REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 550 OF 2003

DLF UNIVERSAL LTD. & ANR. Appellant (s)

VERSUS

DIRECTOR, T.&C. PLANNING
HARYANA & ORS. Respondent(s)

WITH

CIVIL APPEAL NO. 551 of 2003

M/s. ANSAL PROPERTIES &
Industries LTD. Appellant (s)

VERSUS

DIRECTOR, T.&C. PLANNING
HARYANA & Anr. Respondent(s)

WITH

CIVIL APPEAL NO. 1611 of 2003

M/s.Ajay ENTERPRISES LTD. &
ORS. Appellant (s)

VERSUS

STATE OF HARYANA & ORS. Respondent(s)

WITH

CONTEMPT PETITION(C) No. 215/2005 in CIVIL APPEAL No.550/2003 and CONTEMPT PETITION (C)No.106/2006 IN CIVIL APPEAL No.550/2003

JUDGMENT

B.SUDERSHAN REDDY,J :

These appeals are directed against the orders of Punjab and Haryana High Court dismissing the Writ Petitions filed by the appellants herein challenging the impugned order dated 05.05.1999 passed by the Director, Town and Country Planning, Chandigarh, Haryana. The High Court upheld the validity of the impugned memo and accordingly dismissed the Writ Petitions. The same is challenged in these appeals on various grounds.

2. We have heard the learned senior counsel Shri Harish Salve, Shri S. Ganesh, Shri Harish Malhotra and the learned counsel Shri Rajiv Vermani for the appellants and Shri U.U. Lalit, learned senior counsel for the respondents. We have

also heard the learned counsel appearing on behalf of the interveners-applicants.

3. The central question that arises for our consideration in this group of appeals is whether the Director, Town and Country Planning, is empowered to pass the impugned order? Whether the impugned order is ultra vires?

4. By the impugned memo the Director had purported to give the following directions:

(a) the provision in the agreement between the appellant and the plot/flat buyers regarding extension fee and maintenance fee should be deleted from the agreement as the same is not permissible under the law;

(b) further directed to stop charging of extension fee and maintenance fee from the plot/flat holders henceforth and the charges recovered on account of both from

the plot/flat holders "may be refunded to the Government immediately."

(c) stop allowing the transfer of plots after obtaining full payment for the same and to ensure immediate registration of Conveyance Deed "where the full payments of the plot/flats have been received."

5. In order to consider the question as to the validity of the impugned memo few relevant facts may have to be noticed.

BACKGROUND FACTS :

6. The appellants were granted licence under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (for short 'the Act') and the Rules framed thereunder, i.e. Haryana Development and Regulation of Urban Area Rules, 1976 (for short 'the Rules') for setting up residential colonies. The appellants entered into required agreements with the Governor of Haryana acting through Director Town

and Country Planning, Haryana. The appellants acting under the licence so granted and the agreements commenced setting up colonies by dividing the land into plots. The plots were sold to various buyers. The plot buyers are required to make construction on such plots to be used for the purpose for which the lay out was approved. The appellants have also allotted flats to various persons and have entered into agreements. Mutual rights and obligations between the appellants and the plot/flat buyers is structured by the agreements voluntarily entered into by them and all terms and conditions, covenants were mutually agreed by and between the parties. In respect of certain areas even completion certificates were granted as early as in the year 1991-92. The Director all of a sudden without any notice whatsoever to any of the appellants issued the impugned directions which were challenged on various grounds in the High Court.

7. In order to consider the central question as to whether the impugned order is void and unenforceable, it is just and necessary to notice the relevant provisions of the Act.

SCHEME OF THE ACT :

8. The Act intends to regulate the use of land in order to prevent ill planned and haphazard urbanization in or around towns in the State of Haryana. The Act applies to all urban areas in the State of Haryana. We shall notice the relevant provisions of the Act and the Rules which are as under :

> " Section 2. Definitions
>
> (a) .....
>
> (aa).....
> (b) .....
>
> (c) "colony" means an area of land divided or proposed to be divided into plots or flats for residential, commercial, industrial, cyber city or cyber park purposes or for the construction of flats in the form of group housing or for the construction of integrated commercial complexes, but an area of land divided or proposed to be divided—
>
> (i) for the purpose of agriculture ; or

(ii) as a result of family partition, inheritance, succession or partition of joint holding not with the motive of earning profit ; or

(iii) in furtherance of any scheme sanction under any other law; or

(iv) by the owner of a factory for setting up of a housing colony for the labourers or the employees working in the factory; provided there is no profit motive ; or

(v) when it does not exceed one thousand square metres or such less area as may be decided from time to time in an urban area to be notified by Government for the purposes of this sub-clause.
shall not be a colony ,

(d) "colonizer" means an individual, company or association or body of individuals, whether incorporated or not, owning land for converting it into a colony and to whom a licence has been granted under this Act ;

(dd) "cyber city" means self contained intelligent city with high quality of infrastructure, attractive surrounding and high speed communication access to be developed for nucleating the Information Technology concept germination of medium and large software companies and Information Technology enabled services, wherein no manufaturing units shall be permitted ;

(ddd) "cyber park" means an area developed exclusively for locating software development activities and Information Technology Enabled Services, wherein no manufacturing of any kind (including assembling activities) shall be permitted ;

(e) "development works" means internal and external development works ;

(f) …….

(g) "external development works" include water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area;

(gg) "flat" means a part of any property, intended to be used for residential purposes, including one or more rooms with enclosed spaces located on one or more floors, with direct exit to a public street or road or to a common area leading to such streets or road and includes any garage or room whether or not adjacent to the building in which such flat is located provided by the coloniser/owner of such property for use by the owner of such flat for parking any vehicle or for residence of any person employed in such flat, as the case may be ;

(h) ……..

(i) "internal development works" mean—

(i) metalling of roads and paving of footpaths;
(ii) turfing and plantation with trees of open spaces;
(iii) street lighting ;
(iv) adequate and wholesome water-supply ;
(v) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal ; and
(vi) any other work that the Director may think necessary in the interest of proper development of a colony ;

(j) ……

k) "owner" includes a person in whose favour a lease of land in an urban area for a period of not less than ninety nine years has been granted ;

(l) …….

(m) "plot/flat holder" means a person in whose favour a plot/flat in a colony has been transferred or agreed to be transferred by the coloniser ;

(n) . ……

(o) ……

Section 3 Application for licence :

(1) Any owner desiring to convert his land into a colony shall, unless exempted under section 9, make an application to the Director, for the grant of a licence to develop a colony in the prescribed from and pay for it such fee and conversion charges as may be prescribed. The application shall be accompanied by an income-tax clearance certificate :

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.]

(2) On receipt of the application under sub-section (1), the Director shall, among other things, enquire into the following matters, namely :—
(a) title to the land ;
(b) extent and situation of the land ;
(c) capacity to develop a colony ;
(d) the layout of a colony ;
(e) plan regarding the development works to be executed in a colony ; and
(f) conformity of the development schemes of the colony land to those of the neighbouring areas

(3) After the enquiry under sub-section (2), the Director, by an order in writing, shall—

(a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty-five per centum of the estimated cost of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case of cyber city or cyber park purposes as certified by the Director and has undertaken—

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted ;

(ii) to pay proportionate development charges in the external development works as defined in clause(g) of section 2 are to be carried out by the government or any other local authority. The proportion in which and the time within which,

such payment is to be made shall be determined by the Director ;

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be ;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institutions including a local authority on such terms and conditions as it may deem fit ;

(v) to permit the Director or any other officer uthorized by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted :

(4) The licence so granted shall be for a period of 2 years an will be renewable from time to time for

a period of one years, on payment of prescribed fee.

Provided that the Director, having regard to the amenities which exit or are proposed to be provided in the locality, is of the opinion that it is not necessary or possible to provide one or more such amenities, may exempt the licencee from providing such amenities either wholly or in part ;

(b) refuse to grant a licence, by means of a speaking order, after affording the applicant an opportunity of being heard.

[Provided that in the licensed colony permitted as a special project by the Government, the licence shall be valid for a maximum period of five years and shall be renewable for a period as decided by the Government.]

(5) A separate licence shall be required for each colony.

3-A . Establishment of Fund

(1) Any colonizer whom a licence has been given under this Act shall deposit as service charges a sum [at such rate as may be prescribed by the Government from time to time, per square metre of the gross area and of the covered area of all the floors in case of flats proposed to be developed by him into a colony] in two equal instalments. The first instalment shall be deposited within 60 days from the date of the

grant of the licence and the second instalment to be deposited within six months from the date of grant of the licence.

(2) The Haryana Urban Development Authority local authorities, firms, undertakings of Government and other authorities involved in land development shall also be liable to deposit the service charges and shall be deemed to be colonizers for this purpose only. The date of first inviting applications for sale of plots in any colony by it shall be deemed to be the date of granting of licence under this Act for the purpose of deposit of service charges.

(3) The service charges shall be deposited by the colonizer with such officer or person as may be appointed by the Government in this behalf.

(4) The colonizer shall in turn be entitled to pass on the service charges paid by him to the plot holder.

(5) The amount of service charges if not paid within the prescribed period shall be recoverable as arrears of land revenue.

(6) The amount of service charges so deposited by the colonizer shall constitute a fund called the Haryana Urban Development Fund (hereinafter referred to as the Fund) which shall vest in the State Government.

(7) The Fund shall be administered by such officers of the State Government as may be appointed by it for this purpose.

(8) The amount of service charges deposited by the colonizers and grants from the Government or the local authority shall be credited to the Fund.

(9) The Fund shall be utilized by the State Government for the benefit of the urban development and for creation and improvement of urban infrastructure in the State of Haryana. The Fund may also be utilized to meet the cost of administering the Fund.

(10) The Government shall publish annually in the Official Gazette the report of the activities financed from the fund and the statement of accounts.

Section 3 …….

Section 4…….

Section 5. Cost of Development Works

(1) The colonizer shall deposit thirty per centum of the amount realised, from time to time, by him, from the plot-holders within a period of ten days of its realisation in a separate account to be maintained in a scheduled bank. This amount shall only be utilised by him towards meeting the cost of internal development works in the colony. After the internal development works of the colony have been completed to the satisfaction of the Director, the coloniser shall be at liberty to withdraw the balance amount. The remaining seventy per centum of the said amount shall be deemed to have been retained by the coloniser, inter alia, to meet the cost of land and external development works.

(2) The colonizer shall maintain accounts of the amount kept in the scheduled bank, in such manner as may be prescribed :

Provided that where the licence under section 3 is granted for setting up a colony for cyber city or cyber park purposes, the provisions of sub-sections (1) and (2) shall not be applicable.

Rule 2. Definitions

(a) .....

(b) "amenity" includes roads, water supply, street lighting, drainage, sewerage, public parks, schools, play grounds, hospitals, community centers and other community buildings , horticulture, land scaping and any other public utility service;

Rule 3……..

Rule 4 ……..

Rule 5. Development works to be provided in colony [Section 3(3)]—

The designs and specifications of the development works to be provided in a colony shall include—

(a) metalling of roads and paving of footpaths;

(b) turfing and plantation of trees in open spaces;

(c) street lighting;

(d) adequate and wholesome water supply;

(e) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(f) any other works that the Director may think necessary in the interest of proper development of the colony.

11. Conditions required to be fulfilled by applicant [Section 3 (3)]—

(1) the applicant shall—

(a) furnish to the Director a bank guarantee equal to twenty five percent of the estimated cost of the development works as certified by the Director and enter into an agreement in form LC-IV for carrying out and completion of development works in accordance with the licence finally granted;

(b) undertake to deposit fifty percent of the amount to be realized by him from the plot-holders, from time to time, within ten days of its realization in a separate account to be maintained in a scheduled bank and this amount shall only be utilized towards meeting the cost of internal development works in the colony;

(c) undertake to pay proportionate development charges if the main lines of roads, drainage,

sewerage, water supply and electricity are to be laid out and constructed by the Government or any other local authority. The proportion in which and the time within which such payment is to be made shall be determined by the Director;

(d) undertake responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate under rule 16 unless earlier relieved of this responsibility and there upon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

(e) undertake to construct at his own cost or get constructed by any other institution or individual at its cost, schools, hospitals, community centers and other community buildings on the land set apart for this purpose, or undertake to transfer to the government at any time, if so desired by the Government free of cost, the land set apart for schools, hospitals, community centers and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit; and

(f) undertake to permit the Director or any other officer authorized by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due

compliance of the execution of the layout and development works in accordance with the licence granted.

(2) If the Director, having regard to the amenities which exist or are proposed to be provided in the locality, decides that it is not necessary or possible to provide such amenity or amenities, the applicant will be informed thereof and clauses (c), (d) and (e) of sub-rule (1) shall be deemed to have been modified to that extent.

12. Grant of licence [Section 3 (3) and (4)]—

(1)After the applicant has fulfilled all the conditions laid down in rule 11 to the satisfaction of the Director , the Director shall grant the licence in form LC-V.

(2)The licence granted under sub-rule (1) shall be valid for a period of two years from the date of its grant during which period all development works in the colony shall be completed and certificate of completion obtained from the Director as provided in rule 16.

16. Completion certificate/Part Completion Certificate [Section 24]—

(1)After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications the colonizer shall make an application to the Director in form LC-VIII.

(2)After such (scrutiny), as may be necessary, the Director may issue a completion certificate/part completion certificate in form LC-IX or refuse to issue such certificate stating the reasons for such refusal;

Provided that the colonizer shall be afforded an opportunity of being heard before such refusal.

18. Cancellation of licence [Section 8(1)]—

(1) If the Director determines at any time that the execution of the layout plans and the construction or other works is not proceeding according to the licence granted under rule 12 or is below specification or is in violation of the provisions of these rules or of any law or rules for the time being in force, he shall by notice in form LC-X require the colonizer to remove the various defects within the time specified in the notice.

(2) If the colonizer fails to comply with the requirements detailed in the notice issued under sub-rule (1), the Director shall issue him a further notice in form LC-XI to afford him an opportunity to show cause within a period of one month why the licence granted should not be cancelled.

(3) After hearing the colonizer and considering such representation as he may make the Director may either cancel the licence or grant him further time for complying with the requirements of the notice issued under sub-rule (1). If, however, the colonizer does not comply with the said requirements within

such extended period, the Director shall cancel the licence and thereafter, within one month, shall cause a proclamation made in the locality about the cancellation of the licence by beat of drum within thirty days of cancellation of licence.

(4) On cancellation of the licence, no further work shall be undertaken or carried out by the colonizer,

[(5) Deleted.]

20. Release of Bank guarantee [Section 24]—

After the layout and development works or part thereof in respect of the colony or part thereof have been completed and a completion certificate in respect thereof issued, the Director may, on an application in this behalf from the colonizer, release bank guarantee or part thereof as the case may be;

Provided that if the completion of the colony is taken in parts only , the part of the bank guarantee corresponding to the part to the colony completed shall be released;

Provided further that the bank guarantee equivalent to 1/15th amount thereof shall be kept unreleased to ensure upkeep and maintenance of the colony or part thereof, as the case may be, for a period of five years from the date of issue of the completion certificate under rule 16 or earlier, in case the colonizer is relieved of the responsibilities in this behalf.

21……

22……..

23……

24……

25……

26. maintenance and submission of accounts [Section 5 and 6]—

(1) The colonizer shall—

(i) issue regular receipts to the plot holders in respect of the money received by him and maintain counterfoils of the receipts so issued;

(ii) maintain separate ledger account of each plot-holder;

(iii) maintain a register containing authenticated copies of each of the agreements entered into between him and each of the plot holders; and

(iv) maintain accounts books showing details of expenses incurred by him on various development works in the colony.

(2) The colonizer shall within a period of three months after the close of every financial year, submit to the director through registered post with acknowledgement due a statement of accounts indicating the amount

> realized from each plot-holders, the expenditure incurred on internal and external development works separately of the colony with details thereof together with the amount due from each plot holder indicating their postal address. This statement should be duly audited, certified and signed by a chartered accountant.

9. The validity of the impugned memo is required to be decided with reference to the scheme of the Act, Rules and the Regulations framed thereunder.

10. The agreement with the Governor required to be entered by owners of land intending to set up a colony is structured and regulated by Rule 11 of the Rules. The terms and conditions of the agreement and the obligations of the owner of land and covenants thereof are prescribed by Statutory Rules. The contract between the owner of land and its buyers, unlike the agreement entered by the owner of the land with the government, is not required to be in any statutory form. It is a contract between the two willing contracting parties whereunder the terms and conditions are

mutually agreed upon. The covenants decide the mutual obligations between the owner of the land and the buyers thereof.

Interpretation of Contract:

11. It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety

of the contract and the circumstances surrounding its formation. As is stated in Anson's Law of Contract, "a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept….Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large." The Court assumes "that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency…. In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly. A party who claims otherwise, violates the principle of good faith. [See Purposive Interpretation in Law by Aharon Barak : 2005 Princeton University Press].

Extension Fee:

12. Whether the Director is empowered to issue any direction, directing the appellants not to collect the extension fee with further direction to delete the relevant clauses from the agreement?

13. The agreement entered into by the owners and purchasers inter-alia provides that the purchaser shall, after approval of his building plans from the competent authority, "be bound to commence construction of the house on the plot not later than three years from the date the sale deed is executed in his favour….in case the purchaser fails to commence construction within the stipulated period, the seller shall be entitled to resume the plot, refund the amount paid by the purchaser and to resell the plot to somebody else provided that the seller in its sole discretion may extend the aforesaid period of construction "provided the purchaser pays additional charges to the owner." It was mutually agreed that a provision to this effect may have to be incorporated in the sale deed and the purchaser "shall be bound by the

same." This clause enables the owner to charge additional amount for the non completion of the construction by the purchaser within the period stipulated in the agreement. There is nothing in the Act, the Rules and Regulations prohibiting the owner of the land to collect such charges from the buyer. The said provision for payment of "extension fee" has been provided for in the agreement, according to the appellants, only in the interest of speedy development of each colony, and also in order to prevent purchase of plots by speculators who may keep the plot vacant without making any construction with the only object to earn profit by selling the same at a future date and such an act may prove detrimental to other purchasers as such acts obstruct the all round development of the area which is pre-eminently/ predominantly in the public interest. It is not necessary for us to express any firm opinion with regard to the plea so taken by the appellants in this proceeding. It may altogether be a different matter if the purchasers raise objection as regards the very covenants incorporated into the agreement

entered into by and between the parties in a properly constituted proceedings on such grounds as may be available to them in law.

14. The question that arises for our consideration is whether the Director was justified in issuing directions asking the licensee/owner to virtually amend the clauses/covenants in the agreement? Whether the statute confers any authority or jurisdiction upon the Director to meddle with the terms of agreement entered into by and between the owners and the purchasers of plots/flats?

15. The Director's functions and duties are well structured by the Act and the Rules. There is no provision in the Act or the Rules empowering the Director to sit in judgment on the perceived fairness of any clauses incorporated in the agreement entered by the parties. The terms and conditions in the licence granted by the Director do not prohibit incorporation of such a clause in the agreement to be entered

between the owners and the purchasers. Nor there is any clause in the agreement entered by the owner with the Governor through the Director empowering the Director to sit in appeal over the agreement entered by the owners with the purchasers of the plots. There is no explanation forthcoming as to the source of power under which the Director could have issued the impugned directions directing the owner to delete such clauses from the agreement entered with the purchasers.

16. Whether Section 5 of the Act and Rule 11B read with Rule 26(2) of the Rules in any manner prohibit collection of additional charges characterized as 'extension fee' by the owner/colonizer?

17. Section 5 of the Act merely requires the colonizer to deposit 30% of the amount realised, from time to time, from the plot holders in a separate account to be maintained in a scheduled bank and the said amount is to be utilised by him only for meeting the cost of internal development works in

the colony. After the completion of the internal development works to the satisfaction of the Director, the colonizer is entitled to withdraw the balance amount. The remaining 70% of the said amount shall be deemed to have been retained by the colonizer to meet the cost of the land and the external development works. There is no doubt that accounts are required to be maintained by the colonizer in the prescribed manner.

Rule 11(b) merely reiterates as to what has been provided for in Section 5 of the Act.

Rule 26 obligates the colonizer to issue regular receipts to the plot holders in respect of the money received by him and maintain counterfoils of the receipts so issued; maintain separate ledger of each plot holder, maintain a Register containing authenticated copies of each of the agreements entered into between him and each of the plot holders; and maintain account books showing details of expenses incurred on various developmental works in the colony. We fail to appreciate as to how and in what manner these provisions

restrain or prohibit the colonizer/owner to insist buyers of the plots to complete construction in time bound manner and charge extra amounts as may be agreed between the parties for failure to do so. It shall always be open for the Director to insist the colonizer/owner to submit a statement of accounts indicating the amount realized from each plot holders, the expenditure incurred on internal and external development works. We do not find anything in these provisions empowering the Director to issue the impugned directions prohibiting the owners to collect the extension fee for the delayed construction of buildings by the purchasers of the plots. We are essentially dealing with the question as to the authority of the Director and as to whether he is empowered to pass such an order and not with regard to the question as to whether the clauses dealing with this aspect of the matter suffer from any infirmity. The dispute, if any, between the parties to the agreement, may have to be resolved in a properly constituted proceeding in private law domain.

Transfer Fee:

18. Whether the owner/colonizer in law after obtaining full payments from the allottees is prohibited from transferring the plots to the nominees of the allottees? Whether the allottees' right to nominate another person as purchaser of the property can be denied by the colonizer?

19. The prevailing practice of permitting transfer of plots before registration of conveyance deed to the allottee is not contrary to the provisions of the Act or the Rules. The only justification sought to be given by the respondent in this regard is that the State would like a separate set of stamp duty paid to it in respect of each transaction, even though there is no conveyance deed executed as yet in respect of the land in question. This argument is wholly devoid of any merit. Section 17 (1)(b) of the Registration Act requires that where the Conveyance Deed has been prepared for effecting the transfer of a plot or other immovable property, such deed

should be registered within a period of 4 months after its execution. It does not, however, contain any provision whatsoever requiring that a Conveyance Deed should be executed within any period of time after the execution of sale agreement between the buyer and the seller. Nor there is any provision whatsoever in the Stamp Act or Registration Act imposing any restriction on the assignment or transfer of rights under a sale/purchase agreement by the purchaser to a third party, before the execution of any conveyance deed in respect of any immovable property. The parties in the agreement had agreed for the substitution of the name of allottees at the sole discretion of the owner. The conveyance deed executed by the owner is the one which is executed either in favour of the allottee or his nominee as the case may be on which a proper stamp duty and registration fee is required to be paid. In any event the Director has no power under the Act or the Rules to issue any such direction altogether prohibiting such nomination of another person thereby substituting the allottee.

MAINTENANCE FEE:

20. The crucial question that arises for our consideration is whether the Director of Country and Town Planning is empowered to issue any directions, directing the appellants to stop charging maintenance fee from the plot/flat holders and also "delete the relevant clauses from the agreement" and refund the amounts so far collected to the Government immediately. Whether the Act imposes any obligation upon the colonizers or owners to incur maintenance charges out of their own resources? Whether the colonizers/owners are prohibited from recovering the amounts spent towards the maintenance charges from the plots/flats buyers? Whether the clause incorporated in the sale agreement enabling the owners to collect the maintenance charges is void?

21. The Act no doubt imposes certain obligations upon the colonizers/owners and specifies certain items of expenses to be borne by them. Section 3(3)(a)(ii) of the Act requires the

colonizer/owner to pay proportionate development charges if the external development works as defined under Section 2 (g) of the Act are to be carried out by the Government or any other local authority. Similarly Section 3 (3) (a) (iv) requires the owner to construct at his own cost schools, hospitals, community centres and other community buildings on the lands set apart for the said purposes. Further Section 5 of the Act read with Rule 11 (1) (b) imposes obligation and requires the owner to meet the cost of internal development works as defined in Section 2 (i) of the Act.

22. It is no doubt true that Section 3 (3) (a) (iii) imposes responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the authority, as the case may be. That a bare reading of the provisions does not suggest that the

owner is required to provide the said maintenance services free of cost. On the other hand, the latter part of Section 3 (3) (a) (iii) provides that on the expiry of the said period of five years the owner is required to transfer all such roads, open spaces etc. free of cost to the government or the local authority, as the case may be.

23. The learned senior counsel for the respondents relying on Section 2 (i) (vi) contended that maintenance expenses are covered by the said provisions and, therefore, they are required to be borne by the owner/colonizer. Let us test the submission so made by the learned senior counsel. The question that requires to be considered whether providing services of the kind by the owner/colonizer for which maintenance charges are imposed is a "work" of "internal development" which has to be carried out within the colony. Section 2 (i) defines "Internal Development Works" as under:

(a) metalling of roads and paving of footpaths;

(b) turfing and plantation of trees in open spaces;

(c) street lighting;

(d) adequate and wholesome water supply;

(e) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(f) any other works that the Director may think necessary in the interest of proper development of the colony.

24. There is no dispute whatsoever that any maintenance fee or charges are being collected by the owners/colonizers in respect of any of the internal development works mentioned in Section 2 (i). It is not disputed that the appellants are rendering the following additional services, which are not in any manner whatsoever covered by Section 3 (3) (a) (iii) or any provisions of the Act or the Rules.

a) Round the clock security

b) Electricity consumption of street lights, which shall include replacement of bulbs, tubes etc., maintenance of electrical system and its upgradation.

c) Reparing and strengthening of boundary walls and fencing.

d) Conservancy and general upkeep, which shall include sweeping of roads, door to door garbage collection and its disposal, clearing of unwanted growth of plants in vacant plots, repair/replacement/painting of signages, guide maps and gates etc.

e) Upgradation of Roads/parks.

f) Establishment/administrative charges for rendering the aforesaid services, which shall include salaries of staff, rent of the building, telephone, printing, stationery, electricity, computer expenses etc. incurred in running complaint centre in DLF City.

25. In our considered opinion the maintenance fee/charges levied and collected are clearly not in respect of any of the internal development works defined under clause (i) to (v) of Section 2 (i). Perhaps, the learned senior counsel conscious of the difficulty to bring it under Section 2 (i) (i) to (v) urged

that maintenance expenses can be considered to be covered by Section 2 (i) (vi), which refers to "any other work that the Director may think necessary in the interest of proper development of a colony". We find no merit in the submission. Clause (i) to (v) of Section 2 (i) refers to "Works" which are erected within the colony as an integral part of the internal development of the colony. The residuary clause (vi) of Section 2 (i) also refers to "work" which means and implies activities akin to that of which constitute an 'internal development of the colony'. We have already noticed that providing services of the kind for which the maintenance charges/fee are collected, are in no manner in respect of a "work" of "internal development" which is required to be carried out within the licenced area. The expression "work" in Section (i) (vi) cannot be interpreted in isolation ignoring the clauses (i) to (v) in Section 2 (i). Such a construction is impermissible in law.

26. It is, therefore, clear that Director has no authority or power under the Act to issue any directions directing the owners/colonizers to incur maintenance expenses, by deeming the same to be part of the internal development works covered by Section 2 (i). It is needless to reiterate that the maintenance of services specifies in Section 3 (3) (a) (iii) cannot be considered to be part of the internal development works as defined by Section 2 (i).

27. Be it noted that this plea has not been taken by the Director in the High Court nor any such point is urged on his behalf in these appeals before us. On the other hand the material available on record suggests that the Director has never considered the maintenance expenses to be part of internal development works as specified in Section 2 (i). Section 3 (3) (a) of the Act mandates the colonizer/owner to furnish a bank guarantee equal to 25% of the estimated cost of the development works. It is an admitted case that the Director has not taken into consideration the said maintenance expenses for the purpose of computing the

amount of the bank guarantee, which is 25% of the total cost of the internal development works.

28. Whether the amount of maintenance service charges was already included in the sale price of the plots/flats?

29. There is no price fixation formula devised under the provisions of the Act, Rules and Regulations framed thereunder. The Statutory Authorities have no role to play in the fixation of price and costs of land and rate at which the plots/flats are to be sold. The price charged by the owner for the plot is fixed and covered by clauses (1) and (2) of plot sale agreement entered into by and between the parties. The agreed sale price of the plot includes external development charges. The payment of maintenance charges by the plot buyer is provided for in clause (14) of the said agreement. The sale price charged by the owner from the plot buyers includes maintenance of service charges at the most could be a bonafide contention between the owners/colonizers and the

purchasers of plots/flats. The Act, Rules and the Regulations framed thereunder do not provide for any approval or ratification of the agreements so entered into by and between the owners/colonizers. The Director of the Country and Town Planning is not required to put his seal of approval on the agreements so entered. The Director is not authorized or empowered to review or evaluate the terms of contract and resolve the disputes, if any, between the owners/colonizers and the purchasers of plots/flats.

30. The sale price charged by the owner from the buyers for the sale of the plots/flats is a market driven sale price and is not based on any particular figure of cost. The provisions of the Act or the Rules in no manner impose any price control directly or indirectly in respect of plots/flats sold by the colonizer/owner. The sale and purchase of the plots/flats is between a willing vendor and a willing vendee. The Director is not empowered to meddle with the transactions and put

any restriction on the rights of the owner/colonizer in the matter of sale and purchase of plots/flats.

31. Now what remains for our consideration is whether a direction could have been issued by the Director to delete the clause or relevant clauses from the agreements mutually entered by and between the parties. The agreement by and between the owners/colonizers, agreed terms and conditions and covenant therein are purely under private law domain.

32. Let us now examine what are the functions and duties of the Director and the power conferred upon him under the provisions of the Act and Rules. Section 3(1) of the Act provides that any owner of land desirous of setting up a colony shall make an application in writing to the Director in the prescribed Form LC-I alongwith the required particulars mentioned therein which are not required to be noticed in detail. Section 3 (3) (a) provides that after making a proper enquiry under sub-section (2), the Director, by an order in

writing, shall grant a licence in the prescribed form, after the application is furnished to the Director, a bank guarantee equal to 25 per centum of the estimated cost of development works in case of area of land divided or proposed to be divided into the plots or flats for residential, commercial or industrial purpose and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case of cyber city or cyber park. The owner is required to enter into an agreement in the prescribed form for carrying out and for the completion of development works in accordance with the licence granted. Section 3(3)(a)(v) permits the Director or any other officer authorized by him to inspect the execution of the layout and the development works in the colony and to carry out all the directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted. It is thus clear that the Director is entitled to inspect the execution of the lay out and internal and external development works in the colony and to issue appropriate

directions which he may consider necessary and proper for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted. This is to be read along with the condition of licence which requires "that the colony is laid out to conform to the approved layout plans and development works are executed according to the designs and specifications shown in the approved plan accompanying the licence." The Director thus is empowered to issue appropriate directions in order to ensure strict compliance of the terms and conditions of licence subject to which the colony is to be set up by the owner or colonizer. Rule 5 provides that the designs and specifications of the development works to be provided in a colony which is nothing but reproduction of Section 2 (i) which we have noticed in the preceding paragraphs.

33. Section 8 speaks about cancellation of licence by the Director if the colonizer contravenes any of the conditions of the licence or the provisions of the Act or the Rules made

thereunder; provided that before such cancellation the colonizer shall be given an opportunity of being heard.

34. It further provides for the consequences that may flow after the cancellation of the licence.

35. From a fair analysis of these provisions, it becomes clear that the Director's functions and duties and as well as power is completely structured by the statute and the Rules. He undoubtedly plays a vital role and is authorised to issue appropriate directions from time to time concerning the execution of layout and development works in the colony and every such directions issued are required to be complied with by the licensee.

36. In our considered opinion the Director is not authorized to interfere with agreements voluntarily entered into by and between the owner/colonizer and the purchasers of plots/flats. The agreed terms and conditions by and between

the parties do not require the approval or ratification by the Director nor is the Director authorized to issue any direction to amend, modify or alter any of the clauses in the agreement entered into by and between the parties.

37. It is thus clear that there is no provision in the Act, Rules or in the licence that empowers the Director to fix the sale price of the plots or the cost of flats. The impugned directions issued by the Director are beyond the limits provided by the empowering Act. The directions so issued by the Director suffer from lack of power. It needs no restatement that any order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of its legal effect. An order which is not within the powers given by the empowering Act, it has no legal leg to stand on. Order which is ultra vires is a nullity, utterly without existence or effect in law.

38. In **Khargram Panchayat Samiti and another** vs. **State of W.B. and others** [(1987) 3 SCC 82] upon which

reliance has been placed by the leaned senior counsel for the second respondent in no manner supports the impugned directions issued by the Director. The only issue which arose was, whether, in the absence of any specific statutory provision, the authority conferred with a statutory power to issue licence for holding "hats" or "fairs" also possessed any incidental powers to fix the date on which the 'hat' or 'fair' would take place. It was held that such power to fix the date was necessarily incidental to the power of the grant of the licence, in the absence of any provision in the statute. In the very nature of things this court came to the conclusion that it is impossible to separate the power to grant a licence to hold the "fairs" from that of the fixation of the date thereof, because the two are inseparably and intrinsically interconnected. The provisions of the 1975 Act and the Rules enumerates in detail the powers of Director and arms him with jurisdiction to issue appropriate directions from time to time for ensuring due compliance in the execution of the layout and the development works in accordance with the

licence granted. The impugned directions issued result in far-reaching consequences and they cannot be considered to be incidental or ancillary to the power conferred under the Act and Rules. The submission made in this regard is totally devoid of merit.

39. In **D.L.F. Qutab Enclave Complex Educational Charitable Trust** vs. **State of Haryana and others** [(2003) 5 SCC 622], it is held by this court :

> "38. A regulatory Act must be construed having regard to the purpose it seeks to achieve. The State as a statutory authority cannot ask for something which is not contemplated under the Act."

40. Thus while Act and Rules may impose many restrictions on profit percentages etc. time limit on construction and handing over of such construction, such power does not encompass within itself the right to exercise power in manner that inhibits terms and contracts and freedom granted therein.

LIMIT OF 15% PROFIT :

41. The question as to whether appellants made any profit over and above 15% would arise for consideration only after the grant of final completion certificate in respect of the entire colony/development. The application for grant of final completion certificate remained pending with the authorities since long time. The complete accounts are to be finalized to determine whether the 15% limit on the profit has been exceeded and whether the colonizers/owners made profits over and above that. Further steps may have to be taken in accordance with law only thereafter. It would be appropriate to direct the authorities to decide the application so filed by the developers/colonizers for grant of final completion certificate as expeditiously as possible preferably within six months. In case if it is found that the owners had exceeded the said 15% limit on the profit, it shall always be open to the authorities to take appropriate action in accordance with law.

42. For the aforesaid reasons, we find it difficult to sustain the impugned memo of the Director and the same is set aside. But this order of ours shall not preclude owners of plots/flats to avail such remedies as may be available to them in law and raise any dispute that had arisen or may arise and for the enforcement of contractual terms and conditions in which event the matters have to be decided on its own merits uninfluenced by the observation, if any, made in the order of the High Court of Punjab and Haryana and in this order. The question as to whether the cost of the plot includes the maintenance charges may have to be decided on a proper interpretation of the terms and conditions of the agreement. The court in a public law remedy cannot undertake the task of resolving disputes arising out of a contract for such disputes as they essentially lie in the private law domain.

43. In the circumstances, we find it very difficult to sustain the view taken by the High Court for upholding the impugned memo issued by the Director, Town and Country Planning.

The judgment of the High court is, accordingly, set aside. The appeals are, accordingly, allowed subject to the observations made hereinabove.

44. All interlocutory applications and contempt cases are, accordingly, disposed of in terms of this order.

----------J.
[B.SUDERSHAN REDDY]

----------j.
[SURINDER SINGH NIJJAR]

New Delhi,
November 19, 2010