IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2437 of 2003 (O&M)
Date of decision: October 05, 2016

Shalimar Estates Private Limited

.. Petitioner

v.

The State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. M. L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal and Mr. Nitin Sarin, Advocates
for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.
Mr. Anupam Sharma, Advocate for the applicant in
CM No. 6259 of 2016.

...

Rajesh Bindal J.

1. The petitioner has filed the present petition praying for the following reliefs:

(i) Challenge to notification dated 11.7.2002 issued by Haryana Government declaring the area around existing boundary of Haryana State Industrial Development Corporation, Industrial Estate of Village Alipur, District Panchkula, to be a controlled area for the purpose of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short, 'the 1963 Act').

(ii) Challenge to notification dated 31.12.2002 issued by Haryana Government declaring the area around existing boundary of Haryana State Industrial Development Corporation, Industrial Estate of Village Alipur, District Panchkula to be urban area for the purpose of Haryana Development and Regulation of Urban Area Act, 1975 (for short, 'the 1975 Act').

(iii) Challenge to show cause notice dated 26.7.2002 issued under Section 12 of the 1963 Act.

(iv) Order dated 8.8.2002 passed by respondent No. 3 directing the petitioner to demolish the construction already raised.

(v) Order dated 28.1.2003 passed by the Tribunal constituted under the 1963 Act.

Arguments

2. Learned counsel for the petitioner submitted that the petitioner-company was incorporated primarily for real estate development and colonisation. On 28.8.2001, it entered into an agreement to sell for purchase of 211 kanals and 10 marlas of land @ ₹ 6,25,000/- per acre. Additional land measuring 172 kanals and 5 marlas was purchased vide another agreement to sell dated 16.10.2001 @ ₹ 4,50,000/- per acre. There was specific recital in the agreements to sell that the petitioner could develop a colony on the land and offer for sale the plots so carved out. After entering into the agreements to sell, as per the terms thereof, the petitioner started development work in the area. Firstly, it got a site plan prepared; plots of

various sizes from 4 marlas to 10 marlas were carved out; areas were ear-marked for common facilities, roads, parks etc. In the month of October, 2001, various advertisements were issued in the newspapers for sale of plots. Simultaneously, the petitioner started developing the area. The process for laying the roads started and so the pipe lines for sewerage and erection of electric poles. The sale was open from 24.10.2001 till 24.12.2001. Allahabad Bank was appointed the banker. 10% of the sale price was to be paid as earnest money; 15% within 30 days from the date of demand and remaining 75% could either be paid in lump sum or in six equal annual instalments with interest. 565 applications were received. Agreements for sale of the plots were executed in March, 2002 between the company and the prospective buyers, where payment option chosen was in instalments. In some cases, sale deeds were got registered in favour of the buyers of the plots in June, 2002, where entire payment was made in lump sum. Reference was made to number of bills and receipts issued by various vendors and contractors, who were carrying out development works at the spot. It was claimed that upto June, 2002, the petitioner had already invested about ₹ 3.50 crores in the project.

3. He further referred to a communication dated 6.5.2002 from Director, Town and Country Planning, Haryana to one of the allottees of plot, wherein it has been stated that M/s Shalimar Estate is a private colony situated outside the periphery controlled area. Though on the same date, plan was prepared vide drawing No. D.T.P. (P) 726/2002 dated 6.5.2002 for the purpose of Section 4(1)(b) of the 1963 Act prior to the issuance of notification under the 1963 Act, but still the colony of the petitioner was not shown in the plan. The action was malafide. The judgment of Hon'ble the

Supreme Court in Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and another, (1990) 3 SCC 291 was relied upon to submit that when the sale deed is registered, rights flows from the date the agreement was executed.

4. It was further submitted that just with a view to derail the project of the petitioner, notification dated 11.7.2002 was issued by the State Government under the 1963 Act declaring the area around existing boundary of Haryana State Industrial Development and Infrastructure Development Corporation Limited (for short, 'HSIIDC'), Industrial Estate of Village Alipur, District Panchkula, to be a controlled area. This is established from the fact that immediately thereafter, inspection of the site of the petitioner was carried out on 25.7.2002. Despite the fact that it was specifically mentioned in the inspection report that development activity in the colony was in progress, notice for alleged violation of Section 12 of the 1963 Act was issued on 26.7.2002 for 2.8.2002. Immediately, reply was filed by the petitioner claiming that on the date of notification, nature of the land was already changed as it was a colony being developed, hence, there was no violation of the provisions of the 1963 Act. Without affording any further opportunity and permitting the petitioner to lead any evidence, vide order dated 8.8.2002, the petitioner was directed to demolish the construction already raised. The order was totally non-speaking and cyclostyled, where only certain blanks had been filled in. The petitioner filed appeal before the Tribunal constituted under the 1963 Act, which was dismissed without appreciating the contentions raised by the petitioner, especially that the land, which was notified on 11.7.2002, was already being

developed as a colony and substantial plots carved out therein had already been sold by issuing advertisements and by collecting earnest money through banking channel. Once the nature of the land had already been changed prior to the issuance of notification under Section 4 of the 1963 Act, there was no violation. The restrictions were not applicable on the petitioner.

5. He further submitted that a basic error committed by the authorities while passing the order is that nature of the land is sought to be seen on the date of registration of sale deeds, whereas it was required to be seen on the date of issuance of notification and by that time, the nature had already been changed. The definition of 'colony' is provided in Rule 2(3) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (for short, 'the Rules'). It includes any land, which is proposed to be developed for the purpose of sub-dividing it into plots. Similar is the definition of 'colony' in Section 2(c) of the 1975 Act. It includes the land proposed to be divided into plots or flats for residential, commercial or industrial purposes. Once the nature of the land of the petitioner had already been changed into a colony prior to the issuance of notification dated 11.7.2002, in terms of the provisions of Rule 8 of the Rules, the same should have been shown in the development plan itself, which is to be prepared in terms of the provisions of Section 6 of the 1963 Act.

6. It was further submitted that the petitioner had also followed the same procedure, which is followed by Haryana Urban Development Authority (for short, 'HUDA') or HSIIDC for sale of plots. The area, where the plots are offered for sale, is not fully developed when offer for sale is

made. It is only after the plots are sold and the amount is collected partially from the allottees that development activity in the area is carried on. The offer of possession is also made some times after 2-3 years of the sale of plots.

7. Learned counsel further referred to the licence granted by National Highway Authority of India to construct approach road from National Highway to the land of the petitioner on 12.2.2002. Once the licence had already been granted, there was no violation by the petitioner for constructing access from Highway to the colony of the petitioner.

8. Learned counsel further submitted that the case in hand was initially tagged with a bunch of petitions with lead case bearing CWP No. 2294 of 2003 pertaining to violation of the provisions of the 1963 Act, however, vide order dated 1.4.2003, keeping in view the facts of the case in hand, which are different than the facts of other cases, it was segregated and finally the petition was admitted. In other petitions, construction was raised by the petitioners therein much after the issuance of notification under Section 4 of the 1963 Act. The writ petitions were dismissed by this court. The judgment was upheld by Hon'ble the Supreme Court in Rajinder Singh v. State of Haryana, AIR 2005 SC 504. The present petition was segregated as in the case in hand, nature of the land had already been changed by the petitioner prior to the issuance of the notification. He further submitted that on 28.7.2014, when the writ petition was heard, learned counsel for the State sought time to file the current status report. The same was filed mentioning the status at the spot as was existing earlier. The fact is not in dispute that the petitioner could not spend any further

amount on the project after the passing of the order by the authorities directing demolition of even the construction already raised and the infrastructure created.

9. While challenging the notification dated 31.12.2002 issued under Section 2(o) of the 1975 Act, it was submitted that the basic requirement is that any area can be declared to be 'urban area', which is located within the limits of a municipal area or land situated within five kilometers of the municipal limits or such other area which has a potential for building activity. A perusal of the notification does not show that any satisfaction to that effect has been noticed. In the absence thereof, the notification cannot be legally sustained. Even if there is any noting in the file to that effect, that will not be complying with the pre-requisite as laid down in Section 2(o) of the 1975 Act. In fact, both the notifications have been issued just with a view to harass the petitioner. It was on the asking of HSIIDC. Reference was also made to definition of plot/flat holder, as provided for in Section 2(m) of the 1975 Act, which includes even the persons, who have agreements to sell in their favour.

10. Learned counsel for the State submitted that the petitioner became owner of the land on which it allegedly developed colony only vide sale deeds dated 16.5.2002 and 30.5.2002. The notification under the 1963 Act was issued on 11.7.2002. He referred to various clauses in the agreement to sell executed by the petitioner for purchase of land, vide which possession of the land was to remain with the seller and it was to be transferred only after the sale deed was registered. The claim that before the petitioner itself got possession of the land, it had developed the colony thereon is hard to believe. Even the revenue record also established that the

land in question was agricultural on the date when the notification under the 1963 Act was issued. Various clauses in the agreement to sell executed by the petitioner in favour of the prospective buyer also suggest that possession of the plot was to be delivered in five years and the site plan could be revised, the scheme could be changed and even withdrawn. The development of a colony could not possibly take place within a period of 1-1/2 months after purchase of land by the petitioner. It had spent very small amount till such time the notification was issued. No infrastructure facilities were available. The petitioner had done only certain paper work and practically nothing on ground. To bring the case in the definition of 'colony', as provided for in Rule 2(3) of the Rules, effective steps should have been taken. Mere paper work was not sufficient. This has to be considered in the light of the scheme of the Act, which is to prevent unplanned growth.

11. Referring to the scheme of the 1963 Act, she submitted that Section 3 of the 1963 Act prohibits erection or re-erection of any building or lay out any means of access to a road within 30 meters from either side of the road reservation of any scheduled road. Section 4 of the 1963 Act enables the Government to issue notification for declaration of controlled area. Section 5 of the 1963 Act provides for publication of plan showing nature of proposed restrictions and conditions. Section 6 of the 1963 Act provides for restrictions for erection or re-erection of buildings in controlled areas. Section 7 of the 1963 Act provides that no land within the controlled area could be used for any other purpose than for which it was being used on the date of issuance of notification under Section 4 of the 1963 Act without prior permission of the Director. She further submitted that entire

issue was considered by the Tribunal threadbare. Though it is noticed in the order, attempt was made by the petitioner to change the use of land before issuance of notification dated 11.7.2002, however, it was not fully done.

12. With reference to notification issued under Section 2(o) of the 1975 Act, the submission is that once the notification mentions the section, under which it was issued, that means all pre-requisites have been complied with. The file dealing with the matter before issuance of notification under Section 2(o) of the 1975 Act was produced in court and it was submitted that even the notings therein suggest that there was compliance of the provisions of the 1975 Act. She further submitted that the point that there was no opinion formed by the Government that the land sought to be notified had potential for building activity has not been raised in the writ petition. The only ground raised is that the action was malafide and the notification was issued only with a view to harass the petitioner. The area notified under the 1963 Act and under the 1975 Act is same. The object was to stop unplanned growth around the industrial estate already developed by HSIIDC.

13. She further submitted that action was required to be taken under the 1975 Act as despite issuance of notification under the 1963 Act, the petitioner continued publishing advertisements for sale of plots. She fairly did not dispute the fact that there was no restriction for sale of plots even after the issuance of notification under the 1963 Act. She further submitted that in a planned colony, as per the provisions of the 1975 Act, about 50% of the land is to be left for infrastructure facilities. In the case of the petitioner, the area left is only about 25%. Even in the final development plan, the area, where the land of the petitioner is situated, has been shown as

residential zone. The petitioner shall be free to comply with the provisions of the 1975 Act and obtain permission. A proposed colony merely on papers cannot be said to be a colony to take out the same from the rigors of the notifications issued under the 1963 or 1975 Acts.

14. In response, learned counsel for the petitioner submitted that it is totally misnomer to state that only a fully developed colony can be said to be a colony. The definition of the word 'colony', as given under the Rules and the 1975 Act includes even the area proposed to be developed as colony. A colony is not developed in a day. It is a long drawn project. The petitioner had taken effective steps much-much prior to the issuance of notification. The restrictions for providing 50% of the total area for infrastructure facilities will not apply to the petitioner as it had already started the process for developing the colony prior to the issuance of notification. Even the Tribunal in its order had accepted that the petitioner had taken steps for change of land use prior to the issuance of notification, but had gone wrong in observing that it should have been a completely developed colony. Such an interpretation will go beyond the provisions of the 1963 Act and the 1975 Act.

15. Heard leaned counsel for the parties and perused the paper book and the relevant provisions of the 1963 Act and the 1975 Act.

Relevant provisions

16. The relevant provisions of the 1963 Act, as existing at the relevant time, are extracted below:

> "3. ***Prohibition to erect or re-erect buildings along scheduled roads***.- No person shall erect or re-erect any building or make

or extend any excavation or lay out any means of access to a road [within one hundred meters of either side of the road reservation of a bye-pass or within thirty meters on either side of the road reservation of any scheduled road not being bye-pass]:

Provided that nothing in this section shall apply to-

(a) the repair to a building which was in existence immediately before the commencement of this Act or any erection or re-erection of such a building which does not involve any structural alteration or addition therein; or

(b) the erection or re-erection of a building, which was in existence immediately before the commencement of this Act and which involves any structural alteration or addition with the permission of the Director; or

(c) the laying out of any means of access to a road with the permission of the Director; [or]

(d) [the erection or re-erection of a moter-fuel-filling station or a busqueue-shelter with the permission of the Director] [; or]

(e) "the public utility buildings' and 'community assets' which were in existence immediately before the commencement of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development (Haryana Second Amendment & Validiation) Act, 1996.

Explanation.- (1) "Public utility buildings" means buildings belonging to Government, Government Controlled Organisations, Local Bodies, Voluntary Organisations and individuals which are being used for the benefit of public at large without profit motive; and

(2) "Community assets" means assets belonging to Government, Government Controlled Organisations, Local Bodies, Voluntary Organisations and individuals which are created for the beneficial use of public at large without profit motive.]

xx xx x

4. ***Declaration of controlled area.***- (1) The Government may by notification declare the whole or any of any area adjacent to and within a distance of --

(a) eight kilo-metres on the outer side of the boundary of any town; or

(b) two kilo-metres on the outer side of the boundary of any industrial or housing estate, public institution or an ancient and historical monument

specified in such notification to be controlled area for the purposes of this Act.

xx xx xx

6. ***Erection or re-erection of buildings etc. in controlled areas.***- Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means or access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purposes subservient to agriculture.

7. *Prohibition on use of land in controlled areas.*- (1) No land within the controlled area shall, except with the permission of the Director, [and on payment of such conversion charges as may be prescribed by the Government from time to time] be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-Kiln, pottery kiln, lime-kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the onditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.

(1A) Local authorities, firms and undertakings of Government colonisers and persons exempted from obtaining a licence under the Haryana Development and Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under section 8 of this Act.]

(2) The renewal of such licences may be made [after three years] on payment of such fees as may be prescribed.

Rules 2(b) and (c) and 8(i) of the Rules are extracted below:

> **2.** ***Definitions.***-- In these rules unless the context otherwise requires:-
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> xx xx xx
>
> **(b) "Colony"** means an area of land, within a controlled area, which is developed or proposed to be developed for the purpose of subdividing it into plots for residential, commercial, industrial or other purposes;
>
> **(c) "Coloniser"** means an individual, company or association or body of individuals whether incorporated or not including a Co-operative Society owning or acquiring or agreeing to own or acquire, whether by purchase or otherwise, land for the purpose of setting up a colony;
>
> xx xx xx
>
> **8.** ***Contents of Plans of Controlled areas [Section 5(1) and 25 (2)(e)]***.- Plans of a controlled area prepared under sub-section 5 shall consist of :-
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> (i) a map showing existing land use including existing building;
>
> xx xx xx

Sections 2(c), (d), (m) and (o) and 3(1) of the 1975 Act are also reproduced hereunder:

> **"2.** ***Definition***.- In this Act, unless the context otherwise requires,-
>
> xx xx xx
>
> **(c) "colony"** means an area of land divided or proposed to be

divided into [plots or flats] for residential, commercial or industrial purposes, but an area of land divided or proposed to be divided-

(i) for the purpose of agriculture; or

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

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

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

(v) when it does not exceed one thousand square metres, shall not a colony;

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

xx xx xx

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

xx xx xx

(o) "urban area" means any area of land within the limits of a municipal area or notified area or the Faridabad Complex or situate within five kilometers of the limits thereof, or any other area where, in the opinion of the Government, there is a potential for building activities and the Government by means of notification declares.

xx xx xx

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

17. As per the scheme of the 1963 Act, Section 3 prohibits erection or re-erection of buildings along scheduled roads. The term 'scheduled road' has been defined in Section 2(10) of the 1963 Act to mean roads specified in the Schedule including any bye-pass but excluding any part of such road not being a bye-pass, which is situated in the limits of a local authority. The restriction is to erect or re-erect building or to make any excavation or lay out any means of access to a road, within 100 meters of either side of road reservation of a bye-pass, or, within 30 meters of either side of the road reservation of any scheduled road not being a bye-pass. With the permission of the Director, Town and Country Planning, laying out of means of access to a road is permissible.

18. Section 4 of the 1963 Act enables the Government to issue notification to declare any area outside the limits of municipal town or any other area, which in the opinion of the Government has the potential for

building activity, industrial, commercial, institutional or recreational activities to be controlled area. Section 5 of the 1963 Act casts a duty on the Director to get the site plan prepared showing the controlled area and the nature of proposed restrictions and conditions. The site plan is to be submitted to the Government which could be approved with or without modification. Fresh site plan so prepared is to be published by notification for inviting objections. After considering the objections, if any, received and affording opportunity of hearing, final plan is to be prepared and published in the official gazette. Section 6 of the 1963 Act provides restriction on erection or re-erection of buildings in controlled area except in accordance with the plans and restrictions contained in Section 5 of the 1963 Act. Section 7 of the 1963 Act provides that no land within the controlled area shall, except with the permission of the Director, be used for purposes other than those for which it was used on the date of publication of notification under Section 4(1) of the 1963 Act.

19. Rule 2(b) of the Rules, as framed under the 1963 Act, defines the term "colony" to mean any land within a controlled area, which is developed or proposed to be developed for the purpose of subdividing it into plots for residential, commercial and industrial or other purposes. The word "coloniser" has been defined in Rule 2 (c) of the Rules to include an individual or company owning or acquiring land for the purpose of setting up a colony. Rule 8 of the Rules provides that the plan of a controlled area prepared under Section 5 of the 1963 Act shall consist of 'existing land used including existing building'.

20. The 1975 Act, which has been enacted to regulate use of land in order to prevent unplanned growth, defines the word 'colony" in Section 2

(c) to mean an area of land divided or 'proposed to be divided into plots' for residential, commercial, industrial purposes. Section 2(o) of the 1975 Act defines 'urban area'. It means any area of land within the municipal limits of a municipal area or notified area or the Faridabad Complex or situated within five kilometers of the limits thereof or any other area where, in the opinion of the Government, there is a potential for building activities and the same is declared to be so by the Government by way of notification. Section 2(m) of the 1975 Act defines a plot holder to mean a person who has agreed to purchase a plot from a colonizer.

Facts of the case

21. The petitioner-company was incorporated under the Companies Act, 1956 with the main object of colonisation. The petitioner entered into an agreement to sell dated 28.8.2001 for purchase of 211 kanals and 10 marlas of land @ ₹ 6,25,000/- per acre. As per the terms of the agreement, possession of the land was to remain with the seller until the entire payment was made. However, the petitioner-vendee was entitled to fix its sign boards on the land during the period of agreement. It was further allowed to construct office building on specified portion of land. It was mutually agreed that the petitioner-vendee shall have right to prepare a scheme for development of the land as a colony during the period of agreement and can even obtain 'no objection certificate' from any authority. The vendee was further authorised to demarcate plots, issue advertisements in the newspapers for sale of plots, receive earnest money and instalments for booking of plots or houses. Right was also given to appoint a banker or selling agent for booking and sale of plots. Publication of brochure-cum-application form was also allowed. The vendee was further permitted to

allot plots to the intending purchaser. The vendors had agreed to co-operate in the entire process even during the period of agreement to sell.

22. The petitioner entered into another agreement to sell dated 16.1.2001 for purchase of 172 kanals and 5 marlas of land @ ₹ 4,50,000/- per acre. The other conditions giving certain rights to the vendee were similar to those as contained in the earlier agreement to sell. Relevant clauses of the agreement to sell dated 28.8.2001 are reproduced below:

> "xx xx xx
>
> 3. The possession of land will remain with seller until the payment of balance amount of the land.
>
> xx xx xx
>
> 11. The sellers are sole and absolute owners of the land. The sellers will be responsible in case of any defect found in the title of the land.
>
> 12. The purchaser company can fix their sign board on the land during the period of agreement and the sellers will have no objection for the same.
>
> 13. The purchaser company can construct a building for their office in 5 marla land (45 ft x 30 ft.) in front part of 3 kanal 12 marla land bearing Khewat No. 147, Khatoni No. 192, Khasra No. 6//2/2 on Panchkula Barwala Road and can use the said building for their office during the period of Agreement.
>
> 14. The sellers and purchasers are having clear understanding and mutual consent that purchaser company shall have full rights to prepare a scheme of any type of colony and can make maps/plans for that purpose during the period of agreement.

The purchaser company can obtain necessary permissions or N.O.C. from Haryana Government and from Town & Country Planning Department, Haryana according to necessity for the said colony. The purchaser company shall be fully authorised to demarcate the plots and to construct houses on the said land as per layout of the colony to give advertisements in news papers, as per scheme of the colony for allotment of plots and houses during the period of the Agreement. The company can receive earnest money and further instalments for booking of plots or houses as per the scheme. The company can appoint banker and selling agents for the booking of plots as per the scheme during the time of agreement. The company can publish brochure cum application forms and can issue the same on cost or without cost to the intending purchasers of plot directly or through banker or selling agent and can receive complete and filled application forms along with earnest money directly or through banker or selling agent. That the purchaser company can allot plots or houses directly or by draw of lots to the intending purchasers and sellers will have no objection for the same.

15. The sellers will fully co-operate with the purchaser company in the success of scheme prepared by the company during the time of agreement.

16. The possession of the said land will be given on the receipt of full sale consideration amount of the land (after adjusting the advance amount).

xx xx xx”

23. Immediately after agreeing to purchase the land, the object of which was well-defined even in the agreements to sell, the petitioner got a lay out plan prepared on 18.10.2001 for residential township on the land agreed to be purchased. It was meant to cater to the need of common man, as the size of the plots was from 4 marlas to 10 marlas. The details of the size of the plot and number of plots in each category is tabulated below:

Size of the plot	No. of plots
10 marlas	137
8 marlas	149
6 marlas	361
4 marlas	79

24. The lay out plan further provided that the area will have green parks, restricted belt, primary school, community centre, library, dispensary, shopping areas, public health, religious place and club house. The total area planned was 323 kanals and 14 marlas. The petitioner issued various advertisements in different newspapers for sale of plots at different times starting from 23.10.2001. Advertisement provided that booking was to commence on 24.10.2001 and close on 24.11.2001 for general public and for defence personnel and ex-servicemen, the last date was 24.12.2001. Allahabad Bank was the authorised banker to collect the applications. A detailed brochure was also prepared. It was giving attraction to the prospective buyers to pay the price of the plot in easy instalments as well, spread over a period of six years. The allotment was to be made by draw of lots to be conducted within 3 months from the last date of receipt of applications. Possession of the plot was to be handed over on completion of

development work in about 5 years from allotment. Total 450 plots were offered for sale. As per the certificate issued by Allahabad Bank, 565 applications were received along with 10% earnest money for allotment of plots in the scheme, which closed on 24.12.2001. In the cases where the prospective allottees, who were successful in draw of lots, opted to pay the balance sale consideration in instalments, various sale agreements were executed on different dates in March, 2002, some of which have been attached with the petition as Annexures P-21 to P-29. All the agreements specifically mentioned the size of plot, plot number, total sale consideration, the amount already paid and balance to be paid either in lump sum or in instalments. The petitioner got the sale deeds registered in its favour for the land purchased, on 16.5.2002 (Annexure P-4) and 30.5.2002 (Annexure P-5) on payment of balance sale consideration. The petitioner got the sale deeds registered in favour of the allottees of plots in draw of lots, who had opted for payment of entire consideration money in lump sum. Three such sale deeds have been placed on record as Annexures P-30 to P-32 registered on 4.6.2002 and 9.7.2002. The sale deeds specifically mentioned the total sale consideration, the area of plot and plot number in the colony developed by the petitioner. The location of above plots is at different places in the colony.

25. One of the allottees of a plot filed application dated 17.4.2002 to the Director, Town and Country Planning, Haryana, seeking approval for construction. The same was responded to vide memo dated 6.5.2002 mentioning therein that the petitioner is developing a private colony, which is presently outside the periphery of controlled area, however, there is a proposal for issuing notification for declaring the same to be controlled

area, therefore, no approval can be given. Though the aforesaid communication clearly mentioned that the area, namely, M/s Shalimar Estate, Naggal Alipur, Panchkula is a private colony, however, while preparing drawing No. D.T.P. (P) 726/2002 dated 6.5.2002 for the purpose of Section 4(1)(b) of the 1963 Act, the same was not shown as such in the plan by the Town and Country Planning Department.

26. Notification under Section 4(1)(b) of the 1963 Act was issued on 11.7.2002 declaring the area specified in the Schedule to be controlled area for the purpose of the 1963 Act. Immediately thereafter, inspection at the spot was carried out on 25.7.2002 by the Department of Town and Country Planning and it was found that roads were being laid by putting gutka stone. Construction had been raised for the area measuring 30'x40' at the main entrance of the colony. Construction of pillars was being carried on. Electricity poles were also being installed at the edge of the roads. Immediately thereafter, on 26.7.2002, notice was issued to the petitioner as if it was a notification issued only to take care of the colony being developed by the petitioner. The notice was issued under Section 12 of the 1963 Act for alleged violation of Section 7(1) of the 1963 Act. The same was replied to by the petitioner vide letter dated 2.8.2002 stating therein that the colony had already been developed at the site before publication of the notification under Section 4 of the 1963 Act and majority of the residential plots had already been allotted/sold out before that and the site plan and sale deeds etc. were attached. Immediately thereafter on 8.8.2002, order was passed under Section 12(2) of the 1963 Act. It was a kind of printed form with certain words/lines deleted. The violations alleged against the petitioner in the order were that it had constructed gates pillars and metalled

road and installed electric poles. Another allegation was laying of means of access to Panchkula-Barwala road (NH-73). It may be added here that in the show cause notice issued to the petitioner, there was no such violation alleged. The operative part of the non-speaking order reads as under:

> "Your reply dated 2.8.2002 was examined in which you have mentioned that development of site was completed before the date of notification of controlled area (11.7.2002), is wrong and misleading because you are still continuing with raising the unauthorised construction of Gates pillars along with watchman rooms and laying of roads etc. at site."

The petitioner was directed to demolish the construction raised.

27. The petitioner preferred statutory appeal against the aforesaid order before the Tribunal, as constituted under the 1963 Act, giving minute details regarding the project and claiming that the colony was under development, hence, restrictions as notified were not applicable. The use of land already stood changed for residential purpose. It was further mentioned therein that the order impugned before the Tribunal was received by the petitioner on 12.8.2002 and before even the limitation for filing the appeal expired, the officials had come to demolish/remove the construction and electricity poles already erected. The appeal filed by the petitioner was dismissed by the Tribunal vide order dated 28.1.2003.The Tribunal misdirected itself in considering the matter. It opined about the nature of land on the date the sale deed was executed in favour of the petitioner by completely ignoring the terms of the agreement to sell, vide which the petitioner had purchased the land and the object thereof. Further, the advertisements were issued for sale of plots after getting lay out plan

prepared. It also ignored the important aspect that majority of plots had been sold by inviting applications after issuing advertisement in the newspapers and by appointing Allahabad Bank as the collecting agency. Mere entry in the revenue record, as was sought to be relied upon, will not be the determinative factor. It was wrong to notice in the order by the Tribunal that no permission as sought by the petitioner was produced before it, when the undisputed case of the parties was that the area on the date when the colony was proposed to be developed and plots were sold was outside the controlled area, where no restrictions were applicable.

28. A finding has been recorded by the Tribunal in its order that "it can be inferred that attempt was being made to change the land use" and "at the best it can be stated that the appellant intended to carve out residential plots", however due weightage was not given to it. The entire facts of the case were required to be considered. The facts that the petitioner purchased the land for development as colony, carved out plots, sold the same and started development work in the area prior to the issuance of notification dated 11.7.2002 were totally ignored. The emphasis was laid on the fact that colony had not been fully developed before the issuance of notification under Section 4 of the 1963 Act, whereas the definition of 'colony' as provided for under the Rules includes even the area "proposed to be developed".

29. The land of the petitioner, which was declared part of the controlled area, in fact, was being used as a colony before even issuance of the notification. It is even evident from the facts noticed by the Government in the file, as was produced in the Court. In the note dated 1.10.2002 of the Senior Town Planner, it was specifically noticed that the colony was

detected in the month of August 2001. At that time, the said colony was not falling within the urban area and the controlled area. Hence, no action could be taken. As merely by declaration of the area as controlled area, the sale of plots could not be stopped. It was proposed that notification under Section 2 (o) of the 1975 Act be issued to bring the colony under the provisions of the 1975 Act. The relevant part thereof are extracted below:-

> "**Note dated 1.10.2002**
>
> In this connection, the order of Hon'ble C. M. Haryana dated 14.9.2002 at Ch. 116 and order dated 14.9.2002 appearing at N/p 35 may kindly be perused. The Hon'ble C. M. has desired that responsibility for the lapse which resulted in unauthorised construction of Shalimar Colony may be fixed that it should be ensured that no unauthorised construction is allowed and strict vigil be maintained. The Hon'ble C. M. has also desired that report on this issue may be presented to him within two weeks.
>
> xx xx xx
>
> At the time, the said colony was not falling within the urban area and controlled area declared under the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act 1963 and the Haryana Development and Regulation of urban Areas Act 1975. Since, above colony was not within the control of Town and Country Planning Department, therefore, District Town Planner Panchkula could not take action against the said colony at the initial level of its formation.

But the Department remained successful in bringing the colony under the control of Town and Country Planning Department by declaring controlled areas around Alipur Industrial Estate under the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act 1963 immediately thereafter on 11th July 2002.

...... The district Town Planner Panchkula has demolished the gates of the colony, dismantled the roads and uprooted the electric pools erected by the colonizer along the road sides of the above colony. The access to the said colony. The access to the said colony from the National Highway No.73 has also disconnected by digging a trench along the said road.

xxx xxx xxx

The enquiry report also indicates that since, earlier, the above colony was not within the control of Town and Country Planning Department ....

xxx xxx xxx

The STP Panchkula has also pointed out that that sale of plots of above colony can not be stopped at this stage since the provisions of the Haryana Development and Regulation of Urban Areas Act 1975 are not applicable on the site of this colony. .... Similarly, directions have also been issued to the District Town Planner, Panchkula for preparation of Development plan of above Controlled Area on top priority, so that the same could be published immediately."

[Emphasis supplied]

30. The aforesaid facts clearly established that at the time of issuance of notification under Section 4 of the 1963 Act and even as per the official record, the area was being developed as a colony. The sale of plots was in progress. Hence, it should have been shown as such in the site plan prepared in terms of Rule 8 of the Rules. Thus, there would be no violation for use of land as a colony after the issuance of notification dated 11.7.2002.

31. The contention that in the revenue record the land was still shown as agricultural, is merely to be noticed and rejected as the entire process for development was started in October, 2001 when the petitioner entered into agreement to sell and started development activities on the spot.

32. As far as the notification dated 31.1.2002 issued under Section 2(o) of the 1975 Act is concerned, pre-requisite for declaration of any area of land to be urban area is where in the opinion of the Government there is a potential of building activities. A perusal of the file shows that in fact, the reasons were different. The matter regarding declaration of the land as controlled area under the 1963 Act or urban area under the 1975 Act was, in fact, being monitored by the then Chief Minister. The effort was to comply with his directions than the provisions of the 1975 Act. It is also established from the speed at which action was taken against the petitioner after issuance of the notification under the 1963 Act and the demolition carried out. The file was moving at jet speed. The notification under Section 4 of the 1963 Act was issued on 11.7.2002. On 25.7.2002 the inspection was carried out. On 26.7.2002 show cause notice under the 1963 Act was issued

for 2.8.2002. On 2.8.2002, the petitioner filed its reply. On 18.8.2002, the order was passed by the authority directing demolition. Meaning thereby in less than two weeks, the entire procedure was completed. That matter was put up before the then Chief Minister by the Town Planning Department reporting that immediately after passing of the order on 8.8.2002, on 18.8.2002, the entire construction raised had been demolished. In his noting, D.T. P. (hq) DS referred to the order of Principal Secretary to Chief Minister regarding action taken against unauthorised development of colony by the petitioner. The report was submitted stating that on 26.7.2002, notice was issued and on 8.8.2002, demolition order had also been passed. On 18.8.2002, the construction was dismantled. In fact, the report apparently was to satisfy the then Chief Minister. In an affidavit dated 7.1.2015 filed by J. P. Khasa, District Town Planner, Enforcement, Panchkula, in pursuance to the order passed by this court on 28.7.2014 to produce the present status of the site, it was submitted that poles were still existing and so the dilapidated roads and the building. The note is extracted below:

> "Kindly refer to order of worthy P.S. To C.M. placed under F/X. In compliance of these orders, a report was sought from D.T.P./S.T.P., Panchkula regarding action taken against unauthorised development of Salimar Estate in Barwala Controlled area. Senior Town Planner, Panchkula has forwarded the copy of report of D.T.P., Panchkula. After going through report of D.T.P., Panchkula, it is revealed that the site of Salimar Estate falls in controlled area Alipur, the notification of the same was made on 11.7.02.
>
> District Town Planner, Panchkula further informed that a

show cause notice was issued on 26.7.02 against unauthorised construction of colony and on 8.8.02, demolition order, as required under the provision of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 was issued. After expiry of the time of legal notices, the entire constructions of the colony i.e. construction of gate post, gate room, roads, sewer line and 84 poles had been dismantled at site on 18.8.02. This demolition has been verified by SDM, Panchkula through his report placed at F/A.

Therefore the action taken by this department against said unauthorised colony may kindly be brought in kind knowledge of Hon'ble C.M., w.r.t. his order dated 3.8.02. This compliance report could not be submitted within week time because report from S.T.P./D.T.P. Panchkula pertaining action taken against unauthorised construction received yesterday in this office".

[Emphasis supplied]

33. The aforesaid information was perused by the Chief Minister. The note dated 15.9.2002 written by PSCM is extracted below:

"CM has seen. He would like to know as to how the unauthorised construction of colony was allowed by HUDA authorities. CM has desired that responsibility for this lapse be fixed. He has also ordered that it should be ensured that no unauthroised construction is allowed and strict vigil is maintained."

34. The note put up by the Principal Secretary to Chief Minister

dated 15.9.2002 suggested that the Chief Minister has desired that as to how the unauthorised construction of colony was allowed by HUDA authorities. In a detailed note by the Senior Town Planner on 1.10.2002, it was specifically noticed that colony had come up prior to even issuance of notification under Section 4 of the 1963 Act and to stop further development, notification under Section 2(o) of the 1975 Act was required to be issued, otherwise the sale of plots could not be stopped. The above information was submitted to the then Chief Minister. The only reason assigned in the entire noting was that though the area has been declared as controlled area under the provisions of the 1963 Act but under that Act, the sale of plots cannot be stopped, hence, the area deserves to be declared as urban area under the 1975 Act. No where a suggestion was recorded that there is potential of building activities. The notification apparently was issued merely on the direction of the then Chief Minister for his satisfaction and not in compliance to the requisite provisions of the 1975 Act. The file was seen by the then Chief Minister on 5.11.2002 and thereafter the notification under Section 2(o) of the 1975 Act was issued on 31.12.2002.

35. In any case even as per the official record, the area was already being developed as a colony even before the issuance of notification under the 1963 Act. Hence, the position even under the 1975 Act has to be the same as the definition of word 'colony' is similar. As even in the area proposed to be divided into plots for residential, commercial or industrial purposes is also included in the definition of colony. Even prospective buyers of plots as per agreements to sell executed are also defined to be plot holders under Section 2(m) of the 1975 Act. Meaning thereby, on the date of notification under Section 2(o) of the 1975 Act, the land being

already a colony, no license for conversion into a colony was required.

36. The contention of learned counsel for the State that the definition of word 'colony' under the rules of 1975 Act would mean a complete developed colony and not where only some steps have been taken, is merely to be noticed and rejected as the word 'proposed' itself suggests that merely planning at the initial stage may be enough. It depends on the facts of each case. No hard and fast parameters can be laid down but if the facts of the present case are seen, the area in question was certainly being developed as a colony. Initially steps had been taken for the purpose. Not only number of plots had been sold but even the development at the spot had also started. Third party rights had stepped in. It is evident from the fact that the petitioner had placed on record the order passed by Consumer Disputes Redressal Commission, in which the petitioner was directed to execute and get the sale deed registered in favour of the allottee. In some cases, the District Consumer Disputes Redressal Forum-I, Chandigarh, directed the petitioner to pay compensation to the allottees.

37. For the reasons mentioned above, the writ petition is allowed. It is declared that on the date of issuance of notification dated 11.7.2002 under the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act 1963, the land, which was in the process of being developed as a colony, should have been shown as such in the plan prepared under the Rule 8 of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Rules, 1965. As the area in question was already a colony, at the time of issuance of notification dated 11.7.2002 under Section 4 of the 1963 Act, the same fact will follow even at the stage when the notification under the Haryana Development and

Regulation of urban Areas Act 1975 was issued. The impugned orders dated 8.8.2002 passed by respondent no. 3 and 28.1.2003 passed by the Tribunal are set aside.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

October 05, 2016
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No