2022 LiveLaw (Del) 152

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE YASHWANT VARMA
25 February 2022

Constitution of India, 1950; Article 14 - Prior inaction cannot possibly constitute a basis for invocation of the doctrine of legitimate expectation.

W.P.(C) 9346/2021, CM APPLs. 29010/2021 & 5586/2022
BHARATI SHIVAJI & ANR. *versus* **UNION OF INDIA & ANR.**

W.P.(C) 11220/2021, CM APPLs. 34534/2021 & 5547/2022
MAYADHAR RAUT AND ORS. *versus* **UNION OF INDIA AND ANR.**

W.P.(C) 11662/2021, CM APPL. 36058/2021(Stay)
RITA GANGULY *versus* **UNION OF INDIA & ANR.**

Petitioners Through: Mr. Prashanto Chandra Sen, Sr. Adv. with Mr. Aman Raj Gandhi, Mr. Parthasarathy Bose and Ms. Ridhima Sharma, Advs; Mr.Saurabh Upadhyay, Adv.

Respondents Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal R. Digpaul, Advs. for UOI. Mr.Sanjeev K. Baliyan, Sr. Panel counsel with Ms.Shreya Sinha, GP for UOI.

J U D G M E N T

THE BACKGROUND

1. These three writ petitions assail proceedings initiated by the respondents under Section 3B of the **Public Premises (Eviction of Unauthorised Occupants) Act 1971**[1]. The petitions as originally framed challenged show cause notices dated 5 August 2021 pursuant to which proceedings under Section 3B of the Act were commenced. By way of C.M No. 5586/2022 filed in the lead petition [W.P.(C) 9346/2021], the petitioners also brought on record final orders dated 21 January 2022 in terms of which orders for eviction came to be framed against the them. In light of the final orders which were passed and since the Court was already seized of these petitions, on 4 February 2022 the Court passed interim orders restraining the eviction of the petitioners here. The interim protection was thereafter extended to remain in operation till the final disposal of these writ petitions.

[1] the Act

2. All the petitioners are artists of repute and masters in their own right in varied fields of the Indian classical arts. Amongst them are dancers, musicians, exponents of instruments such as the sitar, santoor to name just a few. These artistes of national and international repute have amongst them many who have been conferred the highest civilian honours of the country and have become legends in their lifetime. In recognition of their standing of eminence and the invaluable contribution made by them for the propagation and preservation of classical art forms, they were allotted the premises in question under a discretionary quota by the respondents. The allotments were made on a leave and license basis as per the particulars which are placed below: -

WRIT PETITION NO.	NAME OF THE PETITIONER /ALLOTTEE	DATE OF ALLOTMENT	LAST DATE OF ACCOMMODATION PERIOD	EXTENSION PERIOD	HOUSE TYPE AND LOCATION
W.P.(C) 9346 of 2019 (leading matter)	P-1. Bharati Shivaji	29.07.1987	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) House No. F- 1/104, Asian Games Village Complex, New Delhi.
	P-2. V. Jayarama Rao	17.06.1987	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) house bearing No' F-1I199, Asian Game Village Complex. New Delhi-1
W.P.(C) 11220 of 2021	P-1. Mr. Mayadhar Raut	1987	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 760, Asian Games Village Complex, New Delhi-110049
	P-2. Mr. F. W. Dagar	1996	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 379, Asian Game Village Complex, New Delhi-110049.
	P-3. Ms. Rani Shinghal	2004	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Fiat No. D-87, Gulmohar Park, New Delhi- 110049.
	P-4. Ms. Geetanjali Lal	1987	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 366, Asian Games Village Complex, New Delhi-1 10049.
	P-5.Mr. KR Subanna.	2004	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 774, Asian Games Village Complex, New Delhi-1 10049
	P-6. Mr. Kamal Sabri (original allotment in the name of his father Late Shri Ustad Sabri Khan)	1990	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 764, Asian Games Village Complex, New Delhil 10049.
	P-7. Mr. Devraj Dakoji	1989	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 55, Asian Games Village Complex, New Delhi-1 10049.
	P-8. Ms. Kamalini	2004	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 211, Kidwai Nagar West, NewDelhi-110023.
	P-9. Bhajan Sopori	1992	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	TypeJV Flat No. 79, Block No. 21, Lodhi Colony, New Delhi-110003.
	P-10. Mr. Jatin Das.	2001	Allotment granted on a leave and license basis for a period of 3 years	1990-2014 (after 31.07.14, no formal extension was granted)	Type-V(A) Flat No. 93, Asran Games Village Complex, New Delhi-110049
W.P.(C) 11662 of 2021	Petitioner- Rita Ganguly	9.03.1989	Allotment liable to be cancelled by one month"s notice served to the petitioner	Allotment made in 1989 stood cancelled w.e.f 01.01.2021 by impugned notice of 21.09.2021	1 LF, College Road, New Delhi

3. As the details extracted hereinabove would establish, the petitioners have continued to remain in occupation of the premises even after the initial term of allotment expired decades ago. It is the admitted position that although no formal orders pertaining to the retention of these premises were made by the respondents for a long period of time, they were permitted to retain the same. It is also relevant to note that all the petitioners occupied these premises pursuant to allotments specifically made in their favour. The solitary exception to the above is the petitioner No. 6 in W.P.(C) 11220/2021 who is admittedly not an original allottee. He has continued to occupy the premises which were licensed in favour of his illustrious father the late Ustad Sabri Khan. The said petitioner has continued to retain possession even after the demise of the original allottee. The petitioners challenge the initiation of action by the respondents by contending that the premises had been licensed to them in terms of the policies as existing and considering the invaluable contribution made by them in the perpetuation of classical Indian art forms. It was submitted that the petitioners had been accorded allotment of these premises by the Union in recognition of their work and contribution to preserve traditional art forms.

THE POLICY OF DISCRETIONARY ALLOTMENT

4. The records which have been placed before the Court indicate that initially a policy was framed by the respondents, and stands embodied in an **Office Memorandum of 24 October 1985**[2]. The 1985 O.M. encapsulates the guidelines for allotment of general pool accommodation residences to eminent artists. The policy as embodied in that office memorandum was itself based upon the decision of the **Cabinet Committee on Accommodation**[3] taken in its meeting held on 12 September 1985. The salient provisions made in the aforesaid policy are extracted hereinbelow: -

[2] 1985 O.M. [3] CCA

"2. Up to 15 eminent artists may be allotted general pool accommodation provided: -

(a) he/she or any member of the family or dependent does not own house or plot of land anywhere in India:

(b) each case has the specific recommendation of the Deptt. of Culture and Ministry of Information & Broadcasting with the approval of Minister-Incharge:

(c) the artist makes useful contribution to society and total income from all sources is not more than Rs.3000/- p.m.

(d) the type of accommodation should be type-D or below;

(e) existing allotments made of higher types should be reviewed;

(f) licence fee should be charged under FR-45-B with departmental charges;

(g) duration of allotment would be three years and cases of allotment to be reviewed once in a three years."

5. The aforesaid policy is thereafter stated to have been revised pursuant to a decision taken by the CCA in its meeting held on 25 September 2008. The decision of the CCA came to be duly published in terms of an **Office Memorandum dated 27 November 2008**[4]. The relevant provisions contained in the 2008 O.M. are extracted hereinbelow: -

[4] 2008 O.M.

"F.14-1/2008-Akademies

Government of India
Ministry of Culture

New Delhi the 27th November, 2008

ORDER

Sub:- Allotment of Government residential accommodation to eminent artistes –

Extension of allotment and revision of guidelines

The Cabinet Committee on Accommodation in it"s meeting held on 25.09.2008 has approved the revision of the existing guidelines in respect of allotment of Government residential accommodation to eminent artistes which was communicated to this Ministry vide Cabinet Secretariat"s letter No.CCA/03/2008(i) dated 1.10.2008. The revised guidelines are as under:-

(i) for an artist to qualify for allotment of house, he/she should not be less than 40 years or more than 60 years of age.

(ii) Only artists of outstanding national/international eminence can be considered.

(iii) The artist should be a bona fide resident of Delhi or the artist"s stay in Delhi should be demonstrated to be essential for the pursuit of his/her artistic endeavours.

(iv) The artist should not own a house/flat/land in the National Capital Region of Delhi (Specifically Delhi, Municipal limits of Ghaziabad, Noida, Gurgaon, Faridabad, Bahadurgarh and Sahibabad). Recipients of plots allotted by DDA in the name of artistes or organizations run by them shall not be considered for allotment.

(v) The artist"s income should not exceed Rs.20,000/- per month as substantiated through income tax returns of the last 3 years.

I. Terms of Allotment.

(i) The allotments shall be made for a maximum of 40 units. Of these 40, only 15 artistes will be entitled to D-II type houses and all the rest shall be recommended for Type-IV accommodation. The locality of the houses and the license fee shall be decided by the Directorate of Estates.

(ii) The allotment shall be for a maximum of 3 years. In deserving cases, extension may be considered for one more period of 3 years. No further extension shall be considered. No unauthorized stay beyond the allotment period shall be recognized under any circumstances and the occupant shall have to bear the licence fee, damages for the unauthorized period as determined by the Directorate of Estates. However if the artist demonstrates (a) pursuit of his/her work at a very high level for the entire period of allotment, and (b) efforts at obtaining ones personal accommodation during this time, then the period of maximum retention can be relaxed based on the recommendations of the Selection Committee.

(iii) In case of death of the allottee, the immediate family shall be allowed retention for a period of 6 months only on payment of normal licence fee.

(iv) There shall be periodic review of the allotments recommended by the Selection Committee and if in its opinion any of the allottees ceases to be eligible for allotment, he/she shall be asked to vacate the premises within 6 months – 2 months on payment of normal rent and 4 months on twice the rent. For the purpose of this review, every allottee shall be required to furnish to the Ministry of Culture, for each financial year, a copy of his/her Income Tax Returns supported by an affidavit declaring his/her total income and also stating whether he or she owns or has acquired a plot of land or a house or flat in the National Capital Region of Delhi that makes him/her ineligible for allotment or continued occupation of the accommodation. Such other details that may be asked for by the Ministry of Culture will also have to be furnished by an allottee.

(v) It shall be mandatory for an allottee to file with the assessing authority of Income Tax Department his/her Income Tax Returns for each financial year even if his/her income for any year be below the taxable limits.

(vi) Suitable relaxation from any provision of these guidelines can be made by the CCA in the case of existing allottees and in cases of evident hardship.

II. Process of Selection

(i) All applications for allotment shall be considered by the Selection Committee. This Committee shall be headed by Secretary (Culture) and shall include all the Joint Secretaries in the Ministry of Culture, Secretary, Sangeet Natak Akademi, Secretary, Lalit Kala Akademi, Secretary, Sahitya Akademi, Director, National School of Drama and JS (UD/Director of Estates. The Committee may have special invitees if the need arises.

(ii) The Selection Committee shall meet once in six months to consider fresh cases and review existing ones.

(V.T. Joseph)
Under Secretary to the Government of India"

INTERIM DIRECTIONS OF THE COURT

6. When the present batch of writ petitions were taken up for hearing on 10 January 2022, the Court took note of the submissions addressed by Mr. Sen, learned senior counsel, who had urged that all the petitioners here would qualify and meet the requirements which stand embodied in the 2008 O.M. In order to make good that submission, learned senior counsel sought and was granted time to file an additional affidavit. Pursuant to the liberty so accorded, all the petitioners have filed additional affidavits on the basis of which they seek to contend that they continue to be eligible for allotment of the premises considering the policy as framed by the Union.

7. On 9 February 2022, the Court noted that the impugned show cause notices referred to orders of cancellation and recorded that the allotments stood cancelled with effect from 1 January 2021. However, the Court noticed that those notices or cancellation letters did not form part of the record. It accordingly directed the respondents to place all relevant material for the consideration of the Court. Pursuant to the directions so issued, the respondents have filed additional documents which include the orders cancelling the allotment as made in favour of all the petitioners, the representations which are stated to have been made by them aggrieved by that cancellation and the decisions taken on those representations by the respondents. Since the reasons assigned for cancellation of allotment are identical in respect of all the petitioners, the Court deems it apposite to extract the order of 9 October 2020 as made in respect of the first petitioner in W.P.(C) 9346/2021 which reads as follows: -

"**1619398/2020/AD(T-VB)**

305/1166

No. D-1I/1/ArtistBill/RMC/2018 (E- 9050077)
Government of India
Ministry of Housing & Urban Affairs
Directorate of Estates

Nirman Bhawan, New Delhi
Dated 09th October, 2020

To

Ms. Bharti Shivaji
F-1/104, Asian Games village complex. New Delhi- 110016

Subject: Government Accommodation No. D-II/ 104, Asian Games village complex in name of Ms. Bharti Shivaji-unauthorized occupation reg.

Sir/Madam,

With reference to subject cited above, it is to state that Type 5A House No.0-111 104, Asian Games village complex , New Delhi was allotted in name of Ms. Sharti Shivajl under Eminent Artist category as per guidelines of OM No.12016(2)/BO-Pol.ll (Vol.lll) dated 24.10.1985. The accommodation was permitted to be retained till 31 .07.2014 as per approval of the Cabinet Committee on Accommodation.

2. The issue regarding retention beyond 31 .07 .2014 has been considered and it has been decided by the competent authority to cancel your allotment i.e. 01.10.2020 and allow retention of three months i.e. upto 31 .12.2020 for making alternate arrangements. The retention of the accommodation from 01 .08.2014 to 31.12.2020 on payment of special license fee, is subject to approval of competent authority .

3. You are hereby informed to hand over vacant possession of the quarter to the CPWD Enquiry Office including the portion occupied by his/her sharer, if any, on or before 31.12.2020 failing which eviction proceeding will be initiated as per Public Premises (Eviction of Unauthorised Occupants) Act. He/She is also liable to payment of penal rates/damages rate in respect of the entire premises for the period of overstay beyond 31 .1 2.2020.

4. Your licence fee accounts have been checked from and as on date, an Amount of Rs 577103/- for the period of occupation till 30.09.2020 as per details given in the statement (provisional) enclosed is found to be outstanding against you which may kindly be deposited with this Directorate at the earliest.

Yours Faithfully,

(G.P. Sarkar)
Deputy Director of Estates
Tel-23062816"

8. The representations made by the petitioners aggrieved by the cancellation of allotments were rejected on identical grounds. For the sake of brevity, the Court refers to the decision taken by the respondents with respect to petitioner No.1 in W.P.(C) 9346/2021 which reads as follows:

"No D·II /1/ArtisIBili/RMC/2018 (E-9050077)
Government of India
Ministry of Housing & Urban Affairs
Directorate of Estates
(T E Section)
****

Nirman Bhawan, New Delhi
dated the 23.12.2020

To

Ms. Bharti Shivaji
H No. 0·11/1 04.
Asian Games Village New Delhi · 110016

Subject: Your application dated 22.10.2020

Sir,

With reference to your letter dated 22.10.2020 cited above, I am directed to state that the competent authority has approved the cancellation of the accommodation occupied by you with effect from 01 .10.2020. You have been allowed another three months of retention upto 31.12.2020 for making

alternative arrangements.

2. The matter regarding policy on allotment of General Pool Residential Accommodation (GPRA) to eminent artists pertains to the Ministry of Culture. Accordingly, as per policy prepared by Ministry of Culture, matters related to allotment of accommodation to cultural experts will be dealt

3. In view of above, it is requested that you may kindly vacate the houses as communicated to you through our notice dated 09.10.2020 else damage charges will accrue against you and eviction proceedings may be initiated as per law.

Yours Faithfully,

(A. Mohan Babu)
Superintendent (A/Cs)
Tel: 23061287"

9. The respondents in terms of the liberty accorded have also placed for the consideration of the Court the **Office Memorandum of 17 November 1997**[5]. The 1997 O.M. has taken note of the various orders passed by the Supreme Court in a public interest litigation pursuant to which the respondents were commanded to frame an appropriate policy regulating the discretionary and out of turn allotments in favour of individuals. The respondents also took note of the direction of the Supreme Court that the discretionary quota shall stand capped at 5% of the total number of vacancies occurring in respect of each type of houses in a particular year. Pursuant to the directions so issued, the respondents proceeded to constitute two Committees to oversee the allotments to individuals under the discretionary quota. The committees were to draw up recommendations for the consideration of the Hon"ble Minister in charge and the ultimate recommendation was thereafter supposed to be placed before the CCA. The 1997 O.M. while dealing with allotments proposed to be made in respect of eminent artists made the following provisions: -

[5] 1997 O.M.

"4. Allotment to private individuals/non-governmental organizations:

The allotments made to private persons such as eminent artists, persons of outstanding merit engaged in works of national standing or national award winners in the field of science, sports or social services and non-governmental organizations/institutions will be valid only upto the end of the current allotment period. The non-governmental organisations will not be eligible for allotment of govt. residential accommodation nor will any proposal for extension in the present allotment period be considered, except in national interest or to meet international obligations with the approval of the Cabinet Committee on Accommodation. Similarly, discretionary allotment to private individuals/non-government persons, including freedom fighters, shall be allowed only with the approval of the CCA, if it is considered necessary in national interest or for meeting international obligations. The widows of freedom fighters will be allowed to retain Govt. accommodation only for a period of six months after the demise of the allottees.

5. All the aforesaid types of discretionary allotments shall be made by the govt. within the overall ceiling of 5% of vacancies occurring in each type of houses in a calendar year and, under no circumstances, such allotments shall exceed such ceiling."

10. As would be evident from a reading of the provisions made and encapsulated in the 1997 O.M., discretionary allotments to private individuals including artists of eminence were envisaged to be made subject to the express approval of the CCA and upon it being found that the allotment is necessary in the national interest or for meeting international

obligations. The aforesaid office memorandum further stipulated that those discretionary allotments would have to be within the overall ceiling limit of 5% of vacancies occurring in different categories of houses in a calendar year and that under no circumstances was that ceiling limit liable to be breached or exceeded.

BACKGROUND NOTE OF 6 NOVEMBER 2020

11. Reverting then to the show cause notices which were issued to all the petitioners here, it becomes relevant to note that the ground of cancellation is disclosed to be a review decision taken by the CCA. The aforesaid ground stands amplified and explained by the additional documents which have been placed on the record by the respondents and more particularly an Office Memorandum of 31 December 2020. It appears that the cancellation is an outcome of the final decision taken by the CCA on 8 November 2020. The documents provided by the respondents further bear out that the CCA had on 8 November 2020 proceeded to approve the recommendation as contained in a **Background Note of 6 November 2020**[6] drawn by the Ministry of Culture and more particularly paragraph 9 thereof. The Background Note which came to be drawn by the concerned Ministry of Culture for the consideration of the CCA takes note of the following facts.

[6] Background Note

12. It records that CCA on 25 September 2008 had approved a revision of the existing guidelines in respect of allotment of residential accommodation to eminent artists. Pursuant to the aforesaid direction of the CCA, the allotments in respect of this category of individuals came to be evaluated based on the 2008 policy which has been extracted hereinbefore. As is evident from the provisions made in that policy, the discretionary quota for allotment to eminent artists was subjected to a maximum limit of 40 units. The respondents appear to have undertaken a review of the existing allotments made under the discretionary quota in terms of the obligation placed in the policy itself. In its meeting of 13 April 2011, the Selection Committee found that none of the existing allottees would be eligible for reallotment or further extension. It further noted that all the existing allottees had continued to occupy the premises for periods ranging from 10 to 35 years as opposed to the maximum of two terms of three years each as contemplated under the 2008 O.M. It further noted that most of the existing allottees had also crossed the maximum age limit of 60 years and have an income which would exceed the prescribed limit of Rs.20,000/- per month. Upon taking into consideration the aforesaid facts, the Committee recommended the revision of the existing guidelines and for the extension of the permissive retention of the premises held by these artists for a further period of three years beyond 28 February 2011. The Ministry of Culture is stated to have submitted a note dated 3 July 2013 for the consideration of the CCA for taking a final view on the proposal as drawn.

13. It further transpires from the record that although this proposal was taken up for consideration by the CCA in its meeting held on 1 August 2013, no decision was taken with respect to revision of guidelines. However, the CCA resolved to extend the retention of promises by the 27 eminent artists upto 31 July 2014 in accordance with the recommendations made by the committee for the period of permissive retention being

extended for a period of three years beyond 28 February 2011. In view of the impending expiry of the retention period, the issue appears to have been taken up for consideration by the Selection Committee of the Ministry of Culture again in its meeting of 16 July 2014. The Selection Committee in that meeting decided to reiterate its recommendation for revision of the policy guidelines for the consideration of the CCA and again opined that the CCA may take a final decision of either cancelling the existing allotments or in the alternative for permission being accorded to them to retain the premises for a further period of one year bearing in mind the fact that all the occupants had continued to occupy the premises for periods ranging from 10 to 34 years.

14. The aforesaid recommendation of the Selection Committee insofar as it related to the guidelines being revised and revisited was accepted by the CCA in its meeting held on 30 March 2016. Pursuant to that decision, the Ministry of Culture is stated to have constituted a committee on 11 April 2018. That committee was tasked with examining and reviewing the existing guidelines as well as to examine the proposals and requests received from artists for allotment of houses under the discretionary quota. The Background Note then discloses that although that committee did meet on 14 August 2019, no final decision could be reached with respect to revision of existing guidelines. The issue thereafter fell for consideration in a joint meeting chaired by the Hon‟ble Ministers of State for Culture and the Ministry for Housing and Urban Affairs alongwith other concerned officials on 3 September 2020. After due deliberation, a decision was ultimately taken that the allotments in respect of eminent artists as subsisting should be cancelled and a cut off date prescribed to enable them to make alternative arrangements. In this meeting it was further recommended that the existing allotments be cancelled with effect from 1 October 2020 and that all existing allottees be provided a further period of three months up to 31 December 2020 for making alternative arrangements. It was further resolved that the CCA which is the competent authority may also be moved for regularisation of the period of stay between 1 August 2014 to 30 September 2020 with a further extension of three months to enable all existing allottees to find alternate accommodation. The aforesaid recommendation was thereafter placed for the consideration of the CCA which proceeded to accord its approval to the same on 8 November 2020. The Background Note insofar as the question of justification of the recommendation ultimately made records as follows: -

“6. JUSTIFICATION

6.1 . As per existing guidelines most of the occupants fail to meet income and/or age criteria. Further, as per existing guidelines, they can be allotted accommodation for three years which can be extended for another three years. However, it has been observed that all of them have been occupying accommodation ranging from 16 to 42 years. Therefore, further extension is not justified as per the existing guidelines.

6.2 . On the other hand, it is also observed that the occupants are artists of repute despite that fact, many of them having outstanding license fee due at their end, A copy of the detailed information is placed at Annexure-IX (Page No, 33). Such information is based on the inputs received from Directorate of Estates, as of 30th September, 2020. The period beyond 31.07.2014 has not been regularized and Artists occupying residential accommodation need to pay damage charges in addition ·to their outstanding license fee. Since the accommodation was not regularized, dues including damage charges of more Rs. 32.00 Crore as of 30th September, 2020 have accumulated against 27 occupants (including occupants who have left the accommodation after 31 .07.2014). This facility has been extended only to

the artists residing in Delhi. If continued, this may lead to demands from the Artists community residing in other Metro Cities of India. Also, housing scenario has changed over last two decades private accommodation is now available in all major cities to suit different budgets. Further, as informed by Department of Estates, there is no similar facility or quota in any other Ministry of Central Government at present.

6.3 In conclusion, it is impossible to evolve a set of objective criteria or guidelines for allotment of a limited pool of Central .Government flats as demand far exceeds supply. Hence, there is ample justification for discontinuing the quota.

9. APPROVAL SOUGHT

The approval of the CCA is solicited for the following:

(i) The accommodation occupied by Artists may be cancelled with effect from 01.10.2020. They may be allowed another three months of retention upto 31.12.2020 for making alternative arrangements.

(ii) The stay of all occupants may be regularized from 01.08.2014 to 30.09.2020."

15. The position which emerges from the aforesaid recordal of facts may be briefly summarised as follows. The Selection Committee initially appears to have undertaken a comprehensive review of existing allotments in light of the 2008 O.M. In the course of that review, it found that none of the existing allottees were eligible under the policy as framed. It accordingly recommended that the policy itself be reviewed and pending further consideration, the stay of the eminent artistes may be extended for a period of 3 years beyond 28 February 2011. This since, undisputedly, in most cases, the original terms of allotment had expired. Although this proposal was taken up for consideration by the CCA, it merely assented to the proposal for extension of the period of stay and did not take any principled decision on the recommendation for review of the policy itself. When the extension as granted expired in July 2014, the matter was again brought to the attention of the CCA in 2016 when it directed that the required exercise for review and revision of the policy terms may be duly undertaken. Although pursuant to those directions, the Ministry of Culture did constitute a committee to examine the issue, its deliberations remained inconclusive. The matter was thereafter taken up for consideration by the inter-ministerial group in September 2020 which ultimately resolved that the allotments were liable to be cancelled subject to the allottees being granted reasonable time to vacate the premises and identify alternate accommodation.

THE CHALLENGE BY THE PETITIONERS

16. Before proceeding to notice the rival submissions which were advanced before the Court, it would be pertinent to note that the policy initiatives as taken and formulated by the respondents have not been assailed by the petitioners. The petitioners have chosen to merely challenge the consequential action taken by the respondents in light of the CCA decision of 8 November 2020. Even the said decision of the CCA has not been questioned. The challenge as raised in these proceedings is thus liable to be evaluated and examined bearing the aforesaid aspect in mind.

17. At this juncture, the Court also deems it apposite to observe that its judgment rendered on this batch is neither liable to be viewed nor construed as the Court even momentarily doubting the eminence of the petitioners or refusing to acknowledge the invaluable contribution made by each of them for the preservation of classical art forms. They have undisputedly been indelibly connected with the preservation of our ancient

culture and heritage itself. Their achievements have led to them being conferred with some of the highest civilian honours by a grateful nation. However, the Court must, as it is so invited to do by the petitioners, in discharge of its constitutional obligation rule on the merits of the challenge raised before it in accordance with the legal principles which apply and the policy as formulated by the respondents alone.

18. Mr. Sen, learned senior counsel, has led submissions on behalf of the petitioners and has rendered valuable assistance to the Court. He has with great erudition enunciated the concept of legitimate expectation, its evolution across various jurisdictions, the dignity of an individual under our constitutional scheme and various other issues which according to learned senior counsel merited consideration of the Court. Mr. Sen, commencing his submissions contended that no hearing was afforded to the petitioners before the CCA proceeded to review the policy measures as existing and ultimately approved the recommendation for cancellation of all existing allotments. Learned senior counsel would contend that the doctrine of legitimate expectation not just gave rise to a reasonable assumption of the petitioners being permitted to continue in occupation, it also mandated the respondents affording to them an opportunity to represent against any proposed policy change. Mr. Sen would submit that valuable rights of the petitioners had ultimately been trampled upon by virtue of the change in position as struck by the respondents. Mr. Sen further contends that as would be evident from the provisions made in the 2008 O.M., although the allotment was envisaged to be for a maximum period of three years subject to being further extended for an identical term in deserving cases, that very policy contemplated extension beyond the maximum period prescribed in cases where the artist was able to demonstrate that the pursuit of his/her work at a very high level warranted continuance of the allotment and upon the respondents being satisfied that despite reasonable effort having been expended by the artist, alternate accommodation could not be identified. According to Mr. Sen the provisions made in the 2008 O.M. have clearly been violated inasmuch as the Selection Committee has failed to examine the case of the individual allottees based on the aforesaid factors enumerated in the policy itself.

19. Mr. Sen seeks to draw sustenance from the expanded application of the doctrine of legitimate expectation to contend that the respondents must establish that their actions do not stand tainted by manifest arbitrariness. It was submitted that wider the extent of the discretionary power conferred on an authority, the greater would be the responsibility to ensure that it is not exercised arbitrarily. Dealing specifically with a change in policy and how it would coalesce with the principles of natural justice, learned counsel has placed reliance upon the decision of the Supreme Court in **M.P. Oil Extraction & Anr. Vs. State of M.P. & Ors**.[7] and more particularly paragraph 44 of the report which reads thus: -

7 (1997) 7 SCC 592

"**44.** The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy

decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of 'legitimate expectation' has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in appropriate case, constitutes a substantive and enforceable right."

20. Learned senior counsel has also sought to buttress the aforesaid submissions by referring to the principles laid down by the Supreme Court in **Navjyoti Coop. Group Housing Society & Ors. Vs. Union of India & Ors.**[8] and more particularly paragraph 16 of the report which is reproduced below:-

8 (1992) 4 SCC 477

"**16.** It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline. On the contrary, Mr. Jaitley the learned Counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20,1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice."

21. Learned senior counsel has also placed for the consideration of the Court to a recent decision rendered by two learned Judges of the Supreme Court in **State of Jharkhand & Ors. v. Brahmputra Metallics Ltd. Ranchi & Anr.**[9], where the concept of legitimate expectation and how it has been explained by our courts has been elaborately noticed. The relevant paragraphs of that decision are extracted hereinbelow: -

9 2020 SCC OnLine SC 968

36. Under English Law, the doctrine of *promissory estoppel* has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been explained in *R* v. *North and East Devon Health Authority, ex p Coughlan* in the following terms:

"55…. But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in In re Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion. ……

56….Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding

interest relied upon for the change of policy."

(emphasis supplied)

37. Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine of *promissory estoppel* found in private law. However, since then, English Law has distinguished between the doctrines of *promissory estoppel* and legitimate expectation as distinct remedies under private law and public law, respectively. *De Smith's Judicial Review* notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of *promissory estoppel*:

"[despite dicta to the contrary [*Rootkin* v. *Kent CC*, [1981] 1 WLR 1186 (CA); *R*v. *Jockey Club Ex p RAM Racecourses Ltd.*, [1993] A.C. 380 (HL); *R* v. *IRC Ex p Camacq Corp*, [1990] 1 WLR 191 (CA)], it is not normally necessary for a person to have changed his position or to have acted to his detriment in order to qualify as the holder of a legitimate expectation [*R* v. *Ministry for Agriculture, Fisheries and Foods Ex p Hamble Fisheries (Offshore) Ltd.*, (1995) 2 All ER 714 (QB)]… Private law analogies from the field of estoppel are, we have seen, of limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty, irrespective of whether the loss has been incurred by the individual concerned [*Simon Atrill, „The End of Estoppel in Public Law?" (2003) 62 Cambridge Law Journal 3*]."

(emphasis supplied)

38. Another difference between the doctrines of *promissory estoppel* and legitimate expectation under English Law is that the latter can constitute a cause of action . The scope of the doctrine of legitimate expectation is wider than promissory estoppels because it not only takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of *promissory estoppel*, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been caused to the promisee may be relevant to hold that it would not be "inequitable" for the promisor to go back on their promise. However, no such requirement is present under the doctrine of legitimate expectation. In *Regina (Bibi)* v. *Newham London Borough Council* , the Court of Appeal held:

"55 The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law, because they go to fairness and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."

(emphasis supplied)

39. Consequently, while the basis of the doctrine of *promissory estoppel* in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of *promissory estoppel* has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its *public functions*.

40. Under Indian Law, there is often a conflation between the doctrines of *promissory estoppel* and legitimate expectation. This has been described in Jain and Jain's well known treatise, *Principles of*

Administrative Law :

"At times, the expressions „legitimate expectation" and „promissory estoppel" are used interchangeably, but that is not a correct usage because „legitimate expectation" is a concept much broader in scope than „promissory estoppel". …

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel. …

In *Punjab Communications Ltd.* v. *Union of India*, the Supreme Court has observed in relation to the doctrine of legitimate expectation:

"the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."

It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."

46. In *Union of India* v. *Lt. Col. P.K. Choudhary* , speaking through Chief Justice T.S. Thakur, the Court discussed the decision in *Monnet Ispat* (supra) and noted its reliance on the judgment in *Attorney General for New South Wales* v. *Quinn* . It then observed:

"This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles."

48. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in *Food Corporation of India* v. *Kamdhenu Cattle Feed Industries* , speaking through Justice J.S. Verma, held thus:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is „fairplay in action". Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether

the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

(emphasis supplied)

49. More recently, in *NOIDA Entrepreneurs Assn.* v. *NOIDA*, a two-judge bench of this Court, speaking through Justice B.S. Chauhan, elaborated on this relationship in the following terms:

"39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.
…

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other...]"

(emphasis supplied)

50. As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 finds concrete expression."

22. Mr. Sen has also cited for the consideration of the Court the enunciation on the subject of a legitimate expectation as contained in the authoritative and seminal work of Sir William Wade in "Administrative Law", 10th Edition. Mr. Sen has additionally sought to assail the action of the respondents based upon the principles of dignity as explained by the Constitution Bench in **K.S. Puttuswamy & Anr. Vs. Union of India & Ors.**[10]. Mr Sen submits that the right of a dignified existence which is a constitutional right would extend to safeguarding and securing the right of the petitioners to occupy the public premises in light of the immense contribution made by them for the preservation and propagation of Indian culture.

23. Mr. Upadhyay, learned counsel who addressed submissions on behalf of the petitioners in W.P.(C)11662/2021, apart from adopting the arguments of Mr. Sen, has additionally submitted that the petitioners were never served any orders cancelling their allotments as are alluded to in the notices issued under section 3B. Learned counsel has also referred to the terms of the original order of allotment itself to submit that cancellation was clearly liable to be preceded by a notice.

[10] (2017) 10 SCC 1

STAND OF THE RESPONDENTS

24. Refuting the aforenoted submissions Mr. Digpaul, learned Central Government Standing Counsel has firstly highlighted the fact that the policy decision taken by the respondents has not been questioned by the petitioners. In view thereof, Mr. Digpaul contends, the challenge raised to the impugned notices must necessarily fail and fall. Mr. Digpaul further contends that the Court must necessarily bear in mind the undisputed fact that all the petitioners have remained in occupation of the premises for more than three decades having been inducted in possession from dates commencing from 1987 to 1990. According to learned counsel, the continued occupation of the premises for periods ranging from 10 to 30 years and that too under a discretionary quota cannot possibly be countenanced or be viewed as conferring a right on the petitioners to occupy the premises in posterity.

25. Mr. Digpaul referring to the provisions made in the 1997 O.M. as well as the contemporaneous record placed for the consideration of the Court points out and submits that the discretionary quota in respect of eminent artist stands restricted to 40 units. According to learned counsel, the continued retention of these units by the petitioners here also impedes the right of other artists and clearly restricts the right of the respondents to consider making fresh allotments in favour of deserving artistes and who may otherwise fulfil the terms of the 2008 O.M.

26. Learned counsel then submitted that the challenge is liable to fail on the more fundamental ground of the petitioners having failed to establish that they would fall within the ambit of the 2008 O.M. Learned counsel submitted that none of the petitioners would qualify the restrictions of age and income so as to justify the continued retention of the public premises. Learned counsel has highlighted the fact that despite the liberty granted by the Court on 10 January 2022, none of the petitioners have submitted their income tax returns to establish that they would qualify the income limits as prescribed in the 2008 O.M. Mr. Digpaul has also invited the attention of the Court to the individual orders of cancellation to underline the fact that those orders would evidence all of them being in substantial arrears towards license fee. It was submitted that no efforts were made by the petitioners to even pay the license fee which was admittedly due. In view of the aforesaid facts, learned counsel would submit that the petitioners are clearly not entitled to be accorded any relief.

27. Controverting the submissions addressed on behalf of the petitioners and resting on the doctrine of legitimate expectation, Mr. Digpaul has submitted that it is always open to the Government to modify and amend a policy bearing in mind the exigencies of the time. It was submitted that the petitioners cannot claim to be invested with an indefeasible right to continue on the strength of a policy which may have been originally framed and in any case the said doctrine cannot fetter the right of the respondents to amend the policy itself. In support of his submissions, learned counsel has placed reliance on the following principles as laid down by the Supreme Court in **P.T.R. Exports (Madras) (P) Ltd. v. Union of India**[11]**,** which reads thus: -

11 (1996) 5 SCC 268

"5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was

existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government is not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

LEGITIMATE EXPECTATION

28. Having noticed the rival submissions advanced, the Court proceeds to firstly deal with the invocation of the principle of a legitimate expectation. Mr. Sen learned senior counsel has with great passion and vehemence commended for acceptance the submission that the legitimate expectation of the petitioners has been clearly violated by the respondents who have failed to act fairly. According to learned senior counsel, bearing in mind the stature and eminence of the petitioners, it was incumbent upon the respondents to ensure that they were treated fairly and not unceremoniously asked to vacate the premises at the height of the raging pandemic. In order to evaluate the soundness of the contention addressed, it would be appropriate to advert to the elucidation of that tenet by the Supreme Court in **Brahmputra Metallics.**

29. Tracing the history of the doctrine as it evolved in English law and became a part of our jurisprudence, the Court explained how over a period of time the said doctrine had come to be unhinged from the principle of promissory estoppel to stand independently and on its own and come to be recognised as a facet of Article 14 of the Constitution itself. Noticing the decisions rendered on the subject, the Supreme Court in **Brahmputra Metallics** held that for the purposes of invocation of the principle of legitimate expectation, it is no longer necessary for it to be established that acting on a promise of the respondents, a party had proceeded to change its position to its detriment. The Supreme Court noted that while the said factors may have been relevant to invoke the principles of promissory estoppel, they would have no application where the doctrine of a legitimate expectation is invoked. The Court further observed that the decisions of the Supreme Court have over a period of time held that a legitimate expectation in public law is founded on the expectation of public authorities being liable to act fairly and reasonably. The tenet has been explained to mean the expectation of each citizen to be treated fairly by the State and in furtherance of the guarantee that its actions shall not infringe the rights of fairness and reasonableness as comprised in Article 14 of the Constitution. **Brahmputra Metallics** essentially traces and elucidates the gradual assimilation of the doctrine of legitimate expectation with the cardinal principles of the rule of law and the guarantee of non-arbitrariness as flowing from Article 14 of the Constitution.

30. It becomes pertinent to note that the petitioners contend that legitimate expectation constitutes an enforceable right in itself. It was in support of the aforesaid submission

that learned senior counsel had pressed into service the decision in **M.P. Oil Extraction**. The observation to the aforesaid extent as appearing in that decision must be appreciated bearing in mind that the same came to be made by the Supreme Court while negating a challenge to the validity of a renewal clause appearing in the agreement executed by the State Government in favour of the respondents there. The said observation is also liable to be understood and appreciated bearing in mind the observations as made in later judgements of the Supreme Court which had fallen for notice in **Brahmputra Metallics** and have held that the principle of legitimate expectation cannot be claimed as a right in itself and can only be invoked where the denial of the expectation constitutes a violation of Article 14.

31. In **Navjyoti Cooperative,** the Court found that the policy of allotment of housing sites to cooperative societies with reference to the date of registration was changed to the detriment of various registered applicants. It was also recognised to be a departure from the past and consistent practice adopted by the respondents there. It also becomes relevant to note that by the time the matter came to be decided by the Supreme Court, the impugned directive itself had come to be withdrawn. However, and notwithstanding the above, it was observed that in the facts of that case it would have been desirable for the State to afford an opportunity to the applicants to represent against the proposed changes in the guidelines for allotment.

32. The invocation of the principles of legitimate expectation in the present batch, however, would have to be examined in the backdrop of the following facts which clearly emerge. The allotment in favor of the petitioners was made under a discretionary quota vesting in the respondents. That discretionary quota was itself subject to the directions issued by the Supreme Court in a public interest litigation. If one were to advert to the relevant provisions as they stood enshrined in the 1985 O.M., it becomes important to note that the same did not envisage an allotment continuing eternally. In fact, and to the contrary, Clause 2(g) thereof in unambiguous terms provided that the allotment would be for three years whereafter each allotment would fall for review. When the respondents proceeded to introduce the 2008 O.M., here again it was clearly provided that the allotment would be for a maximum period of three years subject to a further extension being accorded in deserving cases for another equivalent term. It further stipulated that no further extensions would be considered. The 2008 Policy further postulates that only in those cases where the artists demonstrate the pursuit of his/her work during the entire period of allotment and a failure to obtain alternative accommodation would the period of maximum retention be relaxed based on the recommendation of the Selection Committee. It is thus manifest that none of the office memorandums issued by the respondents envisaged or are liable to be interpreted as conferring a right to continue in the public premises infinitely.

33. The Court bears in mind the undisputed fact that all the petitioners have remained in possession of the public premises for decades together. Neither the 1985 nor the 2008 policies guaranteed or held out any promise of the extension of the license period beyond the maximum period prescribed. They contemplated a relaxation of the maximum tenure only in exceptional cases and where hardship was established. It also becomes relevant to note that in the case of most of the petitioners here, the allotments had come to an

end upon the expiry of a period of three years, the original term reserved thereunder. These allotments had been made in 1987, 1989, 1990, 1996, 2001 & 2004. Even after the expiry of the original period of allotment, the petitioners were permitted to retain the premises. As is evident from the recordal of facts in the Background Note, no extensions had formally been made for the period between when the licenses originally expired till 2013. The CCA in its meeting held on 01 August 2013, thereafter, resolved to grant extensions to allottees like the petitioners beyond 28 February 2011 for a further period of three years and upto 31 July 2014. In the meanwhile, while the respondents attempted to frame a fresh policy and to review all existing allotments, further extensions were neither made nor was the continuance of the petitioners beyond 31 July 2014 validated till at least 2020. It was these facts which led to the respondents ultimately taking a policy decision to cancel all existing allotments with effect from 01 October 2020 and to regularize the retention of these public premises for the period of 01 August 2014 to 30 September 2020**.** In order to ensure that no undue hardship is caused to the petitioners here, the respondents also recommended the extension of the retention period by a further term of three months upto 31 December 2020. These recommendations were ultimately accepted by the CCA.

34. On a conspectus of the aforesaid facts, the Court fails to discern a legitimate expectation of the petitioners which may be said to have been violated by the respondents. It becomes pertinent to observe that the indecisiveness of the respondents to have taken a principled decision or to take precipitate action against the petitioners earlier and once the original period of license had come to an end, cannot possibly lead to a legitimate expectation arising or operating in favour of the petitioners. The Court fails to countenance any right arising in favour of the petitioners by virtue of the inaction on the part of the respondents. An expectation that the respondents would continue to remain passive or unassertive cannot be recognised as legitimate. In any case, inaction cannot possibly constitute a basis for invocation of the doctrine of legitimate expectation which itself is founded on Article 14 of the Constitution. It may be additionally noted that permissive occupation of the premises may have been of some relevance provided it was conceded to be based upon an affirmative decision taken in favour of the petitioners. The Court notes that the claim of legitimate expectation as raised does not rest on any express or unequivocal promise or assurance of the respondents. The *pro tem* extensions accorded by the respondents cannot, in law, be viewed as giving rise to a legitimate expectation.

35. The Court then proceeds to consider the merits of the submission that the change in policy as encapsulated in the decision of the CCA was liable to be preceded by an opportunity of hearing being accorded to the petitioners. The soundness of this submission must be tested bearing in mind the undisputed fact that the petitioners remained in permissive occupation of the premises based not upon some express policy decision of the respondents. Their continued occupation was on account of a failure on the part of the respondents to take a principled or decisive view on the question of allotments in favour of artistes and individuals. The Court has already held that a state of indecision could not have given rise to a legitimate expectation. Fundamentally, therefore, this is not a case where a stated position is sought to be reviewed and which

may be recognised as impacting any substantive rights which may have accrued in favour of the petitioners. The submissions addressed on this score consequently stand negated.

36. Before closing the discussion on legitimate expectation, it would be beneficial to advert to the enunciation by the Supreme Court of the concept of a substantive and procedural legitimate expectation in **Kerala State Beverages (M &M) Corpn. Ltd. Vs. P. Suresh**[12]. Explaining the notion of a *"substantive legitimate expectation"* the Supreme Court held: -

[12] (2019) 9 SCC 710

14. The main argument on behalf of the respondents was that the Government was bound by its promise and could not have resiled from it. They had an indefeasible legitimate expectation of continued employment, stemming from the Government Order dated 20-2-2002 which could not have been withdrawn. It was further submitted on behalf of the respondents that they were not given an opportunity before the benefit that was promised, was taken away. To appreciate this contention of the respondents, it is necessary to understand the concept of legitimate expectation.

15. The principle of legitimate expectation has been recognised by this Court in *Union of India* v. *Hindustan Development Corpn.* [*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] If the promise made by an authority is clear, unequivocal and unambiguous, a person can claim that the authority in all fairness should not act contrary to the promise.

16. M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation in *Punjab Communications Ltd.* v. *Union of India* [*Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727] . He referred (at SCC pp. 741-42, para 27) to the judgment in *Council of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which,

"*27*. … (*i*) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(*ii*) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn." (AC p. 408)

17. Rao, J. observed in this case, that the *procedural* part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The *substantive* part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced.

18. It has been held by R.V. Raveendran, J. in *Ram Pravesh Singh* v. *State of Bihar* [*Ram Pravesh Singh* v. *State of Bihar*, (2006) 8 SCC 381 : 2006 SCC (L&S) 1986] that legitimate expectation is not a legal right. Not being a right, it is not enforceable as such. It may entitle an expectant: (SCC p. 391, para 15)

"(*a*) to an opportunity to show cause before the expectation is dashed; or

(*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice."

19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [H.W.R. Wade & C.F. Forsyth, *Administrative Law* (Eleventh Edn., Oxford University Press, 2014).] Administrative policies may change with changing

circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government. [*Hughes* v. *Department of Health and Social Security*, 1985 AC 776, 788 : (1985) 2 WLR 866 (HL)]

20. The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [*Findlay, In re*, 1985 AC 318 : (1984) 3 WLR 1159 : (1984) 3 All ER 801 (HL)] So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."

37. Proceeding further to explain the concept of a *"procedural legitimate expectation"* the Supreme Court observed: -

24. We have referred to the above judgment to demonstrate that there can be situation where the very claim made can be with regard to an opportunity not being given before withdrawing a promise which results in defeating the "legitimate expectation".

25. The principle of procedural legitimate expectation would apply to cases where a promise is made and is withdrawn without affording an opportunity to the person affected. The imminent requirement of fairness in administrative action is to give an opportunity to the person who is deprived of a past benefit. In our opinion, there is an exception to the said rule. If an announcement is made by the Government of a policy conferring benefit on a large number of people, but subsequently, due to overriding public interest, the benefits that were announced earlier are withdrawn, it is not expedient to provide individual opportunities to such innominate number of persons. In other words, in such cases, an opportunity to each individual to explain the circumstances of his case need not be given. In *Union of India* v. *Hindustan Development Corpn.* [*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] it was held that in cases involving an interest based on legitimate expectation, the Court will not interfere on grounds of procedural fairness and natural justice, if the deciding authority has been allotted a full range of choice and the decision is taken fairly and objectively."

38. As was noticed hereinbefore, the case of the petitioners does not rest on any express promise held out by the respondents. No right stood conferred upon the petitioners to occupy public premises indefinitely. The continued occupation of the premises by them was during the period when the respondents were engaged in undertaking a comprehensive review and revision of the policy itself. The mere fact that the petitioners were permitted to retain possession during the time while the policy was under review, cannot be countenanced as giving birth to substantive rights in favour of the petitioner. The issue of an expectation in law to represent against a proposed change of policy would arise where it is found that a person derived benefits based on a stated position taken by the respondents. Contrary to the above, the petitioners were found to be ineligible even under the 2008 O.M. by the respondents. Even if their case were tested on the provisions contained in the 1985 O.M., it would be evident that they could not claim a right to continue in the premises indefinitely even under that policy.

39. In summation, it may be noted that for the application of the doctrine of legitimate expectation, it is incumbent to establish that the expectation is based on an expressed position taken by the State which led to the creation of substantive rights. It must also be established that the denial of the expectation results in violation of Article 14 itself. The petitioners here failed to prove that the action of the respondents violates these twin tenets. Tested on the principles enunciated in **Kerala State Beverages**, the Court finds itself unable to accept the contentions addressed on the anvil of legitimate expectation.

VALIDITY OF THE POLICY

40. The Court then proceeds to consider whether the change of policy can be said to be tainted by manifest arbitrariness. While framing the ultimate recommendations and is evident from the Background Note, the respondents appear to have taken into consideration the undisputed fact that all the petitioners did not fulfill the income and age criteria as formulated and that they had been in occupation of the public premises for periods ranging from sixteen to forty-three years. They have also taken into consideration the fact that since the retention of the accommodation had not been regularised, dues including damages amounting to more than Rs. 32 Crores as on 30 September 2020 had accumulated against them. The respondents further note that no similar discretionary quota stands placed in the hands of any other Ministry of the Union. The respondents have, in the considered opinion of this Court, justifiably taken cognizance of the transformative change of the housing sector in the NCT. Judicial notice can safely be taken of the exponential expansion of options for housing which the nation has witnessed over the last two decades. It was upon due consideration of the aforesaid factors that the respondents ultimately concluded that there was sufficient justification to discontinue the quota itself. It may, however, be noted that this part of the recommendation as made and contained in the Background Note has not been approved or adopted by the CCA. The CCA has only accorded approval to the recommendations as ultimately framed and comprised in paragraph 9 of the Background Note. Upon a consideration of the aforesaid facts, the Court finds itself unable to hold that the factors which evidently weighed with the respondents can be termed as being irrelevant or not germane to the issues which arose. The conclusions with respect to the challenge raised by the petitioners here must necessarily be guided by the indubitable fact that the petitioners do not have an indefeasible right to continue in the public premises in question. Their right to be allotted public premises is liable to be tested based upon the provisions incorporated in the policy adopted and framed. That policy has not been assailed by the respondents here. The aforesaid factor weighs heavily against the petitioners. Of course, the question whether the cancellation of allotment is liable to be interfered with on an alleged violation of the policy terms itself is a separate issue and shall be dealt with hereinafter. The Court thus arrives at the firm conclusion that the decision taken by the CCA is based upon due deliberation and consideration of factors which were clearly germane. The decision ultimately taken cannot be viewed as suffering from a manifest arbitrariness. In any case, this Court is of the firm view that the decision was taken fairly and objectively.

ELIGIBILITY UNDER THE 2008 O.M.

41. The challenge raised by the petitioners here may then be tested on the bedrock of the provisions made in the 2008 policy. As was noted by the Court in the preliminary parts of this decision, undisputedly, all the petitioners fell foul of the age criteria. Insofar as the income criteria is concerned, no proof has been placed by any of the petitioners on record to establish that their annual income does not exceed Rs. 20,000/- per month. It further becomes important to note that the 2008 O.M. further stipulated that the eligibility of an artist, apart from various other conditions, was also liable to be evaluated based upon it being found that the stay of the artist in Delhi was essential for the pursuit of his/her artistic endeavors. Although pursuant to the order of the Court of 10 January

2022, all the respondents were afforded an opportunity to file an additional affidavit to establish that they fulfilled the provisions of the 2008 policy, none of the affidavits tendered pursuant thereto demonstrates compliance with this requirement as placed under that policy. As was noted hereinabove while the petitioners may be artists of eminence, in order to be recognized as being eligible to be granted the benefit under the discretionary quota, it was incumbent upon them to establish that their stay in Delhi was essential for the propagation of the classical arts and their individual disciplines. This, the Court notes, the petitioners have abjectly failed to establish**.** While the petitioners undisputedly are illustrious and pre-eminent exponents in their respective fields of the classical arts, the Court has not been shown any material which may justify the continued retention of public premises in Delhi or that they would be unable to propagate the classical arts in any other State or city of the nation.

ANCILLARY ISSUES

42. While Mr. Sen, learned senior counsel sought to contend that there was no justification for the petitioners being asked to vacate the public premises while the policy itself was under review, the said submission clearly appears to be factually inaccurate when one views the disclosures as made and contained in the Background Note which was drawn for the consideration of the CCA. The Court notes that the concerned Ministry has clearly recorded that the Committee which had been constituted to undertake a review had been unable to arrive at a consensual or principled decision. The issue, thereafter, was again reviewed in a meeting jointly chaired by the Hon‟ble Ministers of State for the Ministries of Housing & Urban Affairs & Culture and after due deliberation it was ultimately resolved that the allotment of existing allottees is liable to be cancelled by providing them a cut-off date to enable them to make alternative arrangements. It was on the culmination of the aforesaid consultative process that the note was ultimately placed for the consideration of the CCA and which in its meeting of 08 November 2020 proceeded to approve the recommendations contained in paragraph 9 of the Background Note.

43. The submission of Mr. Upadhyaya that none of the petitioners were served with any orders cancelling their existing allotments is clearly belied from the additional documents which have been placed on the record by Mr. Digpaul. Those documents establish in unequivocal terms that all the petitioners were served with individual notices terminating their existing allotments and it is only, thereafter, that proceedings as envisaged under Section 3B of the Act were commenced.

44. The additional documents further bring to the fore the glaring fact that all the petitioners have remained in arrears of license fee commencing from 1987. The details in respect of arrears of license fees as owed by each of the petitioners here runs into lakhs. While Mr. Sen, learned senior counsel submitted that the petitioners individually are liable to clear those dues and are willing to do so even now, the Court fails to find any justification to accede to that submission. It cannot possibly be contemplated that the petitioners were either ignorant or oblivious of their obligation to pay the license fee which was due.

45. Before closing, it would be relevant to specifically deal with the entitlement of the

petitioner No.6 in W.P.(C)11220/2021. Undisputedly, no allotment was ever made in favor of the said petitioner. He has continued to occupy the public premises based on an allotment which was originally made in favor of his late and illustrious father Shri Ustad Sabri Khan. Notwithstanding the fact that the said petitioner is a distinguished and renowned exponent of classical music, his entitlement must ultimately be tested on the anvil of the applicable policy. Viewed from that perspective, it is evident the said petitioner had no right to to occupy premises which were originally allotted to his father except for the period provided to heirs of deceased artistes under the 2008 O.M. The said petitioner has also failed to prove that he would otherwise be eligible to be considered for allotment in accordance with the guidelines which prevail and govern the issue of discretionary allotments in favor of eminent artists. The Court consequently finds no right inhering in this petitioner to have retained the public premises in question.

OPERATIVE DIRECTIONS

46. Accordingly, and for all the aforesaid reasons, these writ petitions along with all pending applications fail and shall stand dismissed. The Court, however, in order to enable all the petitioners to make alternative arrangements and be able to exit the premises with dignity extends to them a two month grace period to hand over vacant possession. The period of two months shall commence from the date of this decision. During the aforesaid period, the respondents shall not take any coercive action against them for eviction from the premises. However, a failure on the part of the petitioners to vacate the premises within the aforesaid period shall leave the respondents open to take such further action as may be permissible in law.