

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.2269 of 2018
(Arising out of S.L.P. (Civil) No.8427 OF 2011)**

**Odisha Industrial Infrastructure
Development Corporation Limited** Appellant

Versus

Pitabasa Mishra & Ors.Respondent

WITH

**Civil Appeal No.2270 of 2018
(Arising out of S.L.P. (Civil) No.9478 OF 2011)**

**Sri Saisankar Associates, Represented by
Proprietor, Shri Satyanarayan Mohanty** Appellant

Versus

Pitabasa Mishra & Ors.Respondents

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted in both the Special Leave Petitions.

These Appeals are filed against the judgment of the High Court of Orissa dated 24th December, 2010 in Writ Petition (C) No. 12408 of 2009 filed by Respondent Nos. 1 to 6 by which the allotment of an industrial plot in the Commercial Estate

at Rourkela in favour of M/s. Sai Sankar Associates (Respondent No.7) was set aside.

2. For the sake of convenience, the parties would be referred to as arrayed in Special Leave Petition (Civil) No.8427 of 2011 filed by Odisha Industrial Infrastructure Development Corporation Limited (for short "the Corporation"/"Appellant-Corporation").

3. M/s. Sai Sankar Associates (Respondent No.7) was an unauthorized occupant of an extent of 14 decimals of land which is equivalent to 6300 sq.ft. in the Commercial Estate at Rourkela and was carrying on a small scale industry since 1996. The Respondent No.7 made representations dated 28th September, 1996, 27th January, 1999 and 25th July, 2002 seeking regularization of the industrial plot which was in their unauthorized occupation. Due to the failure of the Appellant-Corporation in considering the said representations, Respondent No.7 filed Writ Petition No. 6969 of 2008 in the High Court of Orissa seeking a direction to regularize the land which was in its occupation. The High Court by a judgment dated 13th May, 2008 directed the Appellant to consider and dispose of the representation expeditiously,

preferably within a period of three months from the date of production of the certified copy of the order.

4. Pursuant to the Order passed by the High Court dated 13th May, 2008 in Writ Petition (Civil) No. 6969 of 2008 the regularization of the industrial plot was considered in the 74th Board Meeting of IDCO held on 20th September, 2008. The Board approved the proposal to regularize land measuring 6300 sq.ft. on payment of Rs.7,89,350/-. The Respondent Nos. 1 to 6 herein challenged the Order dated 20th September, 2008 by filing Writ Petition (Civil) No. 12408 of 2009 and sought a direction to quash the allotment of land made in favour of Respondent No.7.

5. It was submitted on behalf of Respondent Nos. 1 to 6 who filed the Writ Petition before the High Court that they were allottees of shops-cum-residences in the Commercial Estate at Rourkela. They contended that the outright sale in favour of Respondent No.7 for carrying on Saree Polishing and Dyeing of Garments and Fabric Unit would not be conducive to their business activity as the unit of the Respondent No.7 was environmentally hazardous. It was urged by Respondent Nos.1 to 6 before the High Court that they were entitled for issuance of notice as provided in sub Section 4 of Section 34 of

the Orissa Industrial Infrastructure Development Corporation Act, 1980 (hereinafter referred to as 'the Act'). They further submitted that regularization of the industrial plot was not permissible without regulations being framed under the Act. They further argued that, in any event, public property could not have been transferred without conducting a public auction. Finally, it was submitted on behalf of the Respondent Nos.1 to 6 that the allotment of 6300 sq.ft. of land was made for a paltry sum of Rs.7,89,350/- whereas the market value was around Rs.2,00,00,000/-. The Appellant's case before the High Court was that the regularization of 6300 sq.ft. of land was made at the auction price for a similarly situated plot at the rate of Rs.54,44,000/- per acre as against the prevailing concessional industrial rate of Rs.18,21,000/- per acre. The price fixed for the plot of land which was regularized was in accordance with the prevalent policy decision of the Appellant. A submission was made on behalf of the Appellant before the High Court that Sections 33 and 34 of the Act are not applicable to the regularization of the industrial plot in question.

6. It was contended on behalf of Respondent No.7 before the High Court that Respondent Nos. 1 to 6 were also encroachers

and were beneficiaries of regularization of the encroachments made by them in the year 2006 at a concessional rate. Having got the benefit of the regularization of the encroachments made by them at a concessional rate, they did not have *locus* to question the allotment made in favour of Respondent No.7. It was further contended that there was no infringement of any legal right of Respondent Nos. 1 to 6 and the Writ Petition was liable to be dismissed. The High Court allowed the Writ Petition (Civil) No.12408 of 2009 and set aside the order dated 20.09.2008 passed by the Appellant-Corporation in favour of Respondent No.7.

7. Before we proceed further, it would be beneficial to refer to the relevant provisions of the Act. The Act was promulgated to provide for the establishment of a Corporation for the development of industrial infrastructure in the State of Orissa. The functions of the Corporation as provided in Section 14 of the Act¹ are to promote and assist in the rapid and

¹ **Section 14- Functions.** - The functions of the Corporation shall be –
(i) *generally to promote and assist in the rapid and orderly establishment, growth and development of industries, trade and commerce in the State; and*
(ii) in particular, and without prejudice to the generality of Cl. (i) to-
(a) establish and manage industrial estates at places notified by the State Government;
(b) *develop industrial areas notified by the State Government for the purpose and make them available for undertakings to establish themselves;*
(c) undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith; (Emphasis supplied)

orderly establishment, growth and development of industries, trade and commerce in the State. Apart from the other functions, the Corporation is also required to develop industrial areas notified by the State Government and make them available for undertakings to establish themselves. Section 15 of the Act² provides for the general powers of the Corporation one of which is to allot plots, factory sheds or buildings or part of buildings, including residential tenements, to suitable persons in the industrial estates. Chapter VI of the Act deals with acquisition and disposal of land. In case, the Corporation is unable to acquire any land by agreement, the State Government may

(d) provide or cause to be provided amenities and common facilities in industrial estates and industrial areas and construct and maintain or cause to be maintained works and buildings thereof;

(e) make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings;

(f) construct buildings for the housing of the employees of such industries and employees of the Corporation.

² **Section 15- General powers of the Corporation:-** Subject to the provisions of this Act, the Corporation shall have power :

(a) to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Corporation;

(b) to purchase by agreement or to take on lease or under any form of tenancy any land to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions;

(c) *to allot plots, factory sheds or buildings or part of buildings, including residential tenements, to suitable persons in the industrial estates established or developed by the Corporation;*

(d) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of the allotment;

(e) to constitute advisory committees to advise the Corporation;

(f) to engage suitable consultants or persons having special knowledge or skill to assist the Corporation in the performance of its functions;

(g) to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions; and

(h) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions and the carrying into effect the purposes of this Act.

[Emphasis supplied]

acquire land under the Land Acquisition Act, 1894 on behalf of the Corporation as if such land were needed for public purpose as per Section 31 (1) of the Act³. Section 31 (2) of the Act⁴ provides for payment of the compensation awarded for acquisition of land by the Government and all other charges incurred therein. On such payment, the land shall vest in the Corporation. Any land belonging to the State Government can also be placed at the disposal of the Corporation for furtherance of the objects of the Act according to Section 32 (1) of the Act⁵. Section 32 (2)⁶ provides that the land transferred by the State Government shall be dealt with by the Corporation *in accordance with the regulations made under the Act* and directions given by the State Government in that behalf.

³ **Section 31 (1)- Acquisition of land.** -Whenever any land is required, by the Corporation for any purpose of furtherance of the objects of this Act, but the Corporation is unable to acquire it by agreement, the State Government may, upon an application of the Corporation in that behalf, order proceedings to be taken under the Land Acquisition Act, 1894 (1 of 1894) for acquiring the same on behalf of the Corporation as if such lands were needed for a public purpose within the meaning of that Act.

⁴ **Section 31(2)-** The amount of compensation awarded and all other charges incurred in the acquisition of any such land shall be forthwith paid by the Corporation and thereupon, the land shall vest in the Corporation.

⁵ **Section 31(1)- Transfer of Government lands to the Corporation -** (1) For the furtherance of the objects of this Act the State Government may, upon such conditions as may be agreed upon between the Government and the Corporation, place at the disposal of the Corporation any land vested in the State Government.

⁶ **Section 32 (2)-** After any such land had been developed by or under the control and supervision of the Corporation it shall be dealt with by the Corporation in accordance with the regulations made under this Act and the directions given by the State Government in that behalf.

8. Section 33 (1) of the Act⁷ permits the Corporation to dispose of any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon. The Corporation can also transfer the land after undertaking or carrying out such development as it thinks fit. The transfer as mentioned above shall be subject to the terms and conditions as it considers expedient for securing the purposes of the Act. If the Corporation proposes to dispose of any land which is surplus to its requirement by way of sale, the Corporation, as per Section 33 (2) of the Act⁸, is obligated to offer the land in the first instance to the persons from whom it was acquired. Section 33 (3) of the Act⁹ prohibits any disposal of land by way of gift. But, the Corporation is empowered to dispose of land in any manner

⁷ **Section 33(1)- Disposal of land by the Corporation.** - Subject to any directions given by the State Government the Corporation may dispose of-

(a) any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit.

to such person in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

⁸ **Section 33(2)-** The powers of the Corporation with respect to the disposal of land under sub-S. (1) shall be so exercised as to secure, so far as practicable, that -

(a) where the Corporation proposes to dispose of by sale any such land which is surplus to its requirement, the Corporation shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose.

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

⁹ **Section 33(3)-** Nothing in this Act shall be construed as enabling the Corporation to dispose of land by way of gift, but subject as aforesaid; reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner whether by way of sale, mortgage, exchange, or lease or by the creation, of any easement, right or privilege or otherwise.

whether by way of sale, mortgage, exchange, lease or by creation of any easement, right, privilege or otherwise. Section 34 of the Act¹⁰ obligates the Corporation to carry out a periodical review to ensure that the allotment of land is utilized.

¹⁰ **Section 34- Acquisition of unutilised surplus lands in industrial areas and allotment to other industries.** - (1) With a view to ascertaining whether any plot allotted in an industrial area developed by the Corporation has been utilised for industrial purposes or not, the Board shall carry out six monthly review as to how much unutilised area of each plot is capable of sub-division and whether the unutilised area can be utilised for any other purpose under this Act after sub-division, and shall issue notice to the plot holders in the industrial area calling upon them to furnish to it relevant information in the prescribed form and when so called upon each plot holder shall be bound to furnish true and correct information required within one month from the date of receipt of such notice by him.

(2) For the purpose of enabling the Board to determine whether there is any unutilised portion of any plot in the industrial area and whether such portion is capable of sub-division so as to make it useful for any other purpose under this Act after sub-division, it shall be lawful for any officer of the Corporation, either generally or specially authorised by the Board in this behalf, and for his servants and workmen at all reasonable hours - (i) to enter upon and survey the plot; (ii) to set out the boundaries of the utilised portion of the plots; and (iii) to do all other acts necessary for the purposes aforesaid,

(3) If the Board is satisfied that any plot holder has not utilised the maximum area of his plot suitable for construction of buildings for a period of three years or more from the date on which possession of the plot was delivered to him by the Board and the utilised portion is capable of subdivision so as to make it useful for any other purpose under this Act, the Board may, notwithstanding anything contained in any contract or in any law for the time being in force, issue to the plot holder and all other persons interested in the plot notice to show cause why such unutilised portion should not be acquired for the purpose of being utilised for any other purpose under this Act. The Board shall also cause public notice to be given in the manner laid down in S.46.

(4) When any such notice is issued, the Board shall give a reasonable opportunity of being heard to the plot holder and other persons interested in the plot and it shall be open to the plot holder or any other person interested in the plot to appear and object to such resumption on the ground that the unutilised portion is required by the plot holder himself for the purpose of immediate expansion of his own industry and that he has already taken effective steps for utilising such portion.

(5) If after giving a reasonable opportunity of being heard, the Board is satisfied that the holder of the plot has failed to utilise or is not likely to utilise the unutilised portion for industrial purposes within a reasonable period, and such unutilised portion can be used for any other purpose under this Act, the Board may, notwithstanding anything contained in any contract or in any law for the time being in force, for the purpose of enabling the Corporation to properly discharge its functions of promoting rapid growth and development of industries under this Act on such unutilised portion, resume the unutilised portion of the land by giving a notice to the holder of the plot. On and from the date of such notice the unutilised portion of land specified in the notice shall vest absolutely in the Corporation, free from all encumbrances.

(6) Where any land is vested in the Corporation under the last preceding sub-section, the Board may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the Board or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(7) If any person refuses or fails to comply with an order made under the last preceding sub-section, the Board may take possession of the land, and may for the purpose use such force as may be necessary.

(8) Where any land is resumed by the Board under this section the Corporation shall pay for such resumption an amount not exceeding the proportionate amount of premium paid by the plot holder or his predecessor-in-title claiming under the Corporation in respect of the land so resumed, with interest thereon at six per cent per annum from the date of payment of the premium, and where the lease is a rental lease the amount to be awarded shall not exceed an amount equal to three times the net average yearly proportionate rent payable by the plot holder to the Corporation in respect of the land so resumed.

In case the land is unutilized, suitable steps are to be taken by the Corporation as provided under Section 34. The State Government has the power to make rules in consultation with the Corporation under Section 58 of the Act¹¹. The power to make regulations is dealt with in Section 59 of the Act¹² and the terms under which the Corporation may dispose of land, buildings and

¹¹ **Section 58- Power to make rules.-** (1) The State Government may, after consultation with the Corporation in regard to matters concerning it, make rules to carry out the purposes of this Act : Provided that consultation with the Corporation shall not be necessary on the first occasion of the making of rules under this section.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the fees and allowances payable to the Directors;
- (b) the conditions of appointment and service and the scale of pay of the Managing Director;
- (c) the conditions subject to which the Corporation may borrow;
- (d) the date by which the annual financial statement and programme of work shall be submitted by the Corporation to the State Government and the form and manner of preparing such statement;
- (e) the manner of maintaining accounts;
- (f) the form of, and the details to be given in the annual report;
- (g) the fees which may be charged by the Corporation;
- (h) the conditions subject to which the Corporation may dispose of land, buildings and amenities;
- (i) any other matter which has to be or may be prescribed.

(3) All rules made under this Act, shall, as soon as may be after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and if during the said period the State Legislature makes modifications, if any, therein, the rules shall thereafter have effect only in such modified form, so, however, that such modification shall be without prejudice to the validity of anything previously done under the rules.

¹² **Section 59- Power to make regulations. -** (1) The Corporation may, with the previous approval of the State Government make regulations consistent with this Act and the rules made thereunder, the carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for

- (a) the time and place of meetings of the Board and the procedure to be followed in regard to the transaction of business at such meetings;
- (b) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation, other than the Managing Director;
- (c) deployment of funds of the Corporation and the officers of the Corporation who may operate its accounts;
- (d) the terms under which the Corporation may dispose of land, buildings and amenities;*
- (e) the additional terms and conditions subject to which lands and buildings in industrial estates and industrial areas may be held or used;*
- (f) the conduct of business of the Executive Committee;
- (g) any other matter which has to be or may be provided by regulations.

(2) All regulations made under this Act, shall, as soon as may be after they are made be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions and if during the said period the State Legislature makes modifications, if any, the regulations shall thereafter have effect only in such modified form, so however that such modification shall be without prejudice to the validity of anything previously done under the regulations.

[Emphasis supplied]

amenities can be subject matter of such regulations as per Section 59 (1)(d). Additional terms and conditions subject to which land, buildings, industrial estates and industrial areas may be held or used, can be regulated as per Section 59 (1) (e) by the Corporation.

9. Shri Jayant K. Bhushan, learned Senior Counsel appearing for Respondent No.7 submitted that the scope of Sections 31, 32 and 33 of the Act have been misconstrued by the High court. According to him, the High Court committed an error in applying Section 33 to the land in question. He submitted that Section 31 deals with acquisition of the land by the State Government at the request made by the Corporation. Section 33 refers to disposal of such land which was acquired by the State Government. The land belonging to the State Government which is transferred to the Corporation is to be dealt with in accordance with Section 32 of the Act. He relied upon the lease deed executed by the State Government in favour of the Appellant-Corporation in the year 1986 in which it was categorically mentioned that the land in issue belongs to Government. Shri Bhushan argued that the High Court committed an error in holding that regularization was impermissible in the absence of regulations being made

as per Section 32 of the Act. He relied upon the judgments in the case of **Surinder Singh v. Central Government & Ors.**,¹³; **V. Balasubramaniam v. Tamil Nadu Housing Board**,¹⁴; **Mysore State Road Transport Corporation v. Gopinath Gundachar Char**¹⁵ in support of his submission that the absence of regulations does prevent the Corporation to regularize the industrial plots. He also placed reliance upon **Natural Resources Allocation, In Re, Special Reference No. 1 of 2012**¹⁶ to submit that auction is not the only mode for transfer of public land. Shri Bhushan urged that Respondent Nos. 1 to 6 were beneficiaries of regularization of the encroachments made by them at concessional rates and that the Writ Petition was not maintainable as no legal right of theirs was violated. Another submission made on behalf of the Respondent No.7 is that regularization of the industrial plots is governed by the policy decisions of the Appellant-Corporation which were not challenged by Respondent Nos. 1 to 6. In the absence of any challenge to the policy decision, the High Court ought not to have set aside the regularization.

¹³ (1986) 4 SCC 667

¹⁴ (1987) 4 SCC 738

¹⁵ (1968) 1 SCR 767

¹⁶ (2012) 10 SCC 1

10. Mr. Raj Kumar Mehta, counsel for the Appellant-Corporation submitted a synopsis and adopted the submissions made on behalf of Respondent No.7.

11. Shri Suresh C. Gupta, counsel appearing for Respondent Nos. 1 to 6 submitted that the Respondent No.7 has encroached on the entire plot of land and is not entitled to any relief for regularization. He submitted that the policy of regularization of industrial plots framed in 2008 does not permit the regularization of encroachments made by outsiders/trespassers under any circumstance. In other words, where the entire plot of land is encroached, regularization is not permissible. As the regularization of the plot of Respondent No.7 was after 1st January, 2008, the Respondent No.7 could not have been given the benefit of regularization. He also submitted that the Respondent Nos. 1 to 6 are not similarly situated to Respondent No.7 as the encroachments made by them were of land adjacent to their allotted plots.

12. On the basis of the contentions urged, the points that arise for our consideration are:

- I. Acquisition and disposal of the land,
- II. Regularisation in the absence of regulations,

- III. Transfer of land without conducting public auction; and
- IV. Consideration for the land not commensurate

I. Power of acquisition and disposal of the land:

13. The High Court held that the plot in question was acquired by the State Government in exercise of the powers conferred under Section 31 of the Act following the procedure under the Land Acquisition Act, 1894 on behalf of the Appellant to form industrial estates in the industrial area. A Deed of Agreement dated 1st January, 1986 under Section 32 of the Act between the State of Orissa and the Appellant is placed on record by Respondent No.7. By the said agreement, Government land measuring 4.710 acres was given on lease for a term of 99 years to the Appellant-Corporation for development of infrastructure for small, medium and large industries. There is no dispute that the land allotted to Respondent No.7 is part of the said Government land that was leased out to the Appellant. Hence, the finding of the High Court that the plot in question was acquired by the State Government under Section 31 of the Act is not correct as the land belonged to the Government. The High Court proceeded to record a finding that the land was transferred by the Government under Section 32 of the Act and that such land

could not have been regularized without regulations being framed. The High Court further held that the land which was regularized in favour of Respondent No.7 is surplus land and the procedure prescribed in Section 33 of the Act ought to have been followed.

14. The High Court has not appreciated Sections 31, 32 and 33 in their proper perspective. The land acquired by the State Government at the request of the Corporation is dealt with in Section 31 and the disposal of such land is governed by Section 33 of the Act. Government land which is transferred to the Corporation for development in accordance with provisions of the Act is covered by Sections 32 of the Act. Though there is no basis, the High Court recorded a finding that the plot in question was acquired by the Government and thereafter proceeded to hold that Section 32 is applicable and in the absence of regulations, the Appellant could not have regularized the encroachments.

15. The land transferred by the Government under Section 32 shall be dealt with by the Corporation in accordance with the regulations made under the Act and the directions given by the State Government in that behalf and the procedure prescribed

for disposal of land by the Corporation in Section 33 is not applicable to Government land. As the land allotted to Respondent No.7 is Government land which was transferred to the Appellant, we are of the considered opinion that Section 33 of the Act is not applicable to the land in question.

II - Regularisation in the absence of regulations:

16. Section 59 of the Act provides for regulations to be made in respect of disposal of land and buildings by the Corporation. There is no dispute that no regulations have been made for disposal of land. The question that arises for our consideration is whether the Appellant could have regularized the encroachment in the absence of regulations.

17. The exercise of power by an authority in the absence of regulations has been subject matter of discussion earlier by this Court. It will be useful to refer to some of those judgments. In ***Mysore State Road Transport Corporation (supra)***¹⁶, no regulations were framed by the Corporation under Section 45(2)(c)¹⁷ of the Road Transport Corporations Act, 1950 prescribing the conditions of appointment in service and

¹⁷ Section 45(2) - In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief, Executive Officer or General Manager and the Chief Accounts Officer;

the scales of pay of its officers and servants. It was held by this Court that until the regulations are framed or directions given by the Government, the Corporation had the right to appoint officers and servants as may be necessary for the efficient performance of its functions on such terms and conditions as it thinks fit. In ***U.P. State Electricity Board v. City Board, Mussoorie & Ors.***¹⁸ this Court considered the scope of Section 46 of the Electricity (Supply) Act, 1948¹⁹ which provided that the tariff known as the Grid Tariff shall be fixed from time to time '*in accordance with any regulations made in that behalf*'. This Court rejected the submission that tariff could not be fixed in the absence of regulations. It was held that the provision did not contemplate

¹⁸ (1985) 2 SCC 16

¹⁹ Section 46- THE GRID TARIFF. - (1) A tariff to be known as the "Grid Tariff" shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Board in respect of each area for which a scheme is in force, and tariffs fixed under this section may, if the Board thinks fit, differ for different areas.

(2) Without prejudice to the provisions of Sec.47, the Grid Tariff shall apply to sales of electricity by the Board to licensees where so required under any of the First, Second and Third Schedules, and shall, subject as hereinafter provided, also be applicable to sales of electricity by the Board to licensees in other cases: Provided that if in any such other case it appears to the Board that, having regard to the extent of the supply required, the transmission expenses involved in affording the supply are higher than those allowed in fixing the Grid Tariff, the Board may make such additional charges as it considers appropriate.

(3) The Grid Tariff shall be so framed as to include as part of the charge, and show separately a fixed kilowatt charges component and a running charges component: Provided that if in respect of any area the electricity to be sold by the Board is wholly or substantially derived from hydroelectric sources, the running charges component may be omitted.

(4) The fixed kilowatt charges component in the Grid Tariff may be framed so as to vary with the magnitude of maximum demand.

(5) Where only a portion of a licensee's maximum demand for the purposes of his undertaking is chargeable at the Grid Tariff, the price payable for that portion shall not be greater than the average price which would have been payable had the whole of the said maximum demand of the licensee been chargeable at the Grid Tariff.

(6) The Grid Tariff may contain provisions for

(a) Adjustment of price having regard to the power factor of supply taken or the cost of, fuel or both;

(b) A minimum charge related to a past or prospective demand of a licensee on the Board.

(7) The Grid Tariff may contain such other terms and conditions, not inconsistent with this Act and the regulations, as the Board thinks fit.

[Emphasis supplied]

that no Grid Tariff could be fixed unless regulations were made. It was held that the Grid Tariff should be fixed in accordance with the regulations only if there is any regulation and framing of regulations cannot be a condition precedent for fixing a Grid Tariff. It is relevant to note Section 32(2) which is as follows:

“32(2) : After any such land had been developed by or under the control and supervision of the Corporation it shall be dealt with by the Corporation *in accordance with the regulations made under this Act* and the directions given by the State Government in that behalf.”

The language of Section 32(2) of the Act is in *pari materia* to Section 46(1) of The Electricity (Supply) Act, 1948.

18. In *Surinder Singh* (supra)¹³ framing of rules regulating the mode and manner of disposal of urban agricultural property by sale to displaced persons came up for consideration. Section 8 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 provides that the displaced persons shall be paid compensation as determined under Section 7 thereof ‘*subject to any rules that may be made under this Act*’. Interpreting the said provision, this Court held as follows:

“6.Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same.

In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression “subject to the rules” only means, in accordance with the rules, if any.”

19. It was further held that if the legislative intent was that the power conferred on the authority under Section 8 could not be exercised, that intent could have been made clearer by using the expression ‘*except in accordance with the rules framed*’ a displaced person shall not be paid compensation by sale of pooled property.

20. It is clear from the above judgments of this Court that framing of regulations is not *sine qua non* for land being dealt with by the Corporation. On the basis of the judgments of this Court, it can be safely held that the Appellant has the power to deal with the land, to develop and promote the object of the Act even in the absence of regulations.

III- Transfer of land without conducting public auction:

21. The Appellant framed a policy for disposal of lands in industrial estates/ industrial areas in its 63rd meeting of the Board of Directors of IDCO on 30th June, 2004. According to the said policy, encroachments by outsiders could be regularized under following terms:

“3. Existing encroachments by outsiders, who wish to regularize the same for using the land encroached for industrial use or for use as an amenity facilitating industrial growth may be considered subject to the condition that such regularization does not hamper overall planning of the IE nor inconvenience units in the vicinity. Such regularization shall be at the rate per acre as determined by the last auction for plots/ similarly placed and a one-time affair and the concerned allottees shall not be eligible for any further allotment of land in the said IE in future. No regularization of encroachment shall be allowed for non-industrial institutional/ commercial use under this policy.”

22. A change in the policy of regularization was made by a Circular on 23rd February, 2008 by the Appellant. According to the said Circular, encroachments made by outsiders/ trespassers shall not be allowed by it under any circumstances.

23. Regularization of encroached land is dealt with by policy decisions of the Appellant-Corporation which have not been challenged before any court. The regularization of the plot in favour of Respondent No.7 has been set aside by the High Court on the ground that it was done otherwise than by way of public auction. The High Court found that such action on the part of the Appellant was impermissible. It is no more *res integra* that auction cannot be the only method for disposal of public property. This Court in ***Natural Resources Allocation*** (supra) held as follows:

"146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.

148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional

requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate. "

24. In the absence of a finding that the policy of regularization falls foul of the fairness requirement under Article 14 of the Constitution, the allotment of the plot to Respondent No.7 could not have been set aside by the High Court on the ground that no public auction was conducted by the Appellant - Corporation.

IV- Consideration for the land not commensurate:

25. The regularization of the plot in favour of Respondent No.7 was in terms of the policy decision of 2004. As per the said policy decision, the price fetched for a similar plot of land in the auction conducted at the time of regularization would have to be paid by the person in whose favour the allotment is made. The Appellant stated that Rs.7,89,350/- was directed to be paid by the Respondent No.7 on the basis of the auction which fetched Rs.54,44,000/- per acre. It was also stated that the concessional rate at that point of time was Rs.18,21,000/- per acre. We do not find any fault with the Appellant charging Rs.7,89,350/- for 0.415 acres of land on the basis of the prevailing policy decision. It was contended by Respondent Nos. 1 to 6 that the

allotment was made after the 2008 policy came into force and in view of the bar in the said policy of regularization of plots by authorities, the Respondent No.7 could not have been given the benefit. Respondent No.7 was seeking regularization since 1996 but his representations were not being considered by the Appellant-Corporation. Ultimately, the decision of regularization was taken by the Appellant-Corporation, pursuant to a direction given by the High Court to consider the representations made by Respondent No.7. Hence the bar under the 2008 Policy was inapplicable to the case of Respondent No.7. It is also brought to our notice that a number of plots have been regularized in favour of persons similarly situated to Respondent No.7. Therefore, it cannot be said that Respondent No.7 was showered with any undue benefit.

26. For the aforementioned reasons, the judgment of the High Court is set aside and the Appeals are allowed accordingly.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

New Delhi,
February 19, 2018