

Mr. AJ Ansari

PROCEDURAL ORDER NO. 27
DATED 3rd JULY 2020

1. With the consent of the Parties, the sitting was convened on Cisco Webex Meet Platform, arranged by the Special Committee.
2. The State of Haryana has filed Submissions dated 01-07-2020 along with enclosures vide email dated 01-07-2020, less than 48 hours before the scheduled hearing, which was not marked to the Ld. Counsel for the Claimants. Dr. Gusain has clarified that these submissions were made available to the Ld. Counsel for the Claimants on 02-07-2020. The Committee is exasperated at the last-minute filings made by the State of Haryana. The delay in filing submissions /reports by the State of Haryana might not be calculated, but is certainly leading to protracted proceedings. The Committee is constrained to direct and clarify that submissions shall be made atleast 5-days prior to the date of hearing, with advance copy to all concerned.
3. The State of Haryana has made the belated filings on 01-07-2020 in compliance of paragraph 7 of the Procedural Order No. 26 dated 10-06-2020. In paragraph 3 of the Submissions dated 01-07-2020 made by the State of Haryana, total 470 Claimants approached the Scrutiny Committee in the General category and a total of 349 plots are available in Phase I and Phase II under the General category plots which are free from encroachment and the areas under litigation before various District Courts.
4. Mr. Rahul Malhotra, Ld. Counsel for Durga General Plot Holders Welfare Association has submitted that pursuant to in view of his submission

recorded in paragraph 7 (a) of the Procedural Order No. 26 dated 10-06-2020, he has collated that the total number of Claimants in the General category. According to Mr. Malhotra such number stands at 1072 on the higher side (adding 425 Claimants being represented by him, 167 Claimants being represented by Mr. Shivam Garg, around 10 Claimants being represented by Mr. Vikrant Yadav as well as the 470 number of Claimants who approached the Scrutiny Committee in the General category, along with a few cases which, according to him, were not considered by the Scrutiny Committee). Mr. Malhotra has pointed out that for the time being, the Committee may ignore the latecomers, and such applicants which neither appeared before the Scrutiny Committee nor are being represented before the Committee by a Legal Counsel, so that the number of Claimants in each category can be frozen and category-wise entitlement can be adjudicated. Mr. Malhotra has submitted that in this case state-wise advertisements were published for scrutiny of claims, leaving no reason to condone delay in approaching the Scrutiny Committee.

5. Mr. Malhotra has further submitted that as per the approved plan, 55% of the total number of plots were earmarked for the General category, which stands at 1609 plots of varying sizes. It is also his submission that as per his instructions size of one General category plot is equivalent to 2 NPNL category plots. Thus, there are surplus plots available in the General category which can be utilized to accommodate Claimants in the NPNL category.
6. Mr. Sanjay Jain, Ld. Counsel for Durga Builders Plot Holders Welfare Association (Regd.) has registered his overall agreement with the submissions made by Mr. Malhotra and has pointed out that as per the Bilateral Agreement entered into between the State of Haryana and the

erstwhile Colonizer which dictates the terms of the license given to the erstwhile Colonizer, out of 2926 total number of plots, 20% plots were earmarked for EWS category and 25% plots were earmarked for the NPNL category leaving 55% plots to be sold by the erstwhile in the open market at a profit, called as General category. Mr. Jain has then pointed out to paragraph 44 of the Supreme Court's Judgment dated 03-10-2019 (hereinafter referred to as the Judgment), wherein it has been recorded that as per DTCP Haryana, 1603 plots are presently available in the EWS category (746 in Phase I and 857 in Phase II). He has immediately drawn the attention of the Committee towards paragraph 40 of the Judgment wherein it has been recorded that as per DTCP, Haryana only 106 applicants had applied for allotment in the EWS category at the time draw of lots was organized for the EWS category (i.e. on 30-07-1994 and 18-11-1995). It is Mr. Jain's contention that in any event, the total number of eligible allottees in EWS category cannot go beyond 106 and, in such circumstances, there are surplus plots available in the EWS category as well which can be diverted for allotment to eligible allottees of NPNL category. His submissions were also echoed by Mr. Vikrant Yadav.

7. Mr. Malhotra and Mr. Jain have also submitted that even if the surplus lands in General category and EWS category is not enough to accommodate all eligible Claimants, the State of Haryana may consider increasing the extent of plotted land in the colony as per extant rules and guidelines. It has been submitted that as per the existing rules, the extent of plotted land can be increased upto 65% by the State of Haryana. In such circumstances, the concession agreed to by all the Claimants appearing before the Committee regarding reduction in plot sizes to accommodate all the Claimants may not be required to resorted to.

8. On a specific query of the Committee on consensus of all present regarding there being surplus plots in the General and EWS category, Dr. Gusain, Ld. Counsel for the State of Haryana has submitted that as per paragraph 45 and 46 of the Judgment, Mr. Malhotra's submission is incorrect since the available number of plots in the General category now stand only at 540 as against 1630 in the EWS category and 783 in the NPNL category. Dr. Gusain has further submitted that as submitted before the Hon'ble Supreme Court, the available licensed area now stands at 187.825 acres only (since 48% of the licensed land stands embroiled in litigation and encroachment) and the size and category wise plot available within the 187.825 acre as per the State of Haryana were recorded in paragraph 44 of the Judgment. Thus, the Hon'ble Supreme Court has accepted the size-wise and category-wise distribution of plots and lay-out plans submitted by the DTCP, Haryana. As regards the submission of Mr. Jain that excess plots/land is available in the EWS category, Dr. Gusain has stressed that the plots earmarked for EWS category cannot be diverted for other categories in the view of governing statutory guidelines as well as the Bilateral Agreement between the State of Haryana and the erstwhile Colonizer governing the licenses. She has further submitted that as recorded in paragraph 45 of the Judgment, the extent of plotted development cannot exceed 55%, which is also a term in the licenses given to the erstwhile Colonizer.
9. This submission of Dr, Gusain has been supported by Mr. Piyush Sharma, Okhla Enclave Plot Owners Welfare Association (Regd.). As per Mr. Sharma, the Hon'ble Supreme Court has finalized the distribution of plots as per various categories and sizes, and the Committee shall decide the entitlement of the Claimants based thereon. Mr. Sharma has also registered his support to the recommendations made by the State of Haryana vide its Affidavit filed on 09-06-2020. Mr. Sharma has urged the Committee to

decide the entitlements in the NPNL category in terms of Procedural Order dated 07-05-2016 of this Committee, which has been accepted and approved by the Hon'ble Supreme Court in toto in paragraph 42 of the Judgment. Lastly, Mr. Sharma has also submitted that claims of latecomers or such persons which are not before this Committee shall be rejected by this Committee. He has submitted that some applicants who have missed the cut-off date for scrutiny of their claims by the Scrutiny Committee had filed applications before the Hon'ble Supreme Court seeking condonation of delay and consideration of their cases before the Committee. However, such applications were either dismissed or withdrawn before the Hon'ble Supreme Court. Mr. Sharma has undertaken to supply copies of such orders of dismissal or withdrawal before the Committee¹.

10. Mr. Malhotra has opposed the contentions of both Dr. Gusain on behalf of the State of Haryana and of Mr. Sharma, on the ground that as per the licenses given to the erstwhile Colonizer, 55% of the total number of plots were frozen for General category; and the that submissions of the DTCP Haryana (as recorded in paragraph 44 of the Judgment) regarding the size and category wise distribution of plots fall foul of that. It is Mr. Malhotra's further contention that paragraph 44 of the Judgment only records the submissions made by the DTCP, Haryana which does not amount to a ruling by the Hon'ble Supreme Court on this aspect. His contention is that the table drawn up by State of Haryana which is quoted in paragraph 44 of the Judgment, has no basis whatsoever.
11. At his point, Mr. Yadav has pointed out that as per his instructions, the entire project to accommodate all the Claimants before the Committee can be planned within 150 acres only. In this spirit, Mr. Yadav has further

¹ These orders have not been received by the Committee till the publication of this Order.

submitted that the Committee may not reject claims made by such persons who could not approach the Scrutiny Committee as per the cut-off dates given in the state-level advertisements and have sought condonation of delay from the Committee. Since surplus plots would be available as per his calculations, the Committee may keep the claims of such latecomers in abeyance for the time being.

12. Mr. Jain has also submitted that his client has prepared a plan (filed on 03-07-2020 before the hearing) with an architect which shows that all the 1708 NPNL Claimants before the Committee can be accommodated in 90 acres only.
13. The Committee has considered the submissions made by all concerned. First and foremost, it is clarified that this Committee as well as the parties before it is bound by the directions of the Hon'ble Supreme Court recorded in the Judgment. Parties are also requested that aspects which have been discussed and settled by this Committee should not be reargued, especially because they have now received the imprimatur of the Hon'ble Supreme Court in the Judgment.
14. As per the Judgment, the Committee had re-convened and immediately sought views of all concerned on the future course to be adopted so that the directions and tasks assigned to this Committee by the Hon'ble Supreme Court can be expeditiously undertaken. At the hearing dated 15-11-2019, Ld. Counsel for the Claimants had submitted that the list of allottee shall be drawn up in the first instance². Accordingly, written recommendations were sought from the State of Haryana³ and all Claimants were allowed to file their submissions/suggestions/objections thereto. However, at the next

² Paragraph 8 of the Procedural Order No. 23 dated 15-11-2019

³ Paragraph 9 of the Procedural Order No. 23 dated 15-11-2019

hearing, Ld. Counsel for the Claimants/Associations had submitted that the State of Haryana be first directed to ascertain the number of plots and the lay-out plan and only then the category-wise entitlement be adjudicated by the Committee⁴. Although the Committee had expressed its concerns about drawing up the final list of eligible plot holders, the State of Haryana was directed to prepare a new lay-out plans with 80 square yard plots in view of the insistence and concessions made by the Ld. Counsel for the Claimants. It was also clarified that the entitlement of plots in NPNL category will be adjudicated upon at the next date⁵.

15. At the hearing dated 17-01-2020, the State failed to file either the lay-out plan with 80 square yards plot or its recommendations to the NPNL category. It was submitted by the State of Haryana that it cannot develop such layout plans in view of the density restrictions. The State of Haryana also submitted that after discounting the areas under encroachment and litigation, only 2150 plots remain available as on date. After considering all submissions made on this aspect, it was clarified by the Committee that it shall proceed on the basis that the encroached area is not under the legitimate possession of anybody, and therefore will not be taken into account for calculating density⁶.
16. With these directions, the State of Haryana was given a final opportunity to file its recommendations on the list of eligible allottees in the NPNL category. After much delay and warnings given by the Committee, these recommendations came to be filed on 20-05-2020/09-06-2020.

⁴ Paragraph 6 of the Procedural Order No. 24 dated 05-12-2019.

⁵ Paragraph 7 of the Procedural Order No. 24 dated 05-12-2019.

⁶ Paragraphs 4 and 5 of the Procedural Order No. 25 dated 17-01-2020

17. As per the recommendations filed the State of Haryana, it has now recommended that such claimants (who claims were earlier scrutinized and found in order) ought not to be considered now if their plot numbers are falling out of the licensed area/demarcation plan submitted to them by the erstwhile Colonizer⁷. This recommendation of the State of Haryana has created an outcry amongst most Claimants, and they have accused the State of Haryana of siding with the erstwhile Colonizer as both are *pari delicto*. The State of Haryana has sat idle and allowed widespread encroachments and has failed to supervise the functioning of the Colonizer even though the latter was cheating poor persons of their hard-earned savings. Since then, efforts are being made by the Claimants to carve more and more plots so that maximum number of Claimants can be accommodated, irrespective of the fact whether they unknowingly were allotted plots by the erstwhile Colonizer in the unlicensed area as is now being contended by the State of Haryana.
18. In the considered opinion of the Committee, the State of Haryana cannot choose to rely upon the terms of the Bilateral Agreement and the statutory principles to defeat the interest of Claimants, all of whom belong to the weaker sections of our society. The State of Haryana also cannot hold rights of encroachers supreme over the rights of the Claimants who have been seeking due legal remedy for their grievance for almost 3 decades now. It is also not enough for the State of Haryana to submit that since it is unaware about the exact extent of land under litigation, hence it has proceeded to include entire Khasras of land under litigation⁸. The State of Haryana is expected to be mindful of the fact that its casual attitude in

⁷ Paragraph 3(iii)(a) of the Affidavit of the DTCP, Haryana dated 09-06-2020

⁸ Enclosure IV to the State of Haryana's submission dated 01-07-2019 as well as paragraph 3 of the Procedural Order No. 24 dated 05-12-2019.

arriving at the extent of land available for allotment will have far reaching consequences.

19. To protect the rights of their clients, Mr. Sanjay Jain, Mr. Piyush Sharma and Mr. Rahul Malhotra have agreed to draw up a layout plan for the 187 acres keeping in view the terms of the Bilateral Agreement and the applicable statutory norms. Such plans are directed to be filed before the Committee at least three days before the next date of hearing. All concerned are welcome to join. Parties are also encouraged to get an exact estimate of land under litigation and encroachment.
20. Needless to add, the sole purpose of this exercise is to be ensure maximum number of eligible plot holders can be accommodated.
21. It is clarified to all that entitlement in the NPNL category will be adjudicated upon without further delay irrespective of the preparation of fresh layout plans as mentioned hereinabove.
22. At this juncture, the Committee is constrained to note that the office of DTCP, Haryana has been constantly directing various persons to the Chambers of the Special Committee by misrepresenting to such persons that their claims can be separately heard and adjudicated by the Special Committee if they visit the Chambers. The Committee was informed by these persons that by the office of DTCP, Haryana that the Special Committee can allot them plots irrespective of Orders passed by the Hon'ble Supreme Court. The DTCP, Haryana is cautioned from spreading such misinformation.
23. It is also noted that despite clear directions, the Orders passed by this Committee thus far, as well as the Scrutiny Reports of the NPNL, EWS

and General category⁹ are not accessible on the website of Department of Town & Country Planning, Haryana. The Committee directs the State of Haryana/DTCP Haryana to ensure compliance thereof immediately. Needless to add, this direction was passed by the Committee to ensure that the workings of the Committee are available in public domain leaving no scope for misrepresentation.

24. The Special Committee shall next convene on 13-07-2020 2020 at 2.30 PM to 4.30 PM via videoconferencing. The Special Committee shall make due arrangements for the next hearing by videoconferencing and intimate all concerned.



Justice Vikramajit Sen (Retd.)
Commissioner

⁹ Paragraph 14 of Procedural Order No. 23 dated 15-11-2019