

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.**

CWP No. 4212 of 2013. [O&M]
Date of decision: February 18, 2015.

[1]. **CWP No. 4212 of 2013.**

DLF Limited & Ors.

Petitioners

Versus

State of Haryana & Ors.

Respondents

[2]. **CWP No. 10509 of 2013.**

Ansal Properties & Infrastructure Limited

Petitioner

Versus

State of Haryana & Ors.

Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MRS. JUSTICE LISA GILL**

Present:- Shri Ashok Aggarwal and Shri Chetan Mittal, Senior Advocates with Mr. Rajeev Anand, Advocate, for DLF Limited.

Mr. M.L.Sarin, Senior Advocate with Messers Adarsh Jain and Nitin Sarin, Advocates for Ansal Properties.

Dr. Ashwani Kumar, Senior Advocate with Mr. S.S.Pattar, Sr. DAG, Haryana and Ms. Sangeeta Bharti & Ms. Stuti Tandon Advocates, for the respondents.

Mr. D.V.Sharma, Sr. Advocate with Ms. Akshita Chauhan, Advocate, for HUDA.

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J.

DLF Limited and its associate Companies [for short 'DLF'] and Ansal Properties and Infrastructure Limited [for short 'Ansal'] through their respective writ petitions have laid challenge to the constitutionality of Haryana Development and Regulation of Urban Areas [Amendment and Validation] Act, 2012 [Haryana Act No. 4 of 2012]. Ansal has further sought a direction for the refund of ₹983.74 lacs along with interest @18% per annum from 21st July, 2000 besides seeking quashing of the demand notice-cum-letter dated 05th March, 2013. DLF also seeks a writ of prohibition to restrain the respondents from claiming or recovering Internal Community Building Charges as well as a direction for the adjustment and refund of the amount deposited towards ICB charges along with interest @18% per annum.

[2]. The genesis of the reliefs sought by the petitioners lies in an inter-parties judgment of the Hon'ble Supreme Court between the Ansal and State of Haryana and its authorities which is reported as **Ansal Properties and Investment Limited Versus State of Haryana & Ors., 2009[3] SCC, 553.**

[3]. Before advertng to the core questions arising for determination, it may be mentioned that the 'DLF' and the 'Ansal' are engaged in the business of planned urbanization/ colonization by developing their respective land[s] into residential, commercial or institutional areas etc.

[4]. Both the petitioners are Public Limited Companies duly registered under the Companies Act, 1956 and are carrying on their business of planned urbanization and colonization as per the Licences

granted to them under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 [for short '1975 Act'] and the Rules framed there-under, known as the Haryana Development and Regulation of Urban Areas Rules, 1976 [for short '1976 Rules']. The petitioner – Companies are required to enter into an 'Agreement' with the State of Haryana through its Prescribed Authority to obtain the licence for the execution of the 'Development Works' as defined under the 1975 Act. The formats of 'Licences' and 'Agreement[s]' are also prescribed under the Rules.

[5]. The petitioners' case is that as per the provisions of the 1975 Act and the relevant Rules read with Clause 1[e] of the Agreement, the Director, Town and Country Planning, Haryana [for short 'the Director'] though could ask them to pay only the proportionate development charges for 'External' or 'Internal' Development Works, yet the said Authority, in a totally illegal manner and without any authority of law, started levying Internal Community Building Charges [for short 'ICB charges'] for the construction of community buildings, like Hospitals, Schools, Police Posts, Parks, Community Centres etc. under the head of 'External Development Charges' [for short 'EDC'].

[6]. The petitioners in this regard refer to the offending Memo dated 11th January, 1988 of the Director sent in supersession of the earlier Memos, intimating the petitioners and also the other private colonizers about the Government's decision of charging ₹3.72 lac per gross acre as EDC in respect of the 'plotted colonies' which included the ICB charges @ ₹61,000 per gross acre. The Memo further

stipulated that no recovery of ICB charges be made from the plot-holders though the petitioners were given credit for the Community Buildings constructed by them at the earmarked sites.

[7]. It may be clarified at the outset that the ICB charges were sought to be levied on the petitioners or the other Licence-holders only in respect of those 'Community Building sites' which they had failed to construct or get the same constructed and were taken-over/transferred to the State Government and thereafter constructed by the State Government or its agency at their expenses.

[8]. The petitioners are said to have protested against the levy of ICB charges @ ₹61,000 per gross acre but they were coerced into depositing the same as a pre-condition for the renewal and/or grant of new licences. Ansal was informed vide Memo dated 4th May, 1994 of its liability to deposit ₹275.55 lacs along with interest @18%+3% towards external development works for getting its licences, up to the year 1993-94, renewed.

[9]. Ansal challenged the demand for ICB charges before this Court in **CWP No. 6565 of 1994** which was dismissed on 29th July, 1999. The Ansal's **Civil Appeal No. 8186 of 2001** was however allowed by the Hon'ble Supreme Court vide judgment dated 23rd January, 2009 [**2009 /3/ SCC, 553**], [in short : **Ansal's** case] laying down that the demand of ICB charges @ ₹61,000 per gross acre raised by the respondents was totally illegal, unjustified and unreasonable. The Director was asked to adjust the amount already deposited towards the dues of Ansal.

[10]. The afore-stated final conclusion was founded upon a minute consideration of the Legislative Policy of the 1975 Act, the 1976 Rules framed there-under and the terms and conditions of Agreement or Licence executed between the parties. It would thus be apt at this stage to briefly discuss those provisions which were considered in Ansal's case while setting aside the demand raised towards ICB charges.

The Haryana Development and Regulation of Urban Areas Act, 1975:-

[11]. The 1975 Act has been enacted to regulate the use of land so as to prevent ill-planned and haphazard urbanization in or around the towns in the State of Haryana. Its Section 2 defines various expressions, words and phrases used in the Act and as per its clause [e] 'development works' means the 'internal' and 'external' development works. According to Clause [g] 'external development works' include sewerage, drainage, roads and electrical works which may have to be executed in the periphery or outside of a colony for the joint benefit of two or more colonies. Clause [i] explains 'internal development works' to mean [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 work that the Director may think necessary in the interest of proper development of a colony.

[12]. Section 3 of the Act mandates that any owner of a land who desires to convert it into a colony, unless exempted under Section 9, must apply and obtain Licence from the Director on payment of the

prescribed fee. If the Director is satisfied with regard to the existence of the requisites contemplated under sub-Section [2], he would grant the licence under sub-Section [3] in the prescribed form after the applicant has furnished Bank Guarantee equivalent to 25% of the estimated cost of the development works and has further undertaken to comply with the conditions contained in that provision including that [i] such applicant shall enter into an agreement in the prescribed form; [ii] pay the proportionate development charges; [iii] maintain and upkeep all roads, open spaces, public parks and public health services etc. for a period of five years from the date of completion certificate; [iv] construct at his own cost, or get schools/hospitals/community centres and other community buildings constructed by any other institution or individual at its costs, on the lands set apart for this purpose and [v] permit the Director or any other authorised officer to inspect the execution of the layout and the development works in the Colony and to carry out all directions issued by such authorities. Section 3[3][b] empowers the Director to refuse to grant licence, by means of speaking order and after an opportunity of being heard. The licence so granted is valid for a period of two years though renewable from time to time on payment of prescribed fee.

[13]. Section 5 of the Act creates an obligation on the colonizer to bear the cost of development works for which the colonizer is required to deposit 50% of the amount realized by him from the plot-holders in a separate account to be maintained in a scheduled bank. This amount can be utilised by the colonizer only for “meeting the cost of internal development works in the colony”. Once such works have

been completed to the satisfaction of the Director, the colonizer is at liberty to withdraw the balance amount. The balance 50% of amount is deemed to have been retained by the colonizer, *inter-alia*, to meet the cost of land and external development works. Section 8 empowers the Director to cancel the licence if the colonizer contravenes any provisions of the licence or the Act or Rules. Section 9 empowers the Director to grant exemption from obtaining licence in certain situations including where 20% of the plots were carved out and sold or agreed to be sold prior to 16th November, 1961. Section 10 of the Act enables levy of penalties and prescribes other penal consequences as well for any violation of the provisions of the Act. Various other provisions contained in the Act do not need any reference here they being irrelevant in the context of the nature of controversy in hand.

[14]. As regard to the 1976 Rules formulated under the Act, it is pertinent to notice that Rule 4 binds the colonizer to reserve land for roads, open spaces, schools, public and community buildings and other common uses in the layout plan of the colony and such area “shall not be less than 45% of the gross area of the land under the colony”. In the case of an industrial colony, however, the land reserved for the above stated purposes shall not be less than 35% of the gross area of the land under the colony. Rule 5 details out the development works to be executed by the colonizer and the designs and specifications of such works need to be mentioned in the layout plan of the Colony. These development works include:-

(a) metaling of roads and paving of footpaths ;

(b) turfing and plantation with trees of 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.

[15]. Rule 11 of the 1976 Rules is the instrument to secure compliance of the conditions contained in Sections 3, 3-A and 5 of the 1975 Act. As a composite provision, it mandates an applicant who applies for licence - to [i] furnish bank guarantee to the Director which is equal to 25% of the estimated cost of the development works and then to enter into an agreement in Form LC-IV; [ii] undertake to deposit 50% of the amount realized from the plot-holders in the manner prescribed under Section 5 of the Act; [iii] undertake to pay proportionate development charges if the main lines of roads, drainage, sewerage etc. are to be laid out and constructed by the Government or a Local Authority; [iv] undertake the maintenance and upkeep of all roads, open spaces, public parks etc.; [v] undertake to construct at his own cost or get the schools/hospitals/community centres and other community buildings constructed by any other institution or individual at its costs, on the land set apart for this purpose; [vi] undertake to transfer to the Government at any time, if so desired by the Government free of cost, the land set apart for such community buildings; [vii] undertake to permit the Director or any other authorised officer to inspect the execution of the layout and development works in the colony etc. etc.

[16]. Rule 12 of the 1976 Rules provides that once the applicant fulfills all the conditions laid down in Rule 11 to the satisfaction of the Director, the latter shall grant licence in Form LC-V, which shall be valid for a period of two years. The licence can be further renewed in exercise of the power vested in the Director under Rule 14 of the Rules.

Ratio-decendie of the Judgment in Ansal's case:

[17]. The above stated provisions of the Statute, Rules read with terms and conditions contained in the Agreement executed between Ansal and the respondent-Authorities came up for the consideration in **Ansal's Case** for determining as to whether or not Ansal was liable to pay ₹61,000 per gross acre towards ICB charges. The Hon'ble Supreme court set-aside the levy of those charges, laying down that:-

*“34. The said findings arrived at by the learned Division Bench of the High Court appears to be in direct conflict and also in contradiction with the provisions of Sections 3(3)(a)(iv) of the Act and also all the terms and conditions provided in sub-clause (b) of clause (1) of the Licence Agreement. **There is no mention at all of any requirement for the licensee to provide for or to make payment for the cost of construction of internal community buildings when the land is transferred to the Government free of cost. No such statutory basis could be shown either in the statute or in the licence agreement.***

*38. **When the provisions of Section 3(3)(a)(iv) are analysed, it would be apparent that the word used in the said provision is “land” and it has been specifically mentioned therein that if the colonizer does not construct the community buildings and facilities on its own or through***

its agency or organization or individual, then the said licensee would be required to transfer the said land set apart for the aforesaid purpose free of cost to the Government.

39. The Government's claim is therefore restricted to lands which the developer has failed to develop as community centres. In other words only that land which the developer has not been able to develop as community services facilities would stand transferred to the Government free of cost and the said land could be utilized by the Government for the aforesaid purpose either by itself or through its agency. If the legislature had intended that the licensee is required to transfer the land and also to construct the buildings on it or to make payment for such construction, the legislature would have made specific provisions laying down such conditions explicitly and in clear words in which event the provisions would have been worded in altogether different words and terms. It is well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute.

46. It is needless to say that if the provision would have been the same at the relevant time, in that event the situation would have been different but no such provision either in the Act or in the Rules or in any policy framed by the Government could be brought to our attention. Therefore, what we were required to consider was only the explicit provision of Section 3(3)(a)(iv) of the Act and the rules framed thereunder,

which are extracted herein before in terms of which we find no obligation on the part of the appellant to pay for the construction of internal community buildings which was being demanded by the appellant as external development charges. Charges for construction of internal community buildings can never be equated with the external development charges, so the demand itself was illegal.

47. Since the respondent No. 2 sought to justify the demand made on the ground that such demand is justified as internal community building, we have no other option but to hold that such demand could not have been made even as internal community buildings for no such power and jurisdiction was vested in the Government to make such a demand for the simple reason that there was neither any statutory support nor any policy decision in support of the same. Even in the Licence Agreement, nothing was contemplated to the effect that in addition to the liability to transfer the land set apart for the said buildings to the Government free of cost, on the contingency mentioned in the statue and relied in the Licence Agreement, the licensee is also required to pay for the construction of said buildings". [Emphasis applied by us]

[18]. The demand towards ICB charges was thus annulled after interpreting Section 3[3][a][iv] of the Act and the Rules framed thereunder to the effect that there was no obligation on the part of Ansal or a Colonizer to pay for the construction of Internal Community Buildings on having failed to raise construction over the earmarked site[s] which have been transferred to the Government, free of costs. It was clarified that the ICB charges can not be equated with EDC, for the obvious reason that the Legislature has not included the schools/hospitals/

police posts/community centres and other community buildings either within the expressions 'external development works' or 'internal development works'. These Community buildings find mention only in Section 3[3][a][iv] which *inter-alia* provides that such community buildings shall be [i] constructed by the licensee at his own costs; [ii] he can get the same constructed by any other institution or individual at the latter's costs; or [iii] failing which and if so desired by the government, shall **transfer the land** of such earmarked site[s] to the Government, **free of costs**. It was, thus, ruled that in such a contingency; [iv] the colonizer was obligated to transfer the 'land' set apart for hospitals/schools/ community centres and community buildings to the Government free of costs, and [iv] that the expression 'Land' does not include the cost of construction of such community building sites.

Haryana Development and Regulation of Urban Areas [Amendment and Validation] Act, 2012:-

[19]. Ansal and various other builders who had been paying the ICB charges since the year 1987 sought their refund [DLF alone claimed a refund of ₹584.6 Crores] and having regard to the financial implications statedly running into thousands of crores of rupees, the State Legislature enacted the Haryana Development and Regulation of Urban Areas [Amendment and Validation] Act, 2012 [Haryana Act No. 4 of 2012] which received the assent of the Governor of Haryana on 21st March, 2012. It would indeed be relevant here to briefly mention the 'Statement of Objects and Reasons' of the Amendment and Validation Act, 2012 which have been pointedly referred to by both the parties. It is recited therein that EDC for residential plotted colony @

₹3.72 lacs per acre including the amount of ₹61,000 per gross acre towards construction of Community Buildings, were conveyed by the Department in the year 1987. Thereafter, the ICB charges were increased @10% per annum and the same is levied/recovered from all the licensees as a part of EDC. The policy decision for levying the ICB charges was to ensure expeditious construction of the earmarked sites by the Government agency so as to provide basic infrastructure to licensed colonies to encourage habitation in an area like Gurgaon. After a reference to the decision in **Ansal's case**, it is stated that DLF has also sought refund of ICB charges amounting to ₹584.6 Crores and has filed a writ petition in the High Court for that purpose. There is a pointed reference to the fact that “the matter would involve huge financial implications running into thousands of crores in case other licensees also stake their claim for such refund”.

[20]. The Statement of Objects and Reasons reiterates the desirability to validate the 1987 policy decision regarding demand of ICB charges and also to legitimize all actions taken in this regard earlier through agreement[s]. It is further declared that a transparent mechanism needs to be adopted for taking-over and construction of the community sites in case the colonizer is not able to do so in a reasonable period of time. Hence Section 3[3][a][iv] of the Act is to be amended and some new provisions like Section 10-A and 23-A also need to be inserted.

[21]. As regard to the salient features of the 2012 Act, its Section 2 amends sub-Section [3] of Section 3 of the Principal Act [1975] by substituting Clause [iv] and by inserting a new sub-clause

[iv-a] after the sub-clause [iv]. Similarly, Sections 3 and 4 of the Amendment and Validation Act have inserted two new provisions comprising Sections 10-A and 23-A respectively.

[22]. Section 5 of the 2012 Act contains the validation clause added as sub-Sections [1] and [2] to the newly inserted section 23-A.

[23]. Let us at this stage compare and consider the amended or newly inserted provisions *vis-a-vis* those contained in the Principal Act of 1975, in the following tabulated form:-

<u>Principal Act, 1975</u>	<u>Amendment And Validation Act, 2012</u>
“2[e] “development works” means internal and external development works; [g] “external development works” include sewerage, drainage, roads and electrical works which may have to be executed in the periphery of, or outside, a colony for the joint benefit of two or more colonies; [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”.	No change
3.Application for licence. (1)..... (2)..... (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 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)..... (iii)..... (iv) to construct at his own cost, or get constructed by an other institution or individual at	3.Application for licence. (1) (2)..... (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 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)..... (iii)..... (iv) to construct at his own cost, or get constructed by any other institution or

<i>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 as it may deem fit;</i> XX XX XX XX XX XX XX XX XX XX XX XX	individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, in a period as may be specified, and failing which the land shall vest with the Government after such specified period, free of cost, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit: Provided that in case of licenses issued prior to the notification of the Haryana Development and Amendment of section 3 of Haryana Act 8 of 1975 Regulation of Urban Areas (Amendment and Validation) Act, 2012, the licensee, the purchaser or the person claiming through him shall construct the school, hospital, community centres and other community buildings on the land set apart for this purpose, within a period of four years, extendable by the Director by another period of two years, for reasons to be recorded in writing, from the notification of the Haryana Development and Regulation of Urban Area (Amendment and Validation) Act, 2012: Provided further that at the end of the period as specified under the proviso, if the site is not utilised for the purpose, it was meant for, the land shall vest with the Government and in which case, the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit: Provided further that a show cause notice and an opportunity of hearing shall be issued before vesting the land in the Government. (iv-a) to pay proportionate cost of construction of such percentage of sites of such school, hospital, community centre and other community buildings and at such rates as specified by the Director.
XX XX XX	10-A. Recovery of dues.-- All dues payable under the Act, which have not been deposited within the time specified, shall be recovered as arrears of land revenue" 23A. Power to issue directions- The Director, with the approval of the Government, may, from time to time and/or under the directions issued under section 9A by the Government, shall, issue directions as are necessary or expedient for carrying out the purposes of this Act".

XX	XX	XX	5(1) Notwithstanding any judgment, decree or order of any court or tribunal or other authority to the contrary, any action taken with regard to the recovery of proportionate cost of construction of such schools, hospitals, community centres and other community buildings, either through the issuance of executive instructions or through condition prescribed in the Bilateral Agreement executed at the time of grant of licence or through any undertaking obtained from the coloniser, or any action taken or things done or purporting to have been taken or done, before the commencement of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012, shall be deemed to be as valid and effective as if such action was taken or done in accordance with the provisions of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012 and any executive instructions or any Bilateral Agreement or any undertaking obtained in this regard and all such recoveries made, shall be deemed to be as valid and effective as if such Bilateral agreement were executed, or executive instructions were issued or undertakings were obtained or recoveries were made in accordance with the provisions as amended and validated in accordance with the provisions contained in the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012, and shall not be called in question in any court or tribunal or other authority.
XX	XX	XX	Provided that the amount already deposited against the cost of construction of the community buildings shall be spent on the construction of such community buildings or related infrastructure within a period of five years hereafter, unless any further extension is allowed under exceptional circumstances by the Government after recording reasons thereof, and accordingly,—
XX	XX	XX	(i) all acts, proceedings or things done or action taken by the Government or by any other official of the Government or by any authority, in connection with the recovery of cost of construction of such schools, hospitals, community centres and other community buildings by the Director either through issuance of executive instructions or through condition prescribed in bilateral agreement or through any undertaking obtained from coloniser, for all purposes be deemed to be and to have always been done or taken in accordance with law;
XX	XX	XX	

XX	XX	XX	<i>(ii) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such amount already deposited or for nullification of Bilateral agreement already made, executive instructions already issued and undertaking obtained; and</i> <i>(iii) no court or authority shall enforce a decree or order directing the refund of any such recovery of cost of construction of such schools, hospitals, community centres and other community buildings so charged or for nullification of bilateral agreement executed or any executive instructions issued or any undertaking obtained in this regard.</i>
XX	XX	XX	<i>(2) Notwithstanding any judgment, order or decree of any court or tribunal or other authority to the contrary, if a licensee who deposited the cost of construction, full or part, on the demand of Government and later took the refund under a judgment, order or decree passed by court or tribunal or any other authority, the Government may, after the notification of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012, order the recovery of the amount of construction of which the refund has been taken by the licensee under such judgment, order or decree, after giving a show cause notice and an opportunity of being heard”.</i>
XX	XX	XX	

[24]. The significant changes or insertions brought in by the 2012 Act thus include [i] an explicit clause empowering the State Government to specify the period within which the Community Buildings need to be constructed by the colonizer, failing which the land shall vest with the State Government; [ii] the licensee or its agent is permitted to construct the Community Buildings on the land set apart for this purpose within a period of four years, extendable by the Director for another period of two years; [iii] the benefit of the extended period to complete construction of community buildings is admissible to the pre-April, 2012 licence-holders also; [iv] if the site is not utilised for the community buildings, the land shall vest with the Government and the latter shall be at liberty to transfer it to any person or institution

including a Local Authority for the said purpose; [v] the licensee is liable to pay the proportionate cost of construction of such percentage of sites of such community buildings at such rates as may be specified by the Director and this provision has been added retrospectively since 30th January, 1975.

[25]. The newly implanted provisions include the power to recover dues as arrears of land revenue [Section 10-A] and powers conferred upon the Director to issue directions as are necessary or expedient for carrying out the purpose of this Act with the approval of the Government [Sec.23A].

[26]. The provision of validation i.e., Section 23A[1] and [2] [Section 5 of the 2012 Act] opens with a *non-obstante* clause and it says that notwithstanding any judgment, decree or order of any Court or Tribunal or other authority to the contrary, any action taken for recovery of proportionate cost of construction of schools/ hospitals, community centres and other community buildings either through executive instructions or otherwise, including an agreement executed at the time of grant of licence or through an undertaking obtained from the colonizer, before the 2012 Act came into force, shall be deemed to be valid and effective as if such action was taken in accordance with the provisions of the 2012 Act. The executive instructions, bi-lateral agreement or undertaking obtained in this regard and all such recoveries made, shall be deemed to be valid and effective as if these instruments were executed or obtained in accordance with the provisions of the 2012 Act.

[27]. The proviso to sub-Section [1] further declares that the amount already deposited against the cost of construction of the Community Buildings shall be spent only on the construction of such buildings or the related infrastructure within a period of five years unless any further extension is allowed by the Government after recording reasons. The validation clause prohibits the maintainability of any suit or other proceedings or their continuation in any Court or before any Authority for the refund of the amount already deposited or for nullification of bilateral agreement etc. and that no Court or authority shall enforce a decree or order directing any refund of cost of construction of schools/community centres/ hospital or any community building, already recovered from a colonizer.

[28]. Sub-Section [2] below the newly added Section 23-A is loaded with yet another *non-obstante* clause and according to this provision notwithstanding any judgment, order or decree of any Court or Tribunal to the contrary, if a licensee who deposited the cost of construction, full or part, on the demand of the Government and later took the refund under the judgment or order passed by the Court or Tribunal, the State Government after enforcement of the 2012 Act, was competent to recover the said amount of which the refund has been taken by the licensee.

[29]. After the Amendment and Validation Act, 2012 came into force w.e.f. 3rd April, 2012 and its Section 23-A[2] enabled the State Government to recover the amount of ICB charges which were refunded to a colonizer under the directions of the Court's judgment, order or decree, Ansal was slapped with a notice dated 05th March,

2013 [P-32] whereby the order of refund and adjustment of ICB charges amounting to ₹983.74 lacs towards outstanding dues of EDC charges pertaining to its one of the licence of 2005, was withdrawn and Ansal has been asked to deposit the outstanding dues to the tune of ₹1995.65 lacs within 15 days along with penal interest. Though Ansal vide its reply dated 20th March, 2013 [P-33] controverted its liability and took various pleas including that of the unconstitutionality of 2012 Act, but finding no reconsideration or withdrawal of the subject-notice that the instant writ petition has been filed.

[30]. The principal issue[s] raised in these cases therefore count on the validity of the Amendment and Validation Act, 2012.

Petitioners' case as per pleadings:-

[31]. The issue under consideration indeed is an elementary question of law, therefore, an elaborate reference to the pleadings can be conveniently avoided. The petitioners have broadly averred that [i] the Validation Act does not fulfill the constitutional mandate as it does not remove the defect which the Court had found in the previous law nor the provision legalising an earlier executive decision could be introduced retrospectively; [ii] the Validation Act is wholly arbitrary and beyond the legislative competence; [iii] the Validation Act has been enacted to invalidate the judicial pronouncement and is a crude attempt to over-rule the judgment of the highest court of the land in **Ansal's case**; [iv] the inter-se parties judgment of the Hon'ble Supreme Court being final, there can not be a legislative fiat to deny reaping of its fruits; [v] the Validation Act suffers from the vice of arbitrariness as it permits to spend the amount of ICB charges on

“related infrastructure”; [vi] sub-clause [iv-a] could not be introduced retrospectively w.e.f. 30th January, 1975 to cast obligation on a colonizer to pay ICB charges from the year 1975 more so when the contingency of handing-over the site free of cost is yet to arise; [vii] the Haryana Act No. 4 of 2012 deserves to be struck down as it is completely vague and is silent on the refund of ICB charges in a case where the community buildings have already been constructed by the colonizer; [viii] the 2012 Act is violative of Part-III of the Constitution as it divests an owner of the property on account of its mis-utilisation by a third party; [ix] the expression “proportionate cost” contained in the newly added provision is totally vague and arbitrary; [x] the provisions of 2012 Act would lead to absurdity, besides the same being repugnant to the legislative policy of the principal Act of 1975 and [xi] the levy of ICB charges is against the public policy etc.

The stand taken by respondents in the written statement:-

[32]. Respondents have in their written statement [Ansal's case] explained that the petitioner was granted 18 licences for the development of Palam Vihar Residential Colony between 1982 to 1987 and 13 licences for the development of another colony known as Sushant Lok between 1985 to 1987. The total area of both the colonies measured to 461.54 and 412.7 acres, respectively. That despite there being an express clause in the agreement executed by the colonizer that it shall construct or get the schools/hospitals/ community centres and other community buildings constructed, failing which the land shall stand transferred free of cost to the State Government, it was observed that such Community Buildings were not

being constructed for a long time. The State Government, therefore, directed all the colonizers including the petitioner and its associate Companies to transfer the land set apart for construction of community sites. Accordingly, a mechanism had to be put in place to recover from the licensees proportionate cost of construction of such buildings. Since HUDA was entrusted with the execution of external development works, the said Authority along with the Finance, Town and Country Planning Departments etc., determined the EDC rates as communicated to the petitioner and other builders vide Memo dated 21st/23rd December, 1987. The EDC @ ₹3.72 lacs per gross acre including the costs of ICB charges worked out to be at ₹61,000 per gross acre. The Government's decision to take over all the community sites and to get the same constructed from a government agency had to be taken on account of failure of the colonizers to develop the community buildings. The State Government, therefore, took a decision on 23rd May, 1988 to take over the community sites from the colonizers which was formally conveyed to all the colonizers vide letter dated 16th August, 1988. It is claimed that in respect of the two residential colonies, referred to above, Ansal was required to construct 60 Community sites but none of these sites had been constructed till May, 1988 when the decision to take-over the community sites was taken. It is maintained that there are 11 community sites which are still to be constructed by the petitioner.

[33]. A some-what similar stand has been taken against the DLF as well.

[34]. The respondents have further maintained that in view of the specific clause contained in the agreement[s] executed by the colonizers admitting their obligation to construct the community building sites, the respondents earnestly believed that as per the existing provisions of 1975 Act, the colonizer was required to construct it at its own cost or get the community buildings constructed and if it failed to do so, the Government could direct the colonizer to transfer the land free of cost and thereafter the Government would construct such sites or get the same constructed at the cost of colonizer. The respondents, thus, always believed that when the colonizer failed to construct such buildings in a reasonable time, the Government was well within its right to direct them to transfer the land set apart for construction of community buildings and also to pay proportionate cost of construction of such buildings.

[35]. The written statement further explains that since the Hon'ble Supreme Court in **Ansal's case** has interpreted the provisions of 1975 Act and the Rules framed thereunder contrary to what the respondents used to believe, that the defect or lacunae in the provisions has been effectively removed and cured by the Legislature by amending the existing provisions, prospectively or retrospectively and also by inserting some new provisions in the Act.

[36]. Before we proceed further and delve upon the rival claims, one contentious issue on facts is also worth noticeable at this stage. Since the respondents have in their written statement taken the stand that petitioners failed to construct community buildings in a long span of over five years till the State Government decided on 23rd May, 1988

to take-over the community sites and that some of the such sites are yet to be constructed, the petitioners have countered those allegations along with furnishing the details of community sites, which, according to them, have since been constructed or got constructed by them and are complete in all respects as also the vacant sites which were transferred to the State Government but are still lying un-constructed. The State Government's administrative decision, sought to be legalised through the impugned Legislation and which imposes an obligation on the Colonizer to contribute the cost of construction against 25% of over-all ICB sites, is also alleged to be totally illogical, irrational and a rule of thumb as it discloses no criteria, facts or figures for determining that percentage. The respondents too have filed additional affidavits to controvert the petitioners' claim. We propose to deal with this aspect in the later part of this order.

[37]. We have heard Shri M.L.Sarin, Senior Counsel for Ansal, Sarv Shri Ashok Aggarwal and Chetan Mittal, Senior Counsel for DLF and Dr. Ashwani Kumar, Senior Counsel on behalf of the State of Haryana at a considerable length. The relevant record and the brief synopsis handed-over by the parties besides catena of decisions cited at the bar, have also been perused.

Contentions on behalf of the Petitioners:-

[38]. Learned Senior Counsel for the petitioners vehemently argued that:-

- [i] the principles laid down by various pronouncements of the Hon'ble Supreme Court to test a Validation Law may be broadly categorised in three parts, i.e.,

[a] the Validating Statutes shall remove the defect which the Court had found in the previous law. The resultant effect is that if the said amendment was in existence on the given date when the judgment was pronounced, then the Court would not have pronounced the judgment in the manner it has opined; [b] the Legislature is competent to amend the provisions of the Act from a particular date in the past; [c] the amendment does not violate Part-III or other provisions of the Constitution;

[ii] as regard to principle at [a] above, the Apex Court in **Ansal's** case found Section 3[3][a][iv] to be very clear and explicit in using the word 'Land' from which the intention of the Legislature to transfer the land alone was writ large and, thus, there was no statutory basis to compel a licensee for making payment of cost of construction of ICBs. The afore-said defect has not been cured by the Legislature because the obligation even now on the licensee is to transfer the 'land free of cost';

[iii] the Haryana State Legislature though is competent to legislate on the subject, however, creating a fresh charge from a retrospective date is beyond its legislative competence. When there was no obligation in the past, the State can not impose a

fresh charge retrospectively by further taking away the right to refund;

[iv] similarly, the impugned legislation fails to qualify the third test as well. The administrative decision of 1987 is sought to be declared valid under the garb of validation whereas the proviso added to Section 3[3][a][iv] still enables the Licensee to develop the community sites within 4+2 years. The validation provision is *per-se* arbitrary and unreasonable as it has taken away all the rights of refund irrespective of the fact as to whether the sites have been constructed or not.

[v] the judgment rendered by the Hon'ble Supreme Court in **Ansal's case** is inter-parties and has attained finality. The Legislature has enacted the 2012 Amendment Act with the singular aim to over-rule the Supreme Court judgment which is impermissible. The doctrine of separation of powers within our Constitutional frame-work does not vest the Legislature with any Judicial Power, hence the attempt made by Haryana Legislature to set at naught the Apex Court Judgment is totally unconstitutional;

- [vi] the Legislature can fill-up the lacunae or cure the defect in a Statute where the matter is still pending adjudication either before the High Courts or the Hon'ble Supreme Court but where the matter has attained finality, there vests no legislative power to take away the effect of or reverse such judgment.
- [vii] the **Ansal's** case gives a categoric finding on facts, which have not been disputed by the respondents, namely, that the charges though shown as part of EDC are basically the cost of construction for internal community buildings. Such a specific finding of fact being one of the foundation of the judgment, will constitute *res-judicata* and can not be removed or set-aside by creating a deeming fiction in law;
- [viii] the decisions of the Hon'ble Supreme Court where the Legislations rendering the court-decisions ineffective were upheld, are totally distinguishable and can not be employed in the instant case as in all such judgments the matters were still pending consideration before High Courts or the Supreme Court and had not attained finality;
- [ix] the Haryana Act No. 4 of 2012 is completely arbitrary and thus violative of Article 14 of the Constitution as it makes the petitioners liable to pay for raising construction on the land which already stands transferred to the respondents;

- [x] the Amendment and Validation Act, 2012 is in conflict with and runs opposite to the legislative policy of the parent Act, which, as per its Objects and Reasons deals only with the 'user' of the land, whereas the Amending Act seeks to bestow the power of dealing with the "ownership of the land", contrary to the dictum in **M/s DLF Qutab Enclave Educational Charitable Trust Vs. State of Haryana, [2003] 5 SCC, 622;**
- [xi] the impugned Act can not operate retrospectively, for even in respect of the licences issued prior to the date of its notification, the coloniser or its subsequent purchaser etc. can construct the community building sites on the land set apart for that purpose within a period of four years, extendable by the Director by another two years from the date the amended Act has come into force. Then how can one of its clause create obligation towards ICB charges in the past, i.e., retrospectively w.e.f. 30th January, 1975?;
- [xii] the ICB charges can not in any case be levied at this stage in view of the amended provisions where-under the coloniser or the person through him, is entitled to avail a period of four years extendable to six years, for the construction of community buildings. The period of 4+2 years is to reckon from the date the 2012 Act has been notified;

- [xiii] since the Hon'ble Supreme Court in **Ansal's** case has not struck down any provision or part of the 1975 Act, there could arise no occasion for the State Legislature to validate any thing;
- [xiv] **Ansal's case** categorically holds that not only a statutory provision was wanting to levy ICB charges, there was no policy decision as well. However, the Validation Law has been enacted on an erroneous premise that there existed a policy decision by the State Government which is now being validated. The claim now made by the State Government regarding existence of such policy decision, has no factual basis and is only an after-thought;
- [xv] the existence of power to legislate does not *ipso-facto* mean that such power has been legitimately exercised. The Legislature possesses the power to amend the existing Law or to enact a new Law so as to cure the defect or remove a lacuna but can not simply nullify and over-ride the Court-judgment without removing the basis for rendering such judgment. The Amendment and Validation Act fails to qualify this test and is not in 'furtherance of' the judgment rendered by the Apex Court in **Ansal's case** rather it intends 'to negate' that judicial verdict;
- [xvi] the power to legislate retrospectively can be exercised only for the removal of substratum of a

Court judgment and not to declare it as 'not binding' on the parties, the distinction between legislative and judicial functions is well defined within the frame-work of Indian Constitution. The Legislature while exercising its sovereign powers can not impose itself as a Court superior to Supreme Court;

[xvii] the 1975 Act being a Regulatory Act prescribed the penalty to the extent of confiscation of ownership right of the land set apart for community buildings in case of failure of the coloniser to construct himself or get the same constructed. However, the impugned amendment has enhanced the penalty retrospectively as in the event of the above mentioned failure, the licensee is compelled not only to give the land free of costs but also bear the cost of construction as well;

[xviii] the impugned amendment has retrospectively altered the statutory contract executed between the parties, which is impermissible in law. The licence agreement does not give any power to the State to charge for cost of construction of ICBs and it being a binding contract between the parties, can not be unilaterally altered contrary to the principle of novation of a contract in terms of Section 62 of the Contract Act;

[xix] the so-called executive policy decision sought to be validated was inconsequential in law as the bilateral

agreement between the parties can undergo no changes on the basis of such like unilateral administrative action;

[xx] no demand can be raised against the petitioners towards ICB charges as the event of liability, if any, has not arisen. In view of the proviso now added to Section 3[3][a][iv], the licences granted before April, 2012 are also entitled to avail the extended period of 4+2 years for the construction of the left out ICB sites;

[xxi] the demand for ICB charges @ ₹61,000/- per gross acre is otherwise totally illogical and arbitrary as [a] it includes 100% community buildings in the area concerned whereas the stand of the respondents is that only 25% of the buildings are to be transferred to the State for which they are charging the cost of construction; [b] the charge of ₹61,000/- includes cost of the land which the Colonizer is giving free of cost; [c] the petitioners are entitled to the credit of the sites already constructed as per the details furnished by them, in view of the instructions dated 21st December, 1987 [R-2] and [d] the petitioners still have a right to construct the remaining sites within the extended period as per the amended provision especially when all such sites are still in their possession;

[xxii] the State's plea that unbearable hardship shall be caused if it was required to refund thousands of crores of rupees to various licensees, is wholly irrelevant and alien to the context under consideration, for inconvenience cannot be considered as a decisive factor while interpreting the Statute. The maxim "*Dura Lex Sed Lex*" (i.e. The law is hard but it is the law) must be followed and even if it is a case of conflict between law and equity, the law must prevail;

[xxiii] since the language of the Statute is plain and clear this Court should apply the literal rule of interpretation without the aid of considerations like equity, public interest or the intention of the Legislature, so that the relevant words, phrases and expressions can be construed as these are understood in the ordinary parlance.

Case-Law relied on behalf of the petitioners:-

[39]. The decisions cited on behalf of the petitioners to support their leading contentions summarized at [i] to [viii] in Para 38 may also be briefly noticed:-

[40]. The **Cauvery Water Disputes Tribunal's case, [1993] [Supp.] 1 SCC, 96,** considered the question was whether the Ordinance promulgated by the Governor of Karnataka on 25th July, 1991 was unconstitutional and was issued to over-ride the interim order dated July 25, 1991, passed by Cauvery Water Disputes

Tribunal in favour of State of Tamil Nadu in an inter-State Water Dispute? Clause 4 of the Ordinance contained an 'over-riding effect of the Ordinance' and declared that its provision shall have effect notwithstanding anything contained in any order, report or decision of any Court or Tribunal, whether made before or after the commencement of the Ordinance, save and except a final decision under Section 5 read with Section 6 of the Inter-State Water Disputes Act, 1956. It was held that the Legislature can change the basis on which a decision is given by the Court and thus change the law in **general** but it can not ***“set aside an individual decision inter-parties and affect their rights and liabilities alone. Such an act on the part of the Legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal”***.

[41]. **S.R.Bhaqwat & Ors. Vs. State of Mysore, [1995] 6 SCC, 16,** had a chequered history of several rounds of litigation of inter-se seniority dispute of civil servants of States of Hyderabad and Bombay who were allotted to the new State of Mysore under Section 115 of the State Re-organisation Act, 1956. The Mysore High Court settled the seniority dispute and after at-least two rounds, the appeals questioning its correctness were finally dismissed by the Hon'ble Supreme Court on 22nd December, 1972. The decision was given partial effect and writ petitioners were granted deemed dates of promotions. However, before granting the consequential monetary benefits, the State of Mysore issued an Ordinance which culminated into enactment of Karnataka State Civil Services [Regulation of Promotion, Pay and

Pension] Act, 1973. Section 11[2] of the Act had an 'over-riding effect' and according to it the rights of a civil servant were to be determined in accordance with that Act, notwithstanding anything contained in any judgment, decree or order or any Court *“directing promotion or consideration for promotion of civil servants and payment of salaries and allowances consequent upon such promotion....”*. The provision further empowered the State Government to review the cases of promotion etc. granted under the Court orders. The Hon'ble Supreme Court concluded that sub-Section [2] of Section 11 is an attempt by the State Legislature *“to get out of the binding effect of the decision by resorting to its legislative power. The judgments, decrees and orders of any court or the competent authority which had become final against the State were sought to be done away with by enacting the impugned provisions of sub-Section [2] of Section 11. Such an attempt can not be said to be a permissible legislative exercise. Section 11[2], therefore, must be held to be an attempt on the part of the State Legislature to legislative over-rule binding decisions of competent Courts against the State....”*.

[42]. In **State of Tamil Nadu & Ors. Vs. K.Shyam Sunder & Ors. AIR 2011 SC, 3470**, the validity of various provisions of Tamil Nadu Uniform System of School Education Act, 2010 which was enacted to provide the State Common Board of School Education was questioned before the High Court of Madras, who vide the judgment dated 30th April, 2010 struck-down Sections 11, 12, and 14 being unconstitutional. The Hon'ble Supreme Court on 10th September, 2010 upheld that judgment. The State Legislature then brought an

amendment in its Section 3 and substituted it with a new provision with regard to the common syllabus. As the new academic session had commenced on 1st June, 2011 and the Amendment Act came into force on 07th June, 2011, a large number of writ petitions were filed in the High Court challenging that amendment. The High Court struck down Section 3 of the Amendment Act, 2011 after holding that the only purpose to bring the Amendment Act was to nullify the effect of the final judgments. Dismissing the State's appeals, the Hon'ble Supreme Court held that passing the Act, 2011 simply tantamounts to subversive of law.

[43]. In **State of Haryana & Ors. Vs. Karnal Co-op Farmers' Society Limited & Ors., [1993] 2 SCC, 363**, an amendment in the Punjab Village Common Lands [Regulation] Act, 1961 as applicable in the State of Haryana, inserting Sections 13-A and 13-B in the Principal Act, was put to test. Section 13-A enabled the Assistant Collector 1st Grade to set-aside civil Court decrees obtained by persons against Panchayats in respect of land or other immovable property which were held to be not a part of the *shamlat-deh*. This Court struck-down Section 13-A on the ground that the A.C.1st Grade was conferred uncanalised powers to sit over the judgments and decrees of the Civil Courts and, thus, it *ultra-vires* the Constitution. The Hon'ble Supreme Court dismissed the State's appeals laying down that “*under our Constitution no legislature has the power to abrogate Civil Courts' decrees or orders or judicial adjudications by merely declaring under a law made by it that such decrees or orders or adjudications are no longer valid or binding on the parties, for such power of declaration*”

would be a judicial function which can not be encroached upon by a legislature.....”.

[44]. In **B.Krishna Bhat Vs. State of Karnataka & Anr. [2001]**

4 SCC, 227, the issue raised before the High Court was: whether the

Bangalore Development Authority [BDA] could levy any tax, cess or

fee on the owners of the land/buildings situated outside the limits of

Bangalore City Corporation. The High Court answered the question in

favour of the owners of lands and buildings and held that *“there was*

no inherent power to assess, impose and recover taxes, cess and fees

other than the betterment tax as the power to levy and recover taxes,

cess and fees has to be expressly conferred on BDA” and that *“there*

was no material on record to hold that BDA had been rendering any

service to the persons concerned corresponding to the taxes, cess and

fees recoverable because such tax was service related”. The State

Legislature amended the Principal Act and inserted Sections 28-A, 28-

B and 28-C whereby BDA was statutorily entrusted with the obligation

of providing certain civic amenities and in lieu thereof, it was

empowered to levy and collect property tax. Further, Section 7 of the

Amending Act validated all the collection made by the BDA which was

earlier declared as without authority of law by the High Court. It was

held by the Hon'ble Supreme Court that the amended provisions to the

extent of levying property tax or its recovery were neither beyond the

scope of legislative power nor unguided or arbitrary. The Validation

Act, however, was struck down laying down that since the High Court

had set aside and ordered the refund of recovered amount after giving

a finding of fact that no services were rendered by the BDA in lieu of

the tax levied, the lack of services rendered at the relevant point of time was an invalidity which could not have been removed by the Legislature to justify the levy of tax by way of an Amending Act and that finding of fact could neither be ignored nor over-ruled.

[45]. **D.Cawasji Company, Mysore & Anr. Vs. State of**

Mysore & Ors., 1984 [Supp.] SCC, 490 was a case where Sales Tax

was computed on the sale price of *Arrac* together with excise duty and cesses payable thereon. The inclusion of 'excise duty' and 'cesses' in the 'sale price' for the purpose of levy of Sales Tax, having been challenged, the High Court of Mysore held that the Excise Duty which was paid not by the seller but by the purchaser could not become a part of the price at which goods are sold by that seller, hence no Sales Tax could be collected on Excise Duty which was not a part of its selling price. The State preferred an appeal before the Supreme Court but withdrew it subsequently. Since various contractors who had meanwhile paid the disputed Sales Tax amounts sought their refund, the State Government passed Ordinance No. 3 of 1969, followed by the Act of Legislature, Section 3 whereof declared that notwithstanding any thing contained in any judgment, decree or order of any Court, the Sales Tax on country-liquor other than Toddy levied or collected or purported to have been levied or collected shall, for all purposes, *"be deemed to be and to have always been validly levied or collected in accordance with law, as if this Act had been in force at all material times when such tax was levied or collected and*". The aforesaid provision was struck-down by the Hon'ble Supreme Court holding that the amendment was passed, as was set out clearly in the Statement of

Objects also, to over-ride the judgment of the High Court and to enable the State to hold on to the amount collected as Sales Tax on Excise Duty, Health Cess and Education Cess on Arrac or special liquor. It was further held that the State instead of remedying the defect or removing the lacuna has by the impugned amendment sought to raise the rate of tax with retrospective effect to avoid the liability of refund.

[46]. In **The Municipal Corporation of the City of Amhedabad & Anr. Vs. The New Shrock Spg. and Wvg. Company Limited and Ors., [1970] 2 SCC, 280,** the land and building owned by various Textile Companies in the city of Ahmedabad were assessed to property tax but the buildings were assessed on the basis of floor area. The owners unsuccessfully challenged the criteria of assessment before the High Court and even when their appeals were pending before the Hon'ble Supreme Court, the assessment for subsequent years also continued. When the Corporation took coercive steps to recover the due amount of taxes, writ petitions under Article 32 were also filed. Finally, the Hon'ble Supreme Court vide judgment dated 21st February, 1967, struck down the rules, though permitted the Corporation to value the land and buildings on flat rate method. Since the judgment entailed refund of tax already recovered, State of Gujarat brought Amendment Act of 1968 inserting Section 152-A for the validation of the tax amount already assessed or recovered. The provision was held to be unconstitutional on the premise that the Corporation could retain the amount collected as property tax only if there was an assessment according to law and that the impugned provision authorises the Corporation to assess or re-assess the

premises as per the amended criteria even if the previous assessments stood set-aside by the Courts. Sub-Section [3] of Section 152-A was held to be an attempt to make a direct inroad into the judicial powers of the State. It was ruled that no Legislature in this Country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by Courts.

[47]. In **Satchidananda Mishra Vs. State of Orissa & Ors., [2004] 8 SCC, 599**, 49 posts of Junior Teachers were filled in total disregard to the provisions of the 1979 Statutory Rules. Since the State Public Service Commission refused to approve the same, the State Government enacted the Orissa Medical Education Service [Appointment of Junior Teachers Validation] Act, 1993 by which all the appointees were deemed to have been validly and regularly appointed in the service from the date of their original appointments. The Validating Act was held to be unconstitutional by all the judicial forums observing that there was an illegality which struck at the root of the appointments and therefore it was beyond the scope of the legislature to validate the appointments which were violative of Articles 14 and 16 of the Constitution.

[48]. In **Delhi Cloth and General Mills Company Limited & Anr. Vs. State of Rajasthan & Ors., [1996] 2 SCC, 449**, State of Rajasthan issued a notification under the Rajasthan Town Municipalities Act, 1951 proposing to extend the limits of Kota Municipality to include village Rajpura but no final notification was issued. In the case of village Ummedganj, it was included within the limits of Kota Municipality but such inclusion did not precede any

notification inviting objections. Subsequently Ummedganj was also excluded from the limits of Kota Municipality. As the petitioner's Industry was located in the area falling in these villages, Octroi was collected from it. The Petitioner, thus, firstly filed a civil suit to restrain the Kota Municipality from levying or collecting Octroi and followed by another for the refund of about eleven lac rupees which were allegedly paid towards Octroi. The State Government then issued an Ordinance, followed by the Validating Act of 1975 and as per its Section 3, villages of Rajpura and Ummedganj were deemed always to have continued to exist and shall thereafter continue to exist within the limits of Municipality at Kota for all intent and purposes and the liability to pay taxes was also deemed under that provision. Sections 4 to 7 of the Principal Act prescribing the mandatory procedure required to be followed for inclusion of Villages within the municipal limits, however, remained un-amended. The Validation Act was held to be illegal and unconstitutional as it did not cure any defect and merely created a deeming fiction that the subject-villages fall within Kota Municipality even when the mandatory provisions of Sections 4 to 7 had not been followed for inclusion of those villages.

[49]. In **AP Dairy Development Corporation Federation Vs. B. Narasimha Reddy & Ors. [2011] 9 SCC, 286**, Ordinance 2 of 2006 promulgated by State of Andhra Pradesh excluding Milk Diary Cooperative Societies from the purview of AP Mutually Aided Cooperative Societies Act, 1995 with a deeming fiction that such societies shall be deemed to have been registered under the AP Cooperative Societies Act, 1964 retrospectively from the date of

registration of such Societies under the 1995 Act, was struck down being violative of Articles 19[1][c] and 14 of the Constitution on the ground that the State can not force a society to get itself registered under the Statute for which the Society had not applied and that too without giving any option to such societies.

[50]. In **Madan Mohan Pathak & Anr. Vs. Union of India & Ors., [1978] 2 SCC, 50**, the petitioner–employees were held entitled to annual cash bonus under the settlement arrived at with the LIC. By virtue of the Life Insurance Corporation [Modification of Settlement] Act, 1976, that judgment of Calcutta High Court was sought to be rendered in-effective. The Hon'ble Supreme Court held that the High Court judgment was not a mere declaratory judgment holding impost or tax to be invalid so that a validation statute could remove the defect pointed out by the judgment amending the law with retrospective effect. It was a judgment giving effect to the right of the petitioners and the only remedy available against it was by way of appeal or review but so long as the judgment stands, it can not be disregarded or ignored and it must be obeyed by the LIC.

[51]. In **State of Tamil Nadu Vs. State of Kerala & Anr., AIR 2014 SC, 2407** [known as **Mullaperiyar Dam** case], the Hon'ble Supreme Court vide judgment dated 27th February, 2006 decided the dispute between States of Tamil Nadu and Kerala, by permitting the water level in the Mullaperiyar Dam to be raised from 136 to 142 feet with a further direction that after the strengthening work was complete to the satisfaction of the CWC, independent experts would examine the safety angle before the water level is permitted to be raised up to

152 feet. In less than three weeks of the afore-stated decision, the Kerala State Legislature amended Kerala Irrigation and Water Conservation Act, 2003 by the Kerala Irrigation and Water Conservation [Amendment] Act, 2006 and as per the Second Schedule appended to the Amendment Act, the height of Full Reservoir Level of the Dam was fixed at 136 feet. On a challenge laid by the State of Tamil Nadu to the constitutionality of Kerala Amendment Act, 2006, the Constitution Bench summed up the separation of powers doctrine under the Indian Constitution and struck down the 2006 Amendment Act on arriving at the conclusions, *inter-alia*, that :-

“.....it is abundantly clear that on the one hand there is a finding of fact determined by this Court on hearing the parties on the basis of the evidence/materials placed on record in the judgment of this Court in Mullaperiyar Environmental Protection Forum¹ and on the other in 2006 (Amendment) Act, the Kerala legislature has declared the dam being an endangered one and fixed the water level in the dam at 136 ft. If the judgment of this Court in Mullaperiyar Environmental Protection Forum 1 and the 2006 (Amendment) Act are placed side by side insofar as safety of the Mullaperiyar dam for raising the water level from 136 ft. to 142 ft. is concerned, it is obvious that the judgment of this Court and the law enacted by Kerala State legislature cannot stand together and they are irreconcilable and inconsistent. The impugned law is a classic case of nullification of a judgment simpliciter, as in the judgment of this Court the question of safety of dam was determined on the basis of materials placed before it and not on the interpretation of any existing law and there was no occasion for the legislature to amend the law by

altering the basis on which the judgment was founded.
When the impugned law is not a validation law, there is no
question of the legislature removing the defect, as the
Court has not found any vice in the existing law and
declared such law to be bad". [Emphasis applied]

[52]. The decision in **Amarendra Kumar Mohapatra & Ors. vs. State of Orissa & Ors., (2014) 4 SCC 583**, has been referred to highlight the tests prescribed for a Validating Act, namely, whether (i) the vice of invalidity that rendered the Act, Rule, proceedings or action invalid has been cured by the Validating legislation; (ii) the Legislature was competent to validate the Act, action, proceedings or rule declared invalid in the previous judgments and (iii) such validation is consistent with the rights guaranteed by Part-III of the Constitution? It is only when the answer to all these three questions is in affirmative that the Validation Act can be held to be effective.

[53]. In all fairness, three more often-cited decisions in (i) **Shri Prithvi Cotton Mills Ltd. & Anr. vs. Broach Barough Municipality & Ors., (1969) 2 SCC 283**; (ii) **Indian Aluminium Co. & Ors. vs. State of Kerala & Ors., (1996) 7 SCC 637**; and (iii) **Bakhtawar Trust & Ors. vs. MD Narayan & Ors., (2003) 5 SCC 298** have been relied upon by both the parties. We propose to refer to these decisions while summarizing the case-law cited on behalf of the respondents so as to avoid multiplicity.

[54]. Equally profitable is to cite the latest decision of the Hon'ble Supreme Court dated 04th February, 2015 in **S.T.Sadiq Vs. State of Kerala & Ors., 2015[2] SCALE, 69**, [rendered after this order was reserved] wherein the question of constitutional validity of

the Kerala Cashew Factories Acquisition [Amendment] Act of 16th August, 1995, was raised. Having found that Section 6 of the Act is aimed only at directly up-setting a final judgment of the Supreme Court and the *non-obstante* clause of that provision intended to wipe out the final judgment, the Hon'ble Supreme Court has ruled that the Kerala Legislature wished to interfere with two judgments of the Supreme Court making no distinction between factories that were managed by the Cashew Development Corporation and CAPEX. The offending Statute was consequently struck-down.

[55]. For an impetus to the contention that liability to pay ICB charges could not be levied retrospectively, the petitioners relied upon **Star India [P] Limited Vs. Commissioner of Central Excise, Mumbai and Goa, [2005] 7 SCC, 203** which lays down that normally liability with retrospective effect can be extended only by way of clarification and not by way of amendment to Statute with retrospective effect.

[56]. **Delhi Development Authority, N.D. & Anr. Vs. Joint Action Committee, Allottee of SFS Flats & Ors. [2008] 2 SCC, 672** has been pressed into aid to urge that the 1987 administrative policy which is sought to be validated through the impugned amendment was a unilateral novation of contract which is impermissible in law unless the parties are *ad idem* to the new terms and conditions. A Division Bench judgment of this Court in **M/s Janta Land Promoters Ltd. vs. State of Punjab & Ors., 2011(1) ICC 17**, has also been cited for the same purpose.

[57]. For the contention that the licence or agreements issued/executed between the petitioners and the Director are statutory contracts where terms and conditions cannot be varied through unilateral administrative decisions taken by the respondents, reliance was placed on **Bharat Sanchar Nigam Ltd. & Anr. vs. BPL Mobile Cellular Ltd. & Ors. (2008) 13 SCC 597.**

[58]. Similarly, the contention that inconvenience or hardship cannot be a decisive factor while interpreting a Statute and that the law has to be followed even if it is hard and that equity can only supplement law and can not supplant it, was sought to be strengthened citing the decisions in (i) **Mysore State Electricity Board vs. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors., [1963] Supp. [2] SCR, 127;** (ii) **Martin Burn Ltd. vs. Corporation of Calcutta, [1966] 1 SCR, 543;** (iii) **Raghunath Rai Bareja & Anr. vs. Punjab National Bank & Ors. (2007) 2 SCC 230;** (iv) **Vijay Narayan Thatte & Ors. vs. State of Maharashtra & Ors., (2009) 9 SCC 92;** (v) **CMD/Chairman BSNL & Ors. vs. Mishri Lal & Ors. (2011) 14 SCC 739;** (vi) **Popat Bahiru Govardhane & Ors. vs. Special Land Acquisition Officer & Anr., (2013) 10 SCC 765.**

[59]. As regard to the plea that where the language of the Statute is plain and clear, the literal rule of interpretation need to be applied without referring to any other considerations, the petitioners relied upon **Rohitash Kumar & Ors. vs. Om Parkash Sharma & Ors., (2013) 11 SCC 451.**

Contentions on behalf of Respondents:-

[60]. In contrariety, Dr. Ashwani Kumar, learned Senior Counsel for the State of Haryana maintained that the Haryana Act No. 4 of 2012 surely is constitutional and totally impregnable as it conforms to all the well-defined legal tests for the validity of a piece of Legislation. He very fervently urged that:-

- [i] the power of Legislation to amend or enact the law retrospectively in order to cure the defect or lacunae in that law has been unambiguously recognised by the Apex Court in a catena of decisions;
- [ii] no one can have a vested right in a defective legislation and no benefit can be allowed to enure only because the Legislature, due to over-sight, left a lacuna in the legislation or the Courts have construed such legislation in a manner other than what the Legislature perceived it;
- [iii] the law can be moulded to meet the exigencies of Constitution as while the law must be stable, it can not stand still. It is a well recognised principle that the intention of the Legislature is beyond judicial review and that curative statutes are intended to affect past transactions and, thus, are inherently retrospective in their operation;
- [iv] there can be no set formula for the language to be used in drafting the Amendment and Validation Act, nor do the language, expressions or phrases so used,

be the sole test for determining the legality or sustainability of such Statute. The State Legislature in exercise of its sovereign functions has effectively cured and removed the lacuna and defect in the original Act through the Haryana Act No. 4 of 2012;

[v] there can be no transfer malice in the field of legislation;

[vi] the Statement of Objects and Reasons of the impugned Act clearly spells out that the necessity to enact the Validation Act, 2012 arose after the decision of the Hon'ble Supreme Court in **Ansal's** case which pointed out that there ought to be expressly stated power in law to recover the cost of construction of ICBs;

[vii] the respondents have always understood the original law to contain that power but in the light of the decision of the Hon'ble Supreme Court, the Legislature has chosen to explicitly add the said power retrospectively and, thus, the Validation Act truly is in furtherance of the decision in **Ansal's** case and not in negation thereof;

[viii] but for an express provision in the Statute to support ICB charges, the decision of the Hon'ble Supreme Court would have been altogether different. It is that very lacuna only which the Legislature has remedied

through the Validation Act. **Ansal's** case also recognizes the power of Legislature to levy and recover ICB charges through a clearly stated legislative intent. The respondents considered the said Legislative intent to be implicit in the original Act but the same has now been lucidly incorporated. To say it differently, substantive issue decided in **Ansal's** case was lack of statutory power to collect ICB charges, which has now been distinctly added;

[ix] the allegation that there is no rationality behind the decision to recover the costs of construction against 25% of the over-all ICB sites or that such a percentile was *per-se* arbitrary, was well expounded in the affidavit dated 12th May, 1995 filed by the then Commissioner, Town and Country Planning, Haryana in this Court in CWP No. 6565 of 1994, i.e., **Ansal's** case and which was duly noticed by this Court in its judgment dated 29th July, 1999. That administrative decision has been appropriately embedded through the Amendment Act;

[x] the petitioners' plea that a Regulatory Statute like 1975 Act can not empower the State to levy any impost or tax retrospectively is totally misdirected as it is now well recognised part of the constitutional jurisprudence that a Statute containing regulatory measures, which is essentially a function of the State,

can include the power to levy a charge or fee as per its regulating functions for the services rendered or otherwise. The licence fee may be either regulatory or compensatory. The licence fee can be regulatory when the activity for which the licence is given, requires to be regulated or controlled. The fee which is charged for regulation of such activity would be validly classified as a fee and not a tax, even without the element of *quid-pro-quo*;

[xi] the additional affidavit dated 7th August, 2014 filed by the respondents suitably allays the petitioners' apprehension as it clarifies that no cost has been recovered with respect to the sites which have already been constructed by the petitioner- colonizers;

[xii] the petitioners deserve to be non-suited on equitable considerations also as they have been profiteering to the tune of thousands of crores of rupees under the licences granted on the basis of their own undertaking and understanding of the liability towards ICB charges for which there has been an express clause in the Bilateral agreements executed between the parties since the year 1989.

Case Law relied on behalf of the State of Haryana:

[61]. The Constitution Bench judgment in **Shri Prithvi Cotton Mills Ltd.** (supra) is the lead-case cited by both the sides. There the

Hon'ble Supreme Court struck-down Rule 350-A of the Rules made

under the Bombay Municipal Boroughs Act, 1925 which laid the rate for assessing open lands for the purpose of property tax being *ultra-vires* the Act itself [Patel Govardhan Das Hargovind Das Vs. Municipal Commissioner, Ahmedabad (1964) 2 SCR 608]. The Legislature of Gujarat then passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 and on being challenged, the Hon'ble Supreme Court upheld that Validation Act laying down that when a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. Further, the Legislature must possess the power to impose tax and it is not sufficient to declare merely that the decision of the Court shall not bind for that tantamounts to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. It was further held that Validation of a tax declared illegal by the Court can be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal by re-enacting retrospectively a valid and legal taxing provision and then by fiction "making the tax already collected to stand under the re-enacted law". The Constitution Bench also ruled that ***"Sometimes the legislature gives it own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding on courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law....."***

[62]. In **Hari Singh & Ors. vs. The Military Estate Officer & Anr., (1972) 2 SCC 239**, originally the Constitutionality of the Public Premises (Eviction of Un-authorised Occupants) Act, 1958 was challenged on the ground that its Section 5(1) violated Article 14 of the Constitution as it conferred unguided discretion on the authorities to invoke either of the two alternative remedies for eviction of persons in unauthorised possession, namely, [i] suit for eviction in a court of law; or [ii] the recourse under the 1958 Act itself. While the appeals were still pending, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 came to be enacted on August 23, 1971 retrospectively w.e.f. September 16, 1958 [except its Sections 11, 19 & 20]. The appellants challenged the validity of 1971 Act but that was repelled by the Constitution Bench on the grounds that [i] the Legislature was competent to enact the 1971 Act and it has the power to pass laws with retrospective operation; and [ii] the challenge to the constitutionality of the original Act was laid on the ground that there were two procedures and the choice of either was left to the unguided discretion of the Estate Officer and that the 1971 Act has removed the basis of arbitrariness as it does not leave any such discretion with the Estate Officer, for under the 1971 Act there is only one procedure.

[63]. In **I.N.Saksena Vs. State of Madhya Pradesh [1976] 4 SCC, 750**, the petitioner - a Judicial Officer was retired from service after he attained the age of 55 years. He challenged his retirement on the ground that Fundamental Rule 56 as it stood after the amendment dated 29th November, 1963 did not authorise to retire after the attainment of 55 years of age. The Hon'ble Supreme Court accepted

his plea vide judgment dated 30th January, 1967. As he had meanwhile attained the age of 58 years, it was held that he could not be absorbed back in service but will be entitled to such benefits as may accrue to him by virtue of the success of writ petition. When the appeal was heard by the Hon'ble Supreme Court, it could not be pointed out that Madhya Pradesh [Age of Compulsory Retirement] Rules, 1965 had already been made under Article 309 of the Constitution with retrospective effect from March 1, 1963 and under these Rules, a Government servant could be retired on attaining the age of 55 years on three months notice. It was to meet with this situation that the State Government promulgated an Ordinance followed by Act No. 5 of 1967 validating the retirement of certain government servants including the petitioner, notwithstanding the judgment of the Hon'ble Supreme Court in his favour. The 1967 Act empowered the State not to pay the dues of the petitioner from the date of his retirement, i.e., December 3, 1963 onwards. The petitioner challenged the validity of the 1967 Act, particularly its Sections 2 and 5, raising four contentions including “that the Act has been passed to over-rule the decision of the Supreme Court which the Legislature has no power to do”. The Apex Court negatived all the contentions by applying the twin test laid down by the Constitution Bench in **Hari Singh's case [supra]**.

[64]. The Constitution Bench in **M/s Ujaagar Prints & Ors. Vs. Union of India & Ors., [1989] 3 SCC, 488** upheld the validity of Central Excises and Salt Additional Duties Excise [Amendment] Act, 1980 which treated the process of bleaching, dyeing, printing, sizing

etc. as that of a 'manufacturer'. The amendment was necessitated by the judgment of Gujarat High Court which had declared the levy illegal on the premise that such processing did not bring into being a new and commercially different article with a distinctive character and use. It was further held that a competent legislature can always validate a law, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the Legislature, the earlier judgment becomes irrelevant and unenforceable, that can not be called an impermissible legislative over-ruling of the judicial decision. The Apex Court also held that no individual can acquire a vested right from a defect in a statute and seek a wind-fall from the Legislature's mistakes.

[65]. **Vijay Mills Company Limited & Ors. Vs. State of Gujarat & Ors., [1993] 1 SCC, 345** explains the different modes of validating the provisions of an Act retrospectively, depending upon the intention of the Legislature in that behalf. It upheld the Bombay Land Revenue [Gujarat Amendment and Validation] Act, 1981 whereby the rule making provision of the Principal Act was amended to empower the Government to make Rules retrospectively and deeming the amended provision to have been always in existence so as to validate the Rules framed prior to coming into force the amended provision itself.

[66]. **P.Kannadasan & Ors. Vs. State of TN & Ors. [1996] 5 SCC, 670**, is a case where Section 115 of the Tamil Nadu Panchayats Act, 1958 levied local cess on every rupee of land revenue payable to

the Government in respect of any land. The High Court upheld the validity of the levy saying that it was within the legislative competence of the State Legislature it being a tax on land. On appeal before the Hon'ble Supreme Court, the matter was finally heard by a Seven-Judge Bench in **India Cement Limited Vs. State of Tamil Nadu [1990] 1 SCC, 12** which declared the said levy to be out-side the legislative competence of the State Legislature. Following that decision, the Hon'ble Supreme Court also set aside identical levies by the States of Orissa, Bihar and Madhya Pradesh in **Orissa Cement Limited Vs. State of Orissa [1991] Supp.[1] SCC, 430**. Taking note of the fact that these decisions had a serious impact on the revenue of several States, Parliament came forward and promulgated an Ordinance on 15th February, 1992 which was replaced by the Cess and Other Taxes On Minerals [Validation] Act, 1992. Section 2 of the Act contained the validation of State laws and actions taken thereunder relating to cesses or other taxes on minerals and that notwithstanding any judgment, decree or order of any Court, such cesses or taxes shall be deemed to have been validly levied and recovered and also that no suit or proceedings for the refund of the cesses or taxes realized under the State laws shall be maintainable. The validated State laws were included in The Schedule. The Hon'ble Supreme Court upheld the Central Act reiterating the settled principle that since imposition of taxes or cess under State laws was held beyond the legislative competence of the State Legislature and not beyond the competence of Parliament, retrospective validation of an invalid taxing was a permissible legislative recourse.

[67]. In **Indian Aluminium Co. & Ors. Vs. State of Kerala & Ors. [1996] 7 SCC 637**, the High Court of Kerala declared the action of Government of Kerala in imposing surcharge on supply of electricity energy to be *ultra-vires* the Kerala Essential Articles Control Act, 1986 with a further direction to refund the amount collected thereunder. Soon after the Supreme Court upheld that judgment on 13th April, 1989, the State issued the Kerala Electricity Surcharge [Levy and Collection] Ordinance, 1989 which later on was replaced by the Act No. 22 of 1989. The challenge to its Section 11 laid on various grounds like lack of legislative competence or as an attempt to interfere with or encroach upon the power of judicial review entrusted to the Courts, was turned down after referring to the fulsome of case law.

[68]. **State of TN Vs. M/s Arooran Sugars Limited, [1997] 1 SCC, 326** also reiterates that the Legislature may remove the defect pointed out by the Court, which it may do by amending the definition or other provisions retrospectively and such a recourse does not amount to encroachment by the Legislature over the power of Judiciary. The Five Judge Bench ruled that “*a Court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given*”. **Madan Mohan Pathak's case [supra]** was distinguished as there was no *non-obstante* clause in that case to take away the effect of the judgment of the High Court.

[69]. **People's Union for Civil Liberties and Ors. Vs. Union of India & Anr., [2003] 4 SCC, 399**, considered the question of validity of

the Representation of the People [Amendment] Ordinance, 2002 to find out whether it was consistent with the directions issued in **Union of India Vs. Assn. for Democratic Reforms & Anr. [2002] 5 SCC, 294**. It was held, in no uncertain terms, that the Legislature can not over-ride decision of Court by empowering instrumentalities of the State to disobey the same though it can change the basis of the decision or remove the defect pointed out by the Court so as to render the decision in-effective and that the Legislature has no power to review the decision of the Supreme Court and set it at naught.

[70]. In **Bakhtawar Trust & Ors. Vs. M.D.Narayan & Ors., [2003] 5 SCC, 298**, the Karnataka Town and Country Planning Act, 1961 and the Regulations framed there-under prescribed 55 feet as the maximum height of a new construction for the city of Bangalore. The Builder constructed an eight storeyed building with a height of more than 55'. Pursuant to a writ petition filed by the owner of adjoining property, the High Court declared such construction illegal. The Builder's appeal was also dismissed. Thereafter, the Commissioner passed an order directing the builder to demolish 6th, 7th and 8th floors of the building and while the contempt proceedings were also initiated for non-compliance of the order of the High Court, the Karnataka Legislature rescued the builder and passed the Bangalore City Planning Area Zonal Regulations [Amendment and Validation] Act, 1996 whereby the maximum height limit for a new building stood increased to above 165 feet with retrospective effect. In the second round of litigation, the Hon'ble Supreme Court allowed the appeal and declared the Amendment Act as constitutionally valid, for it satisfied

the twin test of competence and curing the defect or lacuna pointed out by the Court in the Original Act.

[71]. **Dharam Dutt & Ors. Vs. Union of India & Ors. [2004] 1**

SCC, 712 reiterates that the doctrine of colourable legislation does not involve any question of *bona-fide* or *mala-fide* and the only question that needs to be answered is whether the Legislature is competent to enact a particular law. If the Legislature is competent to pass such law, the motives which impelled it to act become wholly irrelevant. But if it lacks competence, then the question of motive, in any case, does not arise.

[72]. In **ITW Signode India Limited Vs. Collector of Central**

Excise, [2004] 3 SCC, 48 amendment in Section 11-A of Central Excise Act, 1944 was upheld as a valid piece of legislation, for it was brought in to cure the defect pointed out in the case of **CCE Vs. Cotspan Limited [1999] 7 SCC, 633.**

[73]. In **State of Himachal Pradesh Vs. Narain Singh, [2009]**

13 SCC, 165, the respondent – landowner[s] filed writ petitions in the High Court wherein the State Government was directed to complete the ongoing Land Revenue Settlement operations in accordance with the Punjab Settlement Manual. Some other directions were also issued. The State filed Special Leave Petition in which leave was granted and judgment of the High Court was stayed. During the pendency of Civil Appeal, the State Legislature enacted Himachal Pradesh Land Revenue [Amendment and Validation] Act, 1996 with retrospective effect. The constitutionality of 1996 Act was assailed by the respondent–landowner[s] primarily on the ground that it was a

piece of colourable legislation brought in to nullify the High Court judgment dated 13th January, 1994 and that the Amendment Act was in conflict with the Principal Act. The Hon'ble Supreme Court reversed the view of High Court and upheld the Amendment Act laying down that the power of the sovereign Legislature to legislate within its field, both prospectively and retrospectively, are unquestionable and where the competent Legislature removes the substratum or the foundation of a judgment retrospectively, it does not transgress any other constitutional limitation.

[74]. **A.Manjula Bhashini & Ors. Vs. The Managing Director, AP Women's Cooperative Finance Corporation Limited & Anr., [2009] 8 SCC, 431** too elucidates the same principles as in that case also Andhra Pradesh [Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure] Act, 1994 was amended retrospectively from the year 1994 imposing restrictions on the regularisation of services of daily wage employees, who were otherwise entitled to such regularisation in terms of the directions issued by the Tribunal/Courts in their favour.

[75]. Learned Senior Counsel heavily banked upon the decision in **Secunderabad Hyderabad Hotel Owners' Association & Ors. Vs. Hyderabad Municipal Corporation, Hyderabad & Anr. [1999] 2 SCC, 274,** to justify levy of Licence-fee/other statutory charges under a Regulatory Statute like the 1975 Act, according to which the licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, the element of *quid-pro-quo* between the service rendered and the fee charged ought to be reasonably

established. *Albeit*, the licence fee can be regulatory also when the activities for which a licence is given are required to be regulated or controlled. The fee charged for regulation of such activity would be validly classifiable as a fee and not a tax although no service is rendered.

[76]. Similarly, **Calcutta Municipal Corporation & Ors. Vs. Shrey Mercantile [P] Ltd. & Ors., [2005] 4 SCC, 245**, draws distinction between 'tax' and 'fee' and explains that imposition of fees for the primary purpose of regulation and control can be classified as 'fee' but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a 'tax'. It holds that "*the power to regulate, control and prohibit within the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is a 'fee'*".

[77]. Likewise, **M/s Kishan Lal Lakhmi Chand & Ors. Vs. State of Haryana & Ors., [1993] Supp. 4 SCC, 461**, explains the difference between a tax and a fee, *inter-alia*, pointing out that the power of any Legislature to levy a fee is conditioned by the fact that it must be by and large a *quid-pro-quo* for the services rendered, for which the only requirement is that of a reasonable relationship between the levy of the fee and the services rendered.

[78]. **A.P.Paper Mills Limited Vs. Government of A.P. & Anr. [2000] 8 SCC, 167** also reiterates that the licence fee is regulatory in nature and the element of *quid-pro-quo* is not applicable to such fee though there needs to be a reasonable co-relation between the levy of

licence fee and the purpose for which the Act or the Rules have been enacted.

Settled Principles emerging out of the cited case-law:-

[79]. The legal issues that emerge well settled as per the cited case-law may be conjointly summed up as follows:-

- [i] The validity of a Validating Law depends upon the twin-test as to whether the Legislature possesses the competence over the subject-matter and whether while making the amendment or validation law, it has removed the defect or cured the lacuna which the Courts had found in the existing law;
- [ii] If the Legislature is empowered to legislate over the subject matter, it can enact such a valid law even retrospectively so as to bind even the past transactions;
- [iii] The Legislature while making a law with retrospective effect can not sit over the Court's judgment or usurp the judicial power, for no such power has been vested in it under the Constitution but it can remove the basis which led to the Court's decision;
- [iv] The doctrine of separation of powers within the Constitutional Scheme, vests the power of Judicial review in Courts only;

- [v] Where the court has granted relief or benefits on interpretation of the existing law, the Legislature can nullify the same by enacting the law with retrospective effect save as the law so enacted does not contravene Chapter III or other provisions of the Constitution;
- [vi] Where the competent Legislature enacts a valid law in the manner explained above, the judgment of the Court is not over-ruled or reversed; the judgment is only in-effectuated as its consequences are neutralised after the change of law;
- [vii] The decision of a Court would always bind the parties unless the conditions on which it is based are so fundamentally altered by the competent Legislature that the decision could not have been given in the altered circumstances;
- [viii] Once the Legislature enacts a valid law, prospectively or retrospectively, it can not be declared *ultra-vires* on the ground that it would take away the benefits which would have been available as a result of applicability or interpretation given to the existing law by a superior court;
- [ix] Even a competent Legislature can not directly over-rule a judicial decision and the Validation Act can not simply declare a judgment, order or direction of the

Court as not binding unless the very premise on which the Court delivered the judgment or declared an action invalid, is completely removed and cured in such a manner that the Court, in the light of the changed law, can not reiterate its earlier view;

[x] When the competent Legislature makes a law retrospectively to neutralise a judicial decision, its validity can not be challenged by attributing *mala-fides* to the Legislature as the concept of 'transferred malice' is unknown in the field of legislation and the challenge can sustain only on the dual test of the legislative competence and whether in making the validation it has removed the defect which the Courts had found in the existing law;

[xi] Where the Court has rendered its decision solely on a question of fact which has become final and binding, such findings on facts rendered in the previous proceedings shall operate *res-judicata* and there can not be a deemed substitution or reversal of such fact-finding by the Legislature through a law enacted retrospectively;

[xii] Where an inter-parties final judgment has been implemented and the beneficiary has reaped its fruits, the Legislature can not by way of a declaratory-law authorize the Executive to disobey that judgment by

withdrawing the benefits given under the compliance of that judgment.

[xiii] The 'tax' and 'fee' are two different connotations. The 'Fee' can be regulatory as well as compensatory. In the case of a 'licence fee' levied under Regulatory Statute, the principle of *quid-pro-quo* is not attracted though the fee so levied ought to be relatable to the legislative object of the Act or the Rules framed there-under.

The questions arising for determination:-

[80]. From the exposition of legal issues by learned Senior Counsel for the parties, their pleadings and the case-law cited by them, the following questions need to be determined in these cases:-

- [i] Whether there was any lacuna or defect found by the Hon'ble Supreme Court in the Principal Act of 1975 while deciding **Ansal's** case?
- [ii] If so, whether the State Legislature is competent to cure such lacuna and remove the defect in the Principal Act, 1975 retrospectively?
- [iii] If question No.[ii] is answered in affirmative, whether the Haryana Act No. 4 of 2012 has removed such defect or cured the lacuna in the principal Act?
- [iv] Whether sub-Section [2] of Section 23-A which is part of the Validation clause to the extent it empowers

the State Government “to order the recovery of the amount of construction of which the refund has been taken by the licensee under the judgment, order or decree” of the Court, *ultra-vires* Part-III of the Constitution?

[v] Whether the Haryana Act No. 4 of 2012 has been enacted to over-rule and nullify the judgment in **Ansal's** case and is a piece of colourable Legislation?

[vi] Whether the impugned legislation is violative of Article 14 or other constitutional provisions?

[vii] Whether the Amendment and Validation Act, 2012 is in conflict with the legislative object of the principal Act of 1975?

[viii] What is the effect of the first proviso added to Section 3[3][a][iv] of the 1975 Act vide Haryana Act No. 4 of 2012?

[ix] Whether the 1975 Act being a Regulatory Statute can empower levy of licence fee and other statutory charges like cost of construction of ICB sites retrospectively?

[x] Whether the demand of ₹61,000/- per gross acre towards cost of construction of ICBs raised against

the petitioners is arbitrary and far in excess of the actual cost of construction of 25% of such buildings?

[xi] Whether the impugned legislation amounts to unilateral alteration or amendment of the statutory contract executed between the parties?

[xii] Whether Ansal is entitled to refund of [ICB charges] ₹983.74 lacs along with interest in compliance with the inter-parties judgment of the Hon'ble Supreme Court which has attained finality?

Question No.[i] : Whether there was any lacuna or defect found by the Hon'ble Supreme Court in the Principal Act of 1975 while deciding Ansal's case? :-

[81]. Section 3[3][a] of the 1975 Act as it existed before its amendment in 2012 vividly provided that the applicant seeking licence shall have to give an undertaking [i] for carrying on and completion of the development works in accordance with the licence granted; [ii] the development works means 'internal' and 'external' both and [iii] the expression 'External Development Works' and 'Internal Development Works' as defined in Section 2[g] and [i] of the Act do not include amenities like schools/hospitals/post offices/police posts/ community centres or other community buildings. Nonetheless, a colonizer is obligated to provide these community buildings to the residents of the colony he develops by virtue of Clause [iv] of Section 3[3][a] of the un-amended Act. An identical obligation was created on the colonizer under Rule 11[e] of the 1976 Rules also. There was yet another express clause to the same effect in the bilateral agreement executed between the parties. On a cumulative reading notwithstanding the

effect of these provisions but having regard to the fact that the Legislature had used a specific phrase the 'land' only, Hon'ble Supreme Court in **Ansal's** case held that Section 3[3][a][iv] does not create any obligation on the colonizer to pay for the cost of construction of community buildings in a case where the 'land' set apart for such community buildings is transferred to the State Government free of cost. It was, thus, ruled that ***“if the Legislature has intended that the licensee is required to transfer the land and also to construct the building on it or to make payment for such construction, the Legislature would have made specific provisions laying down such conditions explicitly and in clear words in which event the provision would have been worded in altogether different words and terms”***.

[82]. **Ansal's** judgment rejected the plea that “subsequently respondent No. 2 has made it a policy of including expressly the value of the community buildings in the internal development works.....” and held that ***“if the provision would have been the same at the relevant time, in that event the situation would have been different but no such provision either in the Act or in the Rules or in any policy framed by the Government could be brought to our attention”***. It was further ruled that ***“there was no obligation on the part of the appellant to pay for the construction of ICB which was being demanded by the Government as EDC”*** and that ***“such demand could not have been made even as internal community buildings for no such power and jurisdiction was vested in the Government to make such a demand for the simple reason that there was***

neither any statutory support nor any policy decision in support of the same”.

[83]. The demand raised against Ansal towards ICB charges was undoubtedly annulled for want of explicit provision in the Statute, Rules or policy and the consequential lack of jurisdiction to levy and recover such charges. The Apex Court, therefore, held that if the Legislature had intended that a licensee is required to not only transfer the land but also to bear the expenses for construction of community building sites, then the Legislature would have made a specific provision to that effect.

[84]. It was surely a case of lacuna and defect in Sections 2 or 3[3][a][iv] of the Principal Act, 1975 which led the Hon'ble Supreme Court to set aside the demand raised for ICB charges. To say it differently, if the Legislature had used the expression like 'land along with proportionate cost of construction' in the later part of sub-clause [iv] of Section 3[3] or had it included the amenities like school, hospital etc. in the definition of 'external' or 'internal' development works under Section 2[g][i] of the Act, the verdict would have been totally otherwise. The first question thus stands answered accordingly.

Question No.[iii] : If so, whether the State Legislature is competent to cure such lacuna and remove the defect in the Principal Act, 1975 retrospectively? :-

[85]. The competence of the State Legislature to enact the Original Act of 1975 or the Amendment and Validation Act, 2012, within the constitutional frame-work, has not been doubted by the petitioners. Otherwise also, the Principal Act squarely falls within the ambit of Article 246[3] read with the field of Legislation referable to

Entries 18 and 66 of the List-II – State List of the Constitution. The State Legislature, therefore, is indubitably competent to carry out the amendment[s], subject to the well known limitations like conformity with Part-III and other provisions of the Constitution.

[86]. It is well settled principle of law that where a tax, fee or any other charge is declared by a Court to be illegally collected under an in-effective or invalid law, the Legislature is well within its right to validate such tax, fee or charge by removing the cause of that ineffectiveness or invalidity. Of course, the Legislature must possess the power to levy such tax, fee or charges for if it does not possess such power, its action would continue to remain ineffective or illegal notwithstanding the futile exercise of validation. It is equally well settled that when the Legislature sets out to validate the action declared to be illegal by the Court, the parties shall remain tied up by that decision of the Court unless the conditions on which such judgment is based are so radically modified that the Court could not give such decision in the altered circumstances. The validation of a tax, fee or charge which has been declared illegal by the Court, thus, can be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed by the Legislature.

[87]. The Legislature has varied means and measures to undertake the above stated exercise including either conferment of jurisdiction where jurisdiction had not been properly envisaged before or by re-enacting retrospectively a valid law and then by fiction the tax, fee or charge already collected are saved under the re-enacted law.

Similarly, the Legislature may clarify the true and correct meaning and

interpretation of the law under which the tax was collected and then by legislative fiat it can make the new meaning binding upon the Courts.

[88]. The above illustrated legislative exercise does not amount to usurping of Judicial powers. The dictionary meaning of the word “Usurp” is to ‘take control of or take place of’. There is no usurpation of Judicial Powers so long as the Legislature by its act does not take control of Judicial Powers in its hands and is just exercising its powers conferred upon it exclusively by the Constitution. Parliament or State Legislature are vested with the exclusive power of legislation and make the laws prospectively as well as retrospectively. Retrospective application of law is an act of the Sovereign Legislature. In **Consumer Education and Research Society Vs. UOI and Ors. [2009] 9 SCC, 648**, it is held that Power of Parliament to enact a law under Article 102[1][a] includes the power to enact such law retrospectively.

[89]. Surely, the Legislature can not directly over-rule a judicial decision except that it can retrospectively remove the substratum or foundation of a judgment to make that decision ineffective. Such an exercise is a valid legislative recourse save that it does not transgress any other constitutional limitations. Even in those cases where the Apex Court struck down the enactments, it has been reiterated that the Legislature can change the basis on which a decision is given by the Court and, thus, change the law in general, which will affect a class of persons and events at large. But while doing so, the Legislature can not set aside an individual decision inter-parties and affect their rights and liabilities alone as such an act on the part of the legislature amounts to encroachment in the judicial sphere and usurpation of the

powers of an Appellate Court or Tribunal. There is, thus, an inbuilt embargo against the Legislature from usurping the judicial functions and then over-ruling the court decision or making a direction that the decision is not binding.

[90]. The long journey of case-law starting from **Shri Prithvi Cotton Mills** to **S.T.Sadiq's cases**, after a minute analysis of the doctrine of 'separation of power' in Indian perspective, unequivocally have illuminated these synopsisized principles.

[91]. From the above resume of discussion, we hold that there is no constitutional inhibition against the State Legislature from curing the lacuna or removing the defect in the Principal Act of 1975 with retrospective effect, i.e., from the date such defect or lacuna had occurred.

Question No.[iii] : If question No.[ii] is answered in affirmative, whether the Haryana Act No. 4 of 2012 has removed such defect or cured the lacuna in the principal Act? :-

[92]. To find out whether the Amendment and Validation Act, 2012 has removed the above noticed defect and lacuna in the Original Act of 1975, it appears useful to divide the provisions of Haryana Act No. 4 of 2012 as set out in Para 23 of this order into two parts, i.e., [i] Amendment and Clarificatory Clause[s] and [ii] Validation Clause.

Amendment and Clarificatory Clause[s]:-

[93]. The first part of Clause [iv] of Section 3[3] of the Original Act has been kept intact except that unlike the un-amended provision where-under the licensee is required to 'transfer' the land to the State Government free of costs, if so desired, now there is a shift in the

policy and if the licensee-colonizer fails to construct or get the community buildings constructed within the stipulated period, the earmarked land 'vests' in the State without any formal transfer. Similarly, under the un-amended Act, the licensee had no further explicit liability [on reaching the third stage] except transferring the 'land' set apart for community buildings to the State Government free of costs. The newly inserted provision [Clause (iv-a)] which has been brought on the statute-book retrospectively w.e.f. 30th January, 1975, now puts licensee under an obligation **“to pay proportionate cost of construction of such percentage of sites of such schools, hospitals, community centres and other community buildings and at such rates as specified by the Director”**. The Legislature has, thus, now crystalised its intentment, which it always intended, that if the licensee fails to construct or get the community building sites constructed within the stipulated period, such licensee shall have to pay the proportionate cost of construction of those community buildings besides the fact that the land set apart for those buildings would also vest in the State Government by statutory operation.

[94]. In the wake of these amendments or clarificatory additions, it is inescapable that the Principal Act of 1975 after its 2012 amendment lucidly obliges a colonizer to pay the cost of construction of community buildings in addition to the land set apart for that purpose, if such coloniser fails to construct or get those buildings constructed within the prescribed period. The Haryana Act No. 4 of 2012 indeed has effectively cured and removed those defects or lacunae which the Apex Court detected in the Original Act in **Ansal's**

case. Since the void was created at the time of inception of the Original Act on 30th January, 1975 that the Legislature has filled it up from that very date.

Validation Clause:-

[95]. The second part is Section 5 of 2012 Act vide which sub-Sections [1] and [2] have been added under Section 23-A. This provision opens up with a '*non-obstante*' clause and declares that even if there is a judgment, decree or order of any court or Tribunal, the action taken with regard to recovery of cost of construction of community buildings like schools/hospitals etc., either through executive instructions or through condition prescribed in the bilateral agreement, shall be deemed to be valid and effective as if such action was taken or done in accordance with the provisions of the Amendment and Validation Act, 2012. Sub-Section [2] further provides that even if ICB charges have been refunded to a licensee in compliance to the judgment, order or decree of a Court, the State Government was competent to recover such amount after the 2012 Act has come into force.

[96]. The petitioners have very forcefully contended that the above stated provision, particularly sub-Section [2], does not satisfy the twin-test that [i] the existing provision is defective and which the Legislature intends to cure and [ii] the defect is removed in general and not in particular to over-rule a court judgment.

[97]. It is relevant in the context of legitimacy of Sub-Section [1] to refer to the administrative decision taken in the year 1987 asking the existing and prospective licensees to include the cost of ICB charges

@ ₹61,000 per gross acre in the EDC determined at that time @ ₹3.72 lacs per gross acre. The said administrative policy was duly communicated to all the license-holders and the Director eventually enforced it uniformly. There is also a reference to that administrative policy in the Statement of Objects and Reasons of Haryana Act No. 4 of 2012. The afore-stated policy nevertheless could not defend the State action of imposing ICB charges firstly for want of proper legislative back-up and secondly it could not apply to the licences issued during the years 1982 to 1987, namely, much before its birth. Where an executive action has been invalidated or rendered ineffective by the judgment of a court, the Legislature is well within its right to revalidate it by altering or removing the very basis of invalidity on which the Court gave its judgment. The Legislature may do so with retrospective effect also for the re-validation of the past action already taken under the executive policy.

[98]. The validation clause consisting Sub-Section [1] added below Section 23-A is otherwise in tune with clause [iv-a] inserted in Section 3[3][a] w.e.f. 30th January, 1975, for if the Legislature has now validly levied ICB charges retrospectively from that date, then the recovery of proportionate cost of construction of those community buildings which the State or its agency have completed before the 2012 Act came into force, is totally lawful. For that matter, the decision in Ansal's case squarely supports the respondents as it unequivocally holds that but for an explicit provision in Section 3[3][a] for the imposition of ICB charges, the situation would have been altogether different. Now that the Legislature has cured that defect, the recovery

already affected through executive action, has got the colour of legitimacy and is deemed to have been recovered under the express legislative policy.

[99]. Sub-Sections (1) of Section 23-A [added through Section 5 of the Amendment Act] is a sequel to the retrospective insertion of Clause [iv-a] in Section 3[3][a][iv] of the principal Act. Since the Legislature has wiped out the legal deformity from the date it had crept in and due to which the respondents suffered the judgment in **Ansal's case**, the validation clause so far as sub-Section [1] of Section 23-A which protects the past State action taken on an erroneous understanding or interpretation of the un-amended provision, deserves to sustain and we hold accordingly.

Question No. [iv] : Whether sub-Section [2] of Section 23-A which is part of the Validation clause to the extent it empowers the State Government “to order the recovery of the amount of construction of which the refund has been taken by the licensee under the judgment, order or decree” of the Court, ultra-vires Part-III of the Constitution?:-

[100]. Now, advertent to Sub-Section [2] of the Validation clause added below Section 23-A [through Section 5 of the 2012 Act], it enables the State Government to recover even that amount of ICB charges which the State as a judgment-debtor had refunded to a licensee in compliance with or in execution of the judgment of a Court. The provision obviously empowers the Executive to re-open those matters also where – [a] *inter-se* parties judgment has attained finality; [b] the judgment debtor either has no remedy of appeal or did not avail such remedy; [c] the judgment has already been executed and the decree-holder has reaped its fruits; and [d] the Executing Court too has become *functus-officio* in the sense that nothing remains pending

on its board. The *litmus-test* to be passed for the sustenance of a provision like sub-Section [2] would therefore be:- [i] is it a case of removal of lacuna or curing the defect in general or [ii] is it an abortive attempt by Legislature to review a final judgment and bring the parties to *status-quo* ante? And [iii] whether the veiled object behind sub-Section [2] is to defy the judgment in **Ansal's** case though in a circuitous manner?

[101]. At-least two of the cited decisions have closely dealt with the fact-situation similar to the case in hand and may help in view formation. In **I.N.Saksena's case [supra]** relied upon by the State, the judgment *inter-se* parties was delivered by the Supreme Court on 30th June, 1967. Immediate thereafter and before granting the consequential monetary benefits, the new Legislation was brought into force. Upholding the amended law, Para No. 20 of the judgment clarifies that the earlier judgment was not a 'money decree, raising a judgment debt'. It was held to be a declaratory decree declaring the order of compulsory retirement invalid. The further declaration regarding entitlement to consequential benefits was held to be 'incidental or ancillary to the main relief..... to fall or stand with the same'. It was, thus, held that "*the decree did not create an indefeasible right of property in favour of the appellant*".

[102]. In **S.R.Bhagwat's case [supra]** relied upon by the petitioners the *inter-se* seniority dispute and consequential claim for deemed dates of promotions was settled by the Mysore High Court. The judgment attained finality and was partly implemented except that the consequential monetary benefits were yet to be released. At that

juncture the State of Mysore firstly issued an Ordinance and then enacted the Act where-under the actual financial benefits directed to be made available to the petitioners pursuant to the orders of the High Court were sought to be taken away. The solitary object to legislate the Act was to deny the consequential benefits to the petitioners flowing from the judgment. The Hon'ble Supreme Court declared the Act unconstitutional laying down that a binding judicial pronouncement between the parties can not be made in-effective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and "is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment **and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect**".

[103]. None of the parties have cited the third decision rendered in **Virender Singh Hooda & Ors. Vs. State of Haryana & Anr.(II) [2004] 12 SCC, 588.** That was a case where the Supreme Court vide its previous judgments in [i] ***Virender Singh Hooda & Ors. Vs. State of Haryana & Anr.(i) [999] 3 SCC, 696*** and [ii] ***Sandeep Singh Vs. State of Haryana & Ors. [2002] 10 SCC, 549*** granted the benefit of executive instructions dated 22nd March, 1957 and 26th May, 1972 for appointment in the State Civil Services beyond the advertised posts, i.e., against future vacancies. Both the judgments were implemented and the petitioners were given appointment as noticed by the Hon'ble Supreme Court in Paras 8 and 9 of the judgment. Meanwhile, the State of Haryana enacted the Haryana Civil Service [Executive Branch] and Allied

Services and Other Services, Common/Combined Examination Act, 2002 whereby the subject-instructions were repealed/withdrawn with retrospective effect. The proviso to Section 4[3] of 2002 Act further stipulated that “.....*if a candidate has been appointed or offered appointment over and above advertised posts for any reason, the service of such candidate shall be dispensed with. However, he shall be entitled to be appointed to the service/posts, if any, for which his name was originally recommended by the Commission....*”. The Hon’ble Supreme Court upheld the 2002 Act reiterating the principles already discussed except the afore-mentioned *proviso* which was struck down as it sought to reopen those decisions of the Court which had attained finality and had since been implemented so as to withdraw the benefits already granted in deference to the Court directions. The Hon’ble Supreme Court, thus, held as follows:-

*“68. Despite the aforesaid conclusion, the Act [proviso to Section 4(3)] to the extent it takes away the appointments already made, some of the petitioners had been appointed much before enforcement of the Act (ten in number as noticed hereinbefore) in implementation of this Court's decision, would be unreasonable, harsh, arbitrary and violative of Article 14 of the Constitution. **The law does not permit the legislature to take back what has been granted in implementation of the court's decision. Such a course is impermissible**”.*

[104]. The operative part of the judgment in **Ansal's** case deciphers the option given to the respondents either to refund the ICB charges recovered from Ansal and/or to adjust the same against other dues. It may be the transfer of entries only but this is a conceded fact

that the amount of ₹983.74 lacs paid by Ansal towards ICB charges was adjusted against its dues of EDC in respect of a licence of 2005. In this manner, the judgment in Ansal's case stood complied with and nothing remained recoverable from the respondents in execution thereof. It is equally undeniable that the transfer of entries was made in compliance with the judgment in Ansal's case well before the Haryana Act No. 4 of 2012 was passed. If that is so, is it not a case where the Legislature has by virtue of sub-Section [2] of Section 23-A conferred the Executive with sweeping powers like withdrawal of the benefits given to a decree-holder in execution of the judgment or order of the Court?

[105]. The judgment in I.N.Saksena's case [supra], in our considered view, is distinguishable and does not resolve the riddle for the reasons that:—

- [i] the provisions of the new Legislation challenged therein merely prevented [a] maintainability or continuation of a suit or proceedings for the recovery of any amount including payment towards salary of a government servant who had been compulsorily retired; and [b] the Court was prevented from enforcing or executing a decree or order directing such payment;
- [ii] the previous judgment of the Court dated 30th January, 1967 was a declaratory decree only which did not create an infeasible right of property;
- [iii] the Court's judgment was yet to be implemented.

[106]. [i] Para 9 of the judgment in **S.R.Bhagwat's case** on the other hand, does notice that the High Court judgment had been implemented and the petitioners had been granted deemed dates of promotions. Only consequential monetary benefits were awaiting release;

[ii] by virtue of sub-Section [2] of Section 11 of the offending Act in **S.R.Bhagwat's case**, the judgments, decrees and orders of any court which had become final against the State were sought to be done away;

[iii] the benefits which had already been granted to the petitioners in deference to the court judgment were, thus, sought to be withdrawn on the strength of the impugned provision.

[iv] Similarly, in **Virender Singh Hooda's case** also, the offending proviso to Section 4[3] of 2002 Act was couched in the same tone and tenor and was worded in the same manner as has been employed in sub-Section [2] of Section 23-A of the Validation Clause of 2012 Act;

[v] the previous judgments in **Virender Singh Hooda's case** had attained finality and stood implemented.

[107]. The archival account of facts and the legal principles re-stated in **S.R.Bhagwat** or **Virender Singh Hooda's cases**, coupled with the fine distinction drawn in **S.T.Sadiq's case** that the Legislative function consists in 'making' law and not in 'declaring' what the law shall be, brings a close parity between these three binding decisions

on one hand and the **Ansal's** case on the other, to infer that the offending provisions in all these cases were enacted only with a view to take away the benefits granted under a judgment which has attained finality *inter-se* parties. In the **Ansal's** case the State of Haryana was a party, and the judgment had been implemented well before the 2012 Act came into force. The elevated principle that the Legislature can not take back what has been granted in implementation of the Court's decision, thus, applies with equal force in the case in hand as well.

[108]. Sub-Section [2] of Section 23-A, i.e., the Validation Clause which has gone far-beyond the well-defined limits of respective areas of operation under the Separation of Powers *doctrine* appears to have been enacted with the object to wriggle out of the consequences that have fallen upon the respondents as a result of the judgment in **Ansal's** case and such a recourse being impermissible within the Constitutional frame-work, the afore-stated provision can not sustain and is hereby struck-down being totally unconstitutional.

Question No.[v] : Whether the Haryana Act No. 4 of 2012 has been enacted to over-rule and nullify the judgment in Ansal's case and is a piece of colourable Legislation?:-

[109]. It is well settled that the question of *bona-fides* or *mala-fides* on the part of the Legislature are alien to the doctrine of 'colourable legislation' which operates within a limited radius only to go into the question of competence of the Legislature to enact a law. If the Legislature is competent to enact such law, the motives which prompted it to legislate are wholly irrelevant. Conversely, if the Legislature does not possess the power to enact a law, the question of motive does not arise at all. No malice, thus, can be attributed to the

State Legislature for enacting the impugned law for which it admittedly possesses the powers within our constitutional frame-work.

[110]. Similarly, the petitioners' reliance on the Statement of Objects and Reasons of 2012 Act where there is a reference to the decision of Hon'ble Supreme Court in **Ansal's** case, to buttress their contention re: colourable exercise of legislative power with a hidden motive to over-rule the cited decision, appears to be misconceived. We say so for the reasons that firstly, mere citation of that decision can not be construed that the sole objective of the Legislature was to overcome that inter-parties judgment. Secondly, **Ansal's** case has been referred to point out that there was no statutory basis requiring the licensee to make payment for the cost of construction of ICBs. Thirdly, there is a continuous mentioning of the decided, pending or expected spurt of new court cases so as to apprise the Legislature of the likelihood of estimated burden of thousands of crores of rupees on the State ex-chequer. It will be, thus, too far-fetched to accept from the contents of the Statement of Objects and Reasons that the new enactment was legislated with a singular object to over-rule the judgment in **Ansal's** case or that what is present as an 'appearance' does not correspond with the 'reality'. It can not be over-looked that the Statement of Objects and Reasons of a Statute though is helpful to interpret its provisions but the same does not constitute as a provision of the Statute.

Question No. [vi] : Whether the impugned legislation is violative of Article 14 or other constitutional provisions?:-

[111]. It was vehemently urged that the Haryana Act No. 4 of 2012 is wholly arbitrary and does not stand on the touch-stone of

Article 14 of the Constitution as it makes the petitioners liable to pay for the construction over the land which they set apart and have transferred to the Government free of cost. We do not find any substance in this plea. The legislative intentment of 1975 Act is to prevent ill-planned and haphazard constructions in and around the towns in the State of Haryana. The Act perceives regulated development, for which the license-holder is obligated to create the requisite infrastructure comprising 'External' and 'Internal' Development Works. Similarly, its Section 3[3][a][iv] from the very inception envisages that a colonizer has to provide basic amenities like schools, hospitals, post-office, police posts, recreational parks etc. to the residents of the colony. The statutory obligation to provide the amenities is neither arbitrary nor illegal for all such like basic conditions are integral to a meaningful and dignified way of life as is understood within the salutary and expansive scope of Article 21 of the Constitution.

[112]. The Colonizer, even before he applies for the licence, is fully aware of his obligations re: 'external' and 'internal' development works or other specified 'amenities'. It goes without saying that the cost component of such development works or amenities is appropriately passed on to the residents while determining the allotment or sale-prices. It is farcical to say that the burden of ICB charges falls upon the licensee alone. It is the net end consumer, namely, the buyer of the plot or property, who pays for these amenities. Seen from this angle and putting it differently, the Haryana Act No. 4 of 2012 merely binds the licensee by way of an explicit

provision to pay towards the cost of community buildings and account for the amount which he has already received or would recover from the buyers. The amended Act has brought in place the mechanism where-under the colonizer shall spend or pass-on the cost of amenities which is presumed to have been recovered or would be recovered from the buyers. Therefore, it is difficult to attribute any arbitrariness, least to say that the amended Statute violates Article 14 of the Constitution.

Question No. [vii] : Whether the Amendment and Validation Act, 2012 is in conflict with the legislative object of the principal Act of 1975?:-

[113]. The petitioners' case is that the original Act of 1975 deals with only the 'user' of land, whereas the Haryana Act No. 4 of 2012 bestows the power to deal with the 'ownership of the land' on respondents and the later is thus in conflict with the legislative object of the principal Act. **M/s DLF Qutab Enclave Educational Charitable Trust Vs. State of Haryana & Ors., [2003] 5 SCC, 622** was relied upon to urge that the 1975 Act was enacted to regulate the user of land so that the urban areas are not developed in a haphazard manner and nothing more. The judgment holds that the regulatory provisions contained in the 1975 Act can not be construed as a total prohibition on the transfer of land set apart for community buildings like schools, hospitals etc. The cited decision, in our considered view, does not advance the above noticed plea. Its Para No. 42 interprets Section 3[3][a][iv] to mean that there is an obligation on the colonizer for the construction of schools/ hospitals/community centres and other community buildings at his own cost or get the same constructed by

any other institution etc. and that the power of the Government to take over the lands is restricted only in a case where the community services had not been developed. Thus, the State's right to take over the undeveloped community building sites was well recognised. Section 3[3][a][iv] was interpreted in **Ansal's** case to hold that it fell short of empowering the respondents to recover the proportionate cost of construction wherever the sites reserved for community buildings stood transferred to the State Government due to non-construction by the coloniser or his agent. Since the Haryana Act No. 4 of 2012 has filled up that lacuna and cured the defect by inserting an explicit provision for the recovery of the cost of construction of community building sites from the colonizer if need be, the Amendment Act is supplementary and complementary to the Principal Act. None of the provisions of Original Act are at logger-heads with those of the Amendment Act, necessitating for this Court to avert any head-on collision.

[114]. That the land shall vest in the State only on the contingency when the coloniser fails to perform his statutory obligation is well manifested in the un-amended as well as the amended provisions. The Haryana Act No. 4 of 2012 merely picks up and ties the broken threads to reach the same logical end. There is, thus, no conflict between the intentment or object behind the principal Act of 1975 or those which led to the enactment of Haryana Act No. 4 of 2012.

Question No.[viii] : What is the effect of the first proviso added to Section 3[3][a][iv] of the 1975 Act vide Haryana Act No. 4 of 2012?:-

[115]. For the just appreciation of the Legislative intentment and the true construction of its provisions, the Haryana Act No. 4 of 2012 may be segregated into four parts. The first part comprises the amendment and substitution of Clause [iv] of Section 3[3][a]. The second part is the 'addition' of Clause [iv-a] immediate after Clause [iv]. The third part is the addition of Section 10-A while the fourth part consists of Section 23-A along with its sub-Sections [1] and [2] added by way of Section 5 of the Amendment and Validation Act, 2012. The Legislature, has without any scope of ambiguity, amended and substituted Clause [iv] with prospective effect only. It is for this precise reason that under the first proviso, a Colonizer to whom licence was granted before the Amendment and Validation Act came into force on 03rd April, 2012, or his agent, are permitted to construct the schools/hospitals/ community centres and other community buildings on the land set apart for that purpose, within a period of four years extendable to another two years by the Director.

[116]. The Legislature has in its wisdom deemed it appropriate to grant moratorium to all the old licensees to enable them to construct the un-developed community building sites within a period of 4+2 years countable since 3rd April, 2012, which obviously means that till the expiry of original or extended period, they are not liable to pay ICB charges except for the sites which stood transferred to the State and thereafter have actually been constructed either by the State or its agency. The petitioners like any other old licensee are also entitled to the benefit of extended period for constructing the community buildings on the earmarked sites including those which they have transferred to

the State under the un-amended law. No penal consequences for non-construction of those community building sites which were subject matter of the licences granted prior to 03rd April, 2012, though transferred to the respondents but have still been lying un-constructed, can be fastened on the petitioners till the expiry of extended period of 4+2 years. The petitioners are held entitled to avail the extended period to construct those sites and then hand-over the same to the State Government.

[117]. In other words, the ICB charges in respect of a Community Building site required to be constructed even under an old licence granted before 03rd April, 2012 can not be levied on a licensee till the expiry of 4+2 years the extended period given by the Legislature for such construction, commencing since 3rd April, 2012.

[118]. On the same analogy, no demand towards ICB charges can be raised against the petitioners in respect of the community building sites which are yet to be constructed, for the Legislature has extended the period for such construction. The demand towards ICB charges stands restricted only in respect of those sites which the petitioners had transferred to the State Government and thereafter have been constructed by the State Government or its agency. The proportionate cost of construction of these sites is recoverable from the petitioners as per the newly added explicit provision. The other consequence which must follow is that the community building sites transferred by the petitioners to the State Government and which are still lying un-constructed, shall have to revert back to the petitioners to enable them to construct or get the same constructed within the

extended period of six years [4+2]. It is only if the petitioners are not inclined to construct those sites within the permissible period or they decline to take back such vacant sites for construction purposes within the stipulated time, that the respondents shall be entitled to raise their demand for payment of ICB charges qua such sites.

Question No.[ix] : Whether the 1975 Act being a Regulatory Statute can empower levy of licence fee and other statutory charges like cost of construction of ICB sites retrospectively?:-

[119]. The fact that the principal Act is of regulatory character is neither in dispute nor can it be debated in view of the *dictum* in **DLF Qutab Enclave's case [supra]**, wherein the Hon'ble Supreme Court emphatically categorised it as a Regulatory Act. The basic features of the Act also speak loudly about it being regulatory in nature. The Act envisions the modicum of licence which is to be granted on fulfillment of certain conditions and the monitoring by the statutory Authorities of the development activities to be carried out there-under. Having held so, the answer to the question posed here-in-above comes instantly from the decision in **Secundrabad Hyderabad Hotel Owners' Association case [supra]** which draws distinction in the manner of levy of fee under a Regulatory Statute vis-a-vis a Compensatory Act and further explains that when the fee is charged for rendering a specific service, certain element of *quid-pro-quo* need to be established, whereas 'licence fee' under a regulatory statute is charged for regulation of such activities, though no service is rendered. The decisions in [i] **Calcutta Municipal Corporation;** [ii] **M/s Krishan Lal Laxmi Chand** and [iii] **A.P.Paper Mills' cases** [supra], also more or less reiterate that a levy in the nature of fee does not cease to be of

that character merely because there is an element of compulsion nor is it always necessary that a fee must have direct relation to the actual service rendered by the Authority to an individual.

[120]. The State Legislature has, owing to the ever-increasing demand in housing sector, resolved in larger public interest to prevent not only the haphazard and ill-planned urbanisation but also prescribe statutory measures to ensure that the private colonizers do not deny the bare living conditions and requisite amenities to their prospective buyers. The Legislature has well fore-sighted that the State exchequer alone can not be burdened for creating complete urban infrastructure, at the cost of several other compelling priorities. The Statute, thus, postulates compulsory execution of 'external' and 'internal' Development Works by the licensee/coloniser at his cost as also the construction of community buildings on the earmarked land at the cost of such licensee. As the Act sets up a regulatory mechanism for the grant of licence until the Licensed project is executed, the prescription of 'licence fee' or other statutory 'charges' squarely falls within the permissible limits elaborated in the above cited decisions.

Question No.[x] : Whether the demand of ₹61,000/- per gross acre towards cost of construction of ICBs raised against the petitioners is arbitrary and far in excess of the actual cost of construction of 25% of such buildings?:-

[121]. This issue has been hotly debated between the parties and in that process, the respective facts and figures have also been seriously disputed. In all fairness, the respondents firstly claimed that there are several community building sites under different licences which the petitioners did not construct till May, 1988 when the State Government took a decision to take over such sites. The petitioners

have filed counter-affidavits, emphasising that they had already constructed most of the community building sites and/or are in the process of completion of such constructions. They have also demonstrated that several vacant sites handed-over to the State Government are yet to be constructed by its agency – HUDA and those sites are lying un-attended for decades. We have made a futile attempt to scan through these affidavits to understand the correctness of rival claims. It is difficult to appreciate the petitioners for non-completion of the construction of several community buildings despite their obligation under the licence[s] or to pat the respondents, who, as it appears, are equally blame-worthy for having failed to construct some of the vacant sites taken from the petitioners. Nevertheless, the blame game can not effectively resolve the controversy. A writ court is not the ideal forum to hold a roving inquiry. The respondents have not apparently issued even one reasoned show-cause notice to the petitioners along with the licence-wise details of the un-constructed community building sites. Since this question of fact is crucial for determining the final liability of petitioners towards ICB charges, we do not approve the casual approach of the Director or other authorities in sending cryptic and evasive details to the petitioners while alleging their failure to construct the community buildings. Such sweeping allegations made by the respondents need not be accepted out-rightly unless substantiated with exact particulars of the willful inaction.

[122]. As regard to the vigorously raised factual dispute on the number of total community building sites constructed so far or those which are yet to be constructed or the sites transferred to the State but

are still lying un-constructed, it is directed that the Director shall issue a comprehensive notice to the petitioners, giving details of such sites, licence-wise, to which the petitioners shall be entitled to submit their reply along with relevant supporting material/documents, where-upon the said disputes shall be entrusted to the Principal Secretary, Town and Country Planning Department, Haryana, who shall adjudicate it after hearing the parties and by way of a speaking order. Till such exercise is undertaken, no ICB charges shall be levied on the petitioners in respect of those disputed sites.

Question No.[xi] : Whether the impugned legislation amounts to unilateral alteration or amendment of the statutory contract executed between the parties?:-

[123]. The petitioners' contention that the Licence is a bilateral agreement and there could be no unilateral novation of its terms and conditions is de-void of any merit for more than one reason. Firstly, the licence is a creation of the 1975 Act , thus, constituting a statutory contract between the parties. The rights and obligations emanating from such Agreements are regulated by the Statute or the Statutory Rules framed there-under. Secondly, the Legislature has chosen to amend or insert new provisions in the Act, mostly with retrospective effect, hence these amended provisions are deemed to be in existence from the very inception and are operative by legal fiction since the time the petitioners applied or were granted the licence[s]. Thirdly, the terms and conditions of the agreement between the parties are governed by a special law, therefore, the same must always be in conformity and subservient thereto. Fourthly, the petitioners have bound themselves down to pay the ICB charges while executing the

bilateral agreements. For example., the Agreement dated 16th January, 1985 [Annexure P-5 in DLF's case] unequivocally says that "that the owner shall pay the following external development charges as determined by the Chief Engineer, HUDA.....[1] xx [2] xx, [3] xx, [4] xx, [5] Community Building @ ₹26,000/- per gross acre....". Fifthly, the judgment in **Ansal's** case does not hold that a licensee, in no circumstances, is liable to pay ICB charges, for it set aside the demand towards ICB charges for want of an explicit provision in Section 3[3][a][iv] which deficiency has since been made good by the Legislature.

Question No.[xii] : Whether Ansal is entitled to refund of [ICB charges] ₹983.74 lacs along with interest in compliance to the inter-parties judgment of the Hon'ble Supreme Court which has attained finality?:-

[124]. In view of our answer to Question No. [iv], whereby sub-Section [2] of the Validation Clause added to Section 23-A has been struck down on finding it unconstitutional and an impermissible law, this question has to be answered in favour of the Ansal for the reason that the amount of ₹983.74 lacs earlier recovered from Ansal towards ICB charges was admittedly adjusted towards EDC dues in respect of a licence of 2005. However, after the Haryana Act No. 4 of 2012 came into force, the State of Haryana invoked its powers under Sub-Section [2] of Section 23-A, i.e., Validation clause and again changed the entries thereby adjusting the subject amount towards ICB charges, followed by a fresh demand for payment of EDC along with interest etc. Since the very source of power for issuing the impugned notice stands annulled, the consequential action must fall flat. Resultantly, the amount of ₹983.74 lacs which was for all intent and purposes

refunded to Ansal in compliance of the judgment of the Hon'ble Supreme Court in its favour, is liable to be refunded but without any interest, with a further liberty to adjust it against the pending dues. We order accordingly.

[125]. In the light of the above discussion and findings, we sum-up the conclusions as follows:-

- [i] The Haryana Development and Regulation of Urban Areas [Amendment and Validation] Act, 2012 [Haryana Act No. 4 of 2012] is upheld except sub-Section [2] of the Validation Clause added below Section 23-A and inserted through Section 5 of the Haryana Act No. 4 of 2012;
- [ii] Sub-Section [2] which is a part of the Validation Clause and has been added to Section 23-A, is hereby struck-down being unconstitutional as it *ultra-vires* the permissible limits of Legislative powers. The writ petitions challenging the *vires* of Haryana Act No. 4 of 2012 are accordingly dismissed, except to the extent above;
- [iii] In view of the first proviso added to Section 3[3][a][iv] of the Haryana Development and Regulation of Urban Areas Act, 1975, which has come into force with immediate effect, the petitioners and other licence-holders are entitled to the benefit of extended period of 4+2 years for the construction of community building sites under the old licences also and such extended period shall commence w.e.f. 03rd April,

2012, i.e., when the Haryana Act No. 4 of 2012 was notified;

[iv] Those community building sites which the petitioners had transferred to the State Government and which are yet to be constructed by the State or its agency, shall be re-transferred to the petitioners within a period of three months from the date of receipt of a certified copy of this order, so as to enable them to construct the same or get such sites constructed, within the extended period as per conclusion No. [iii] above;

[v] The petitioners, if they fail to raise construction over the left-out community building sites within the extended period, shall be liable to pay ICB charges irrespective of the date of licences, in accordance with Section 3[3][a][vi-a] of the 1975 Act which has come into force retrospectively;

[vi] Since the Legislature has validly brought into force sub-Section [1] of Section 23-A for the validation of ICB charges already recovered from the petitioners or other licence-holders, the claim of the petitioners for the refund of those charges is rejected and their writ petitions qua this relief are hereby dismissed, subject to conclusion No. [viii] below;

[vii] The power to levy licence fee or other statutory charges conferred under the Haryana Development and Regulation

of Urban Areas Act, 1975 which is regulatory in nature, is hereby upheld;

[viii] In view of our conclusion No. [ii], Civil Writ Petition [No. 10509 of 2013] filed by M/s Ansal Properties and Infrastructure Limited to the extent it seeks refund or re-adjustment of the amount of Rs.983.74 lacs in compliance with the judgment of the Hon'ble Supreme Court in its favour and reported as [2009] 3 SCC, 553, is allowed and the respondents are directed to refund or readjust that amount against other dues of the petitioner without payment of any further interest, within a period of three months from the date of receipt of copy of this order;

[ix] The contentious issues with regard to [a] as to how many community building sites have already been constructed by the petitioners and handed-over to the State; [b] how many such vacant sites have been transferred to the State Government; [c] how many such transferred sites have been constructed by the State or its agency and [d] whether the liability towards ICB charges has been correctly assessed on proportionate basis against 25% sites, are directed to be placed before the Principal Secretary, Town and Country Planning Department, Haryana, who shall accord opportunity to the petitioners as well as the Director to produce the relevant records and if need be, shall direct a fact-finding inquiry and then determine these issues by passing a speaking order within

a period of six months from the date of receipt of a certified copy of this order and till then the demand, if any, raised against the petitioners even in respect of those community building sites which were transferred to the State Government and are said to have been constructed by the State or its Agency at their expenses, shall be kept in abeyance.

[126]. Having held so, we hasten to add that the above stated conclusions shall not be taken as an expression of views in respect of other statutory liabilities, if any, including EDC and the respondents shall be at liberty to raise demands in respect thereto and/or to recover such charges from the petitioners in accordance with law.

[127]. Disposed of in above terms. Dasti.

**(SURYA KANT)
JUDGE**

**February 18, 2015.
dinesh**

**(LISA GILL)
JUDGE**