

**BEFORE JUSTICE (RETD.) VIKRAMAJIT SEN
THE SOLE ARBITRAL TRIBUNAL**

In the matter of:

Okhla Enclave Plot Holders Welfare Association & Ors. Petitioners

Versus

Union of India & Ors. Respondents

Present:

Shri Piyush Sharma, Advocate with Shri M.P. Pandey, General Secretary of Okhla Enclave Plot Owners Welfare Association (Regd).

Shri Sudarshan Rajan, Advocate with Shri Kishori Lal, General Secretary of Durga Builders Plot Holders Welfare Association (Regd).

Shri Rahul Malhotra and Shri Varun Garg, Advocate for Durga General Plot Holders Welfare Association.

Shri Shivom Garg and Shri Ramashankar, Advocates for Shri JK Kalra & Ors.

Shri Keshav V. Hegde, Advocate for Durga Builders Plot Holders Plot Booking Forum.

Ms. Suman Lata Katiyar, Advocate for Mrs. Usha Khattar & Ors.

Shri Shivom Garg and Shri Ramashankar, Advocates for Shri JK Kalra & Ors.

Dr. Monika Gusain, Advocate on Record, Advocate for the State of Haryana with Shri Anil Dabas, DTP(P), Faridabad

Shri Satvik Varma, Shri Nitin Mishra, Shri Gaurav Kumar, Shri Udit Chauhan and Shri Lautaksh Joshi, Advocates for Durga Builders Private Limited.

PROCEDURAL ORDER NO. 19
DATED 23rd March 2018

1. By this Order, the Tribunal shall dispose of the various pending Applications/representations received by the Tribunal. For ease of reference, the Applications/representations and their contents are being discussed before being disposed of by a common Order.

2. The Tribunal has received a Letter dated 21-03-2108 on behalf of Mr. Piyush Sharma, Ld. Advocate for Okhla Enclave Plot Owners Welfare Association (Regd). Vide this Letter, Mr. Sharma has prayed for modification/ amendment in the Procedural Order No 18 dated 26-02-2018 (hereinafter referred to as the ‘previous Order’) as follows—
 - a. It has been contended that Para 2 of the previous Order that the submissions/arguments of the Ld. Counsel has not been recorded which have been enlisted in Para 2 of the Letter. Thus, it has been prayed that the submissions of the Ld. Counsel be appropriately recorded.
 - b. It has been further prayed that Para 5 of the previous Order be struck off, especially the observation of the Tribunal that these *‘proceedings are becoming quite acrimonious’*. In support thereof, it has been contended that the Ld. Counsels have *‘made submissions in a peaceful atmosphere’*.

A reply on behalf of the Builder/Colonizer dated 25-03-2018 has been received by the Tribunal. In the Reply, the aforesaid letter has been opposed for it being a measure to delay and derail these proceedings.

3. Another Letter dated 26-02-2018 seeking Review/ modification in the Procedural Order No. 18, on behalf of Mr. Kishori Lal, General Secretary Durga Builders Plot Holders Welfare Association (Regd.) has been received by the Tribunal via email on 17-03-2018. Vide the said letter, it has been submitted, *inter-alia*, that under Section 8(1) and 8(2) of the Haryana Development and Regulation of Urban Areas Act, 1975 the DTP can directly allot plots; the Hon'ble Supreme Court vide its various Orders has already thrown out the Builder from the equation and that Mr. Arun Mehra, who is currently representing the Builder before this Tribunal, is not competent to represent Durga Builder Pvt. Ltd. On the basis of the aforesaid, it has been prayed that the '*Hon'ble Tribunal may proceed in the matter in view of the fact that the Colonizer has no longer any role to play and thereafter go ahead with the Tribunal in view of the Terms of Reference*'.
4. Mr. Piyush Sharma and Mr. Sudarshan Rajan, Ld. Advocates for the Plot Holders' Associations led arguments seeking to establish that this Tribunal can pass orders for allowing DTP to take over the land from the Builder and the DTP can directly make allotments as well as develop the land, as Orders to that effect have already been passed by the Hon'ble Supreme Court. In support thereof, the Ld. Counsels have specifically relied on Order dated 07-04-1997 in W.P.(C) No. 113 of 1996 Order dated 22-04-2013 in W.P.(C) N0. 876 of 1996 as well as Orders dated 17-07-2013 and 18-07-2013 in W.P.(C) No. 876/ of 1996 to argue that the Hon'ble Supreme Court has allowed the DTP to make direct allotments to the Claimants.
5. In addition, the Ld. Advocates for the Plot Holders' Associations had also placed reliance on Section 8(1) and 8(2) of the Haryana Development and Regulation of Urban Areas Act, 1975 ('Act') to argue that the License of

the Builder stands cancelled. The said sections are quoted herein for the facility of ready reference –

‘8. (1) A license granted under this Act, shall be liable to be cancelled by the Director if the colonizer contravenes any of the conditions of the license 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.

(2) After cancellation of the license, the Director may himself, carry out or cause to be carried out, the development works in the colony and recover such charges as the Director may have to incur on the said development works from the colonizer and the plot-holders in the manner prescribed as arrears of land revenue.’

6. Apart from the above mentioned, the Ld. Counsel submitted that that the Builder has not paid the License Fee since 2002-2003 and hence the current representatives of the Builder before this Tribunal cannot claim to be the Colonizer of the Project Lands.
7. Based on the aforesaid provisions of the Act, it has been argued by the Ld. Counsel for various Plot Holders’ Associations that this Tribunal has the power to pass appropriate directions directing DTP to take over the land from the Builder right away and make allotments. Thus, the Tribunal can pass appropriate Orders for eliminating the Builder from these proceedings.
8. Ld. Counsel for the Builder had vehemently refuted these submissions. According to him, the Hon’ble Supreme Court has not passed any such

Orders till date from which it can be inferred that the DTP has been allowed to make direct allotments to the Plot Holders'. He has urged that the Orders passed by the Hon'ble Supreme Court in these matters cannot be read in isolation as done by the Ld. Counsel for various Plot Holders' Associations. It is his case that the Project Land had been placed under the DTP Haryana by the Hon'ble Supreme Court only for '*watch and ward*' in the background of widespread encroachment on the Project land.

9. With regard Section 8 of the Act, it has been argued by the Ld. Counsel for the Builder that the DTP Haryana has not initiated any proceedings so far to cancel the License of the Builder, a fact which has been confirmed by Shri Anil Dabas, DTP(P).
10. The Ld. Counsel for the Builder has submitted these applications are an attempt on the part of the various Plot Holders' Associations to keep the pot boiling and prolong these proceedings. He has submitted that these Associations are exploiting innocent allottees and collecting an amount of almost Rs. 2 crores per year from various allottees in the garb of these proceedings.
11. The rival submissions have been heard and duly considered. Though only a handful of Orders have been quoted before the Tribunal, however, all the Orders passed by the Hon'ble Supreme Court in W.P.(C) No. 113 of 1996 as well as in W.P.(C) N0. 876 of 1996 till date have been examined. The Orders passed by the Hon'ble Supreme Court have to be read and understood in continuum and not in isolation. From a cohesive reading of the Orders passed by the Hon'ble Supreme Court, I am unable to agree with the Plot Holders' Association that the Builder had been cast away from the matter by the Hon'ble Supreme Court. Rather the Hon'ble

Supreme Court had directed all the parties, including the Builder, to this Tribunal to '*resolve each and every issue involved in these matters*'.

12. Given that there are no such Orders passed by the Hon'ble Supreme Court, I had impressed upon the Ld. Counsels for various Plot Holders' Associations to point out the relevant law which may enable an Arbitral Tribunal to direct the State of Haryana to take over the land and make direct allotments to the eligible allottees, which nonetheless, are yet to finalized. The provisions of HUDA Act, as quoted hereinabove, do not enable the Arbitral Tribunal to strip the Builder/Colonizer of its land, especially when the State of Haryana has admitted that it has not cancelled the license of the Colonizer to develop the land. Upon specific enquiry made by the Tribunal, the State has admitted that proceedings have not even been initiated against the Builder, which should have been so in the face of the admitted defaults in payments of License Fee since 2002-2003 by the Builder. Be that as it may. Thus, the Applications are hereby rejected.
13. At this juncture, it would be prudent to look back at the history of these proceedings. With the consensus of all involved, it was decided that these disputes can be resolved only if first there is a fair approximation of the total number of allottees. For this purpose, this Tribunal vide Order dated 23rd July 2016 and the subsequent Order dated 3rd September 2016, devised and directed scrutiny of alleged allottees by the Scrutiny Committee. It was further decided by consensus that for administrative ease, first the scrutiny would be undertaken for the NPNL category. The Scrutiny Committee submitted its Report on 28th October 2017. Parties had requested to put for their suggestions and objections to the Report within 15 days therein. No such suggestions have been received till date.

14. Thereafter, the Builder had suggested to propose new schemes to accommodate maximum allottees. Parties had decided to meet on 12th January 2018 at 3 PM in the office of STP to deliberate on the proposed scheme and inform the Tribunal accordingly. However, the Committee is yet to be informed about the same.
15. Separately, despite directions from the first date of hearing, the various Plot Holders' Association have not submitted the details of their members along with details of their allotment. The survey of the land has not been completed despite repeated directions from this Tribunal. Encroachment is rampant and continues to mar the land despite repeated directions from this Tribunal.
16. On the next date of hearing, it is expected that all the parties would report due compliance of the previous Orders passed by this Tribunal, with a view to resolve these disputes as expeditiously as possible.
17. The Tribunal shall next assemble on 13-07-2018 at 4 PM.



Justice (Retd.) Vikramajit Sen
Sole Arbitator