



Dr. Monika Gusain, Advocate on Record, for the State of Haryana with Shri Ravi Sinha, STP Faridabad and Ms. Renuka Chauhan DTP Faridabad

Shri Mohit Mudgal, Shri Gaurav Kumar and Ms. Joveria Sabbah, Advocates for Durga Builders Private Limited

**PROCEDURAL ORDER NO. 23  
DATED 15<sup>th</sup> NOVEMBER 2019**

1. These proceedings are being held today in compliance of and pursuant to Order dated 3<sup>rd</sup> October 2019 in W.P.(C) No. 876/1996 passed by the Hon'ble Supreme Court of India. At the outset, the attention of this Committee has been drawn towards Page 41 of the said Order which reads as follows-

*Other observations relevant for determination of the issue: -*

- *The sixth respondent-Colonizer is bound to pay the licence fee of Rs. 21,86,97,901/- (as on 28.02.2019) towards renewal of licence with interest @ 6% per annum from 28.02.2019. If the amount is not paid, it is for the State to proceed against the sixth respondent to recover the amount as if it is a land revenue. For the said amount of 21,86,97,901/- (as on 28.02.2019), there would be a charge on the properties of the sixth respondent-Colonizer.*
- *Upon the payment of Rs.21,86,97,901/- as licence fee, respondent No.6-Colonizer is at liberty to work out his remedy qua the encroached area of 46.85 acres in accordance with law and also the surplus plots as determined by the learned arbitrator.*
- *Pursuant to the order passed by the Supreme Court, DTCP, Haryana has stated that it has spent an amount of Rs.1.25 crores towards watch and ward and the same is payable by the Colonizer. Thus, the colonizer shall pay Rs.1.25 crores to DTCP, Haryana till August, 2019-the date of filing of the affidavit before the Supreme Court and further expenses borne by the Department for watch and ward of the licensed area and other incidental expenses. If the above amount is not paid by the sixth*

*respondent-Colonizer, it is for the State of Haryana to proceed against the sixth respondent to recover the amount as land revenue.*

- *On payment of licence fee and other dues, the Colonizer would be entitled to make a claim for the surplus plots, if any, left over.*
2. The Committee has inquired from the Colonizer regarding the status of the payment of the aforesaid amounts. In response Mr. Mohit Mudgal, the Learned Counsel for the Colonizer, has submitted that the Order of the Hon'ble Supreme Court provides for fulfillment of a two-fold condition before the Colonizer is called upon to make the payment of Rs. 21,86,97,901/-. Firstly, it has been urged that the total number of Claimants, who are eligible for allotment, shall be firmed up. Thereafter, a payment schedule may be worked out whereunder the payments to be made by the Colonizer are linked to the payments which are due from the eligible allottees. It has also been further submitted that the State of Haryana should also be directed to give a statement showing the manner in which the amounts deposited thus far by the Colonizer have been dispersed.
  3. The Learned Counsel for the Colonizer has further submitted that the Order of the Hon'ble Supreme Court does not prescribe the manner in which the payment of Rs. 21,86,97,901/- is to be made, leaving it to the Committee to pass requisite directions. Lastly, it has been contended that the payment of Rs. 21,86,97,901/- is related to the claim of the Colonizer for the balance land and is not linked to the present disputes.
  4. The submissions made by the Learned Counsel for the Colonizer have been strongly contested by all the other Parties. The thrust of the submissions made by the Learned Counsel appearing for various Claimants has been that the directions passed by the Hon'ble Supreme Court in the said Order dated 3<sup>rd</sup> October 2019 have to be complied with in totality. It has been

further argued that if the Colonizer fails to comply with the directions of the Hon'ble Supreme Court, then the Colonizer shall forfeit *locus standi* to be heard before the Committee.

5. The Committee has carefully examined the Order passed by the Hon'ble Supreme Court. The role of this Committee is limited to the compliance of the directions given by the Hon'ble Supreme Court. The Committee does not find force in the submission of the Colonizer that the amounts directed to be paid under the Order are contingent upon the drawing up of a list of eligible Claimants or allottees, or payments made by the eligible allottees or statement of accounts by the State of Haryana. This understanding of the Committee is based on the categorical directions of the Hon'ble Supreme Court in paragraph 18 of the Order-

*18. The claim of the sixth respondent can be considered by the arbitrator only subject to the condition that he is paying the licence renewal fee of Rs.21,86,97,901/- (as on 28.02.2019) payable with interest @ 6% from 28.02.2019 plus Rs.1.25 crores borne by DTCP, Haryana in maintaining the security as per the order of the Court dated 18.07.2013. The area claimed by the sixth respondent- Colonizer shall be considered by the learned arbitrator only after examining by the rightful claim of the beneficiaries identified by Scrutiny Committee (to be finalized and approved by the learned arbitrator).*

6. In view of these facts and circumstances, the Committee had suggested to the Colonizer that it can deposit the amounts directed by the Hon'ble Supreme Court with the Committee in an escrow account till the list of eligible allottees is firmed up. The Committee had also proposed that in the interest of justice, the Committee would consider allowing 4 to 6 weeks to the Colonizer to deposit the amounts in the escrow accounts. The Committee had specifically directed the Colonizer to take appropriate instructions of the aforesaid suggestion of the Committee. Be it noted that

this suggestion was made in view of the fact that the payments made by the Colonizer are secured with the Committee and it can be ensured that the amount deposited are used only in the subject Project. This suggestion would also assuage the concerns of the Colonizer that the amounts deposited by the Colonizer are not mis-directed by the State of Haryana towards purposes other than the subject Project. However, the Colonizer did not accept the proposal of the Committee and insisted that the Colonizer would deposit the amounts only after finalization of the list of allottees. The Committee had also proposed that the Colonizer can make part payments along with Bank Guarantees, providing the Colonizer time to furnish the entire amount. This proposal was also not found acceptable by the Colonizer.

7. In view of the refusal of the Colonizer to pay the amounts directed by the Colonizer, the claim(s) of the Colonizer cannot be heard by the Committee. The State of Haryana is free to take steps as per the Order of the Hon'ble Supreme Court. Needless to state, the Colonizer will become entitled to participate in these proceedings as soon as it complies with the directions of the Hon'ble Supreme Court.
8. The Committee had directed all concerned to file a written note on the future course of action to be adopted by the Committee. The Learned Counsels for the Claimants have made detailed oral submissions in this regard. There is a consensus amongst all present that the first step should be finalizing the list of allottees, in terms of the direction of the Hon'ble Supreme Court in paragraph 58 of the Order, which are as follows-

*58. Summary of Conclusion: -*

*Number of claimants settled by the Scrutiny Committee: -*

*• The number of eligible allottees are to be decided by the Arbitrator applying the parameters as set out in the order of the Arbitrator dated 07.05.2016 and the learned Arbitrator to determine the final list of eligible plot owners in all the categories – NPNL, Economic Weaker Sections (EWS) and General and also commercial.*

*• Once the allottees are identified and the allottees pay the apportioned development charges, the learned Arbitrator shall direct the Director to execute necessary documents in favour of the allottees in terms of Section 8(4) of the HDRA Act.*

9. The Scrutiny Committee has submitted its Scrutiny Report with respect to NPNL, EWS and General category. The Hon'ble Supreme Court has also noted these facts in paragraph 3 of the Order. It has been mutually decided that the Committee shall first take up the NPNL category. The Learned DTP, Haryana is directed to submit its written recommendations on the Scrutiny Report of the NPNL category, with the Committee in the next 10 days. At the next hearing, the Committee shall consider the recommendations of the Learned DTP, Haryana as well as the various objections received by the Committee with respect to the Scrutiny Report for the NPNL category.
10. The proceedings today have seen a huge turnout. To ensure that the proceedings take place smoothly and in a time efficient manner, the Committee reiterates the directions given in its previous Order dated 23<sup>rd</sup> April 2016 which were inter-alia, as follows-

*“At the outset it was again clarified, keeping in perspective the experience at previous hearings of the Tribunal, that it would be salutary to grant audience to all person claiming a right in the subject matter, provide they form an Association of at least 15 persons. This has been agreed to by the parties who appeared in person as well as those who are represented by*

*Advocates. It is directed that every Association must file with the Tribunal a List of Members, furnishing the initial date of booking or payment, as the case may be...*”

11. The Parties are directed to comply with the directions given vide Order dated 23<sup>rd</sup> April 2016. Every Association must file its authenticated List of Members (along with contact details). Be it noted that an Association shall be granted the right of audience with the Committee only upon receipt of the List of Members.
12. The Committee also encourages the Parties/Claimants appearing before the Committee to align/join with an existing Association for administrative convenience. In this regard, it has been brought to the attention of the Committee that in the past whenever the Claimants, who do not appear under the aegis of an Association, have made efforts to join one of such Associations, such efforts have not met a favorable response from the Associations and unjust demands have been made. It is clarified that no person shall be thwarted from joining the existing Associations or forming a new Association as per law. If any complaints are received against any of the Associations, then the Committee shall not hesitate from passing stringent orders against errant individuals/Associations.
13. The Learned Counsels appearing before the Committee are directed to file due authorizations, which shall clearly spell out the Parties’ names and contact details, at least 3 days in advance of the next date of hearing. It is clarified that the Committee shall not grant a right of audience to the Learned Counsel who appear before the Committee without a due authorization/vakalatnama. The Learned Counsels for the Claimants are also directed to fill in their complete name and contact details as well the name of the Party they represent on the appearance sheet circulated during

their hearing. It is also clarified that submissions made to the Committee shall be accepted only if they are duly endorsed by the Counsel as well as the party concerned, and accompanied with an Index.

14. To ensure that the information regarding these proceedings as well workings of this Committee is accessible to all concerned, the Committee directs the Department of Town & Country Planning, Haryana to publish on its website the Orders passed by this Committee thus far, as well as the Scrutiny Reports of the NPNL, EWS and General category.
15. The Committee has also discussed the aspect of the fees of the Committee. Although the Hon'ble Supreme Court has directed that the Committee may decide its remuneration, the Committee is mindful of the fact that Claimants appearing before the Committee are mostly from the less-advantaged sections of the society who have been patiently waiting for more than 2 decades for a roof over their heads. For this reason, the Committee does not wish to increase the fees fixed almost four years ago, i.e. vide Order No. 1 dated 20<sup>th</sup> February 2016. The Committee wishes to ensure that the fees of the Committee are equally borne by all the Claimants, and the burden is not concentrated on a few Associations only. It has been noted that some Associations have occasionally appeared before the Committee however have failed to share the expenses of the proceedings as well as the remuneration of the Committee. It is directed that each Association shall submit a detail of payments made to the Committee so far along with a List of its members. As far as the State of Haryana is concerned, it is disappointing that even after several reminders they have failed to clear the arrears of the fee of Rs. 3,50,000/- communicated vide emails as well as orally.



16. The Tribunal shall next assemble on 5<sup>th</sup> December 2019 at 2. 30 PM.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen', with a horizontal line underneath.

Justice (Retd.) Vikramajit Sen