

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(103)

CWP No. 9509 of 2014 (O&M)

Date of decision: 24.08.2016.

Resident Welfare Association

..... Petitioner.

Versus

Haryana Urban Development Authority and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr. Ajay Gupta, Advocate and
Mr. Sandeep Jasuja, Advocate, for the petitioner.

Mr. Surender Singh Pannu, DAG, Haryana,
for respondents No. 1 to 3.

Mr. Vikas Bahl, Senior Advocate, with
Mr. Ramandeep Singh, Advocate, for respondent No. 4.

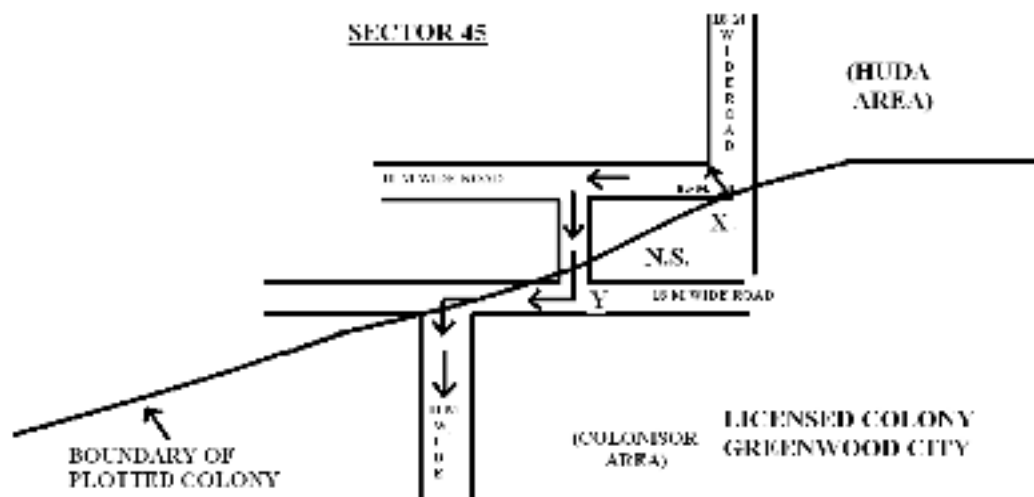
Mr. Puneet Bali, Senior Advocate, with
Mr. Tushar Sharma, Advocate, for respondent No. 5.

S.S. SARON, J.

The petitioner - Resident Welfare Association, Sector 45, Pocket (D), Gurgaon through its President Shri Jaswant Singh Dagar has filed this petition in the nature of public interest litigation seeking directions against Haryana Urban Development Authority ('HUDA' - for short) through its Chief Administrator; HUDA through its Administrator and the Principal Secretary, Town and Country Planning Department, Haryana (respondents No. 1 to 3) to construct the missing link of the 18 metres wide road leading to Netaji Subhash Marg 'A' Road between Sector 45 and Sector 40, Gurgaon (Near plot No. 1425 etc., Sector 45, Gurgaon) shown in red colour in the site plan attached with the petition as Annexure P1 and also in the revised site plan (Annexure P10). A further prayer has been made for restraining the respondents to construct the Nursery School on the missing patch shown in

red colour of the 18 metres wide road of Sector 45, Gurgaon, as per zoning plan (Annexure P9).

In order to understand the factual position of the case the following drawing may be noticed:



A perusal of the above drawing shows that there is an 18 metres wide road that comes from the top and it terminates at point 'X'. The boundary of the plotted colony has been depicted. The area above the said line is the colony developed by the HUDA and the lower portion of the same is owned by the private colonizers including Unitech Ltd. (respondent No. 4). Horizontally, there is an 18 metres wide road which is between Sector 45 and Sector-40, Gurgaon. This is known as Netaji Subhash Marg. The letters 'NS' depict the Nursery School, which is part of area that is below the line showing the boundary of plotted colony. It was owned by Unitech Ltd. (respondent No. 4). The Nursery School has now been constructed by Science Olympiad Foundation (respondent No. 5).

The petitioner-Association seeks construction of road from point 'X' to the 18 metres wide horizontal road i.e. the Netaji Subhash Marg through the area/land of the Nursery School. This according to them has been sanctioned by the Town and Country Planning Department vide its sanctioned

plan (Annexure P5).

The Unitech Ltd. (respondent No. 4) and its sister concerns, namely, (1) Sharda Plywood Industries Ltd., (2) Suvidha Industries Ltd., (3) New India Construction Company Ltd., (4) Unitech Industries Ltd., (5) Unitech Builders Ltd. and (6) Unitech Investments Ltd., were granted licenses No. 30, 31, 32, 33, 34 and 35 respectively on 31.01.1992 for a total area measuring 102.05 acres by the Director, Town and Country Planning Department, Haryana. They are the owners of the land below the boundary line of plotted colony since 31.01.1992. The layout plan for the said colony was also approved on 31.01.1992 along with the grant of licenses. A revised layout plan (Annexure R1) with the written statement of the Chief Town Planner, Department of Town and Country Planning, Haryana was approved on 20.12.1994 due to exchange of some land with the HUDA. In the said revised plan (Annexure R1), land for a Nursery School measuring 0.20 acre was earmarked in the said layout plan. This Nursery School site, which is below point 'X' and also below the line showing boundary of the plotted colony but above the 18 metres wide horizontal road i.e. the Netaji Subhash Marg has been constructed, is the bone of contention between the parties.

The land as shown in the layout plan (Annexure P5) sanctioned by the Town and Country Planning Department, Haryana, according to the petitioner, is for entire Sector 45, Gurgaon and according to the respondents, is only for that part of the area owned by HUDA.

The Chief Town Planner, Department of Town and Country Planning, Haryana, in his reply dated 19.09.2014, has mentioned that the layout plan of Sector 45 of the year 1994 prepared by the HUDA shows the boundary of the HUDA land and the land owned by Sharda Plywood Industries Ltd., licenses to Sharda Plywood Industries Ltd. and its associate

companies (now Unitech Ltd. respondent No. 4) were granted in the year 1992. It is mentioned that a perusal of the layout plan also shows that the 18 metres wide road shown in yellow colour (i.e. the vertical 18 metres road as shown in the above drawing) ends at the boundary of the HUDA land (i.e. at point 'X' in the above drawing) and, thereafter, the boundary of licensed area of Sharda Plywood Industries Ltd. starts. It is submitted that in the said circumstances, the contention of the petitioner that the 18 metres wide road passing through the licensed land of respondent No. 5 i.e. Science Olympiad Foundation, is not possible. The license of this land was granted to Unitech Ltd. (respondent No. 4) in the year 1992. Therefore, it would be wrong to allege that Unitech Ltd. (respondent No. 4) by encircling its land by barbed wires created nuisance to the movement of general public. It is also stated as wrong that 18 metres wide road (i.e. the vertical 18 metres wide road as shown in the above drawing) has been illegally obstructed by Unitech Ltd. (respondent No. 4). The HUDA cannot construct any road through the land of private developer for which license had already been granted by the Department of Town and Country Planning and the layout plan for the said colony had been approved. The site in question had been earmarked for a Nursery School site and the private colonizers were competent to raise constructions thereon after getting the zoning plan/building plan approved from the competent authority. The zoning plan/building plan for the construction of a Nursery School had been sanctioned on 22.06.2012, i.e. before the filing of the present writ petition.

There is no replication to the averments made in the written statement filed by the Chief Town Planner, Department of Town and Country

Planning, Haryana on behalf of respondent No.3, which means that the said stand as taken remains un-rebutted.

The contention of learned counsel for the petitioner is that the zoning plan/building plan of respondent No. 4 - Unitech Ltd. has been sanctioned prior to 27.04.1994. Therefore, it is submitted that the sanctioned layout plan (Annexure P5) issued by the Town and Country Planning Department, Haryana should be implemented by linking the 18 metres wide vertical road as shown in the drawing above from point 'X' to the horizontal 18 metres wide road i.e. Netaji Subhash Marg.

The said position is, however, not tenable as in the aforementioned written statement filed by the Chief Town Planner, Department of Town and Country Planning, Haryana on behalf of respondent No.3 it has been mentioned that the layout plans were approved on 22.10.1997, 02.02.1999 and 2003 and have been placed on record as Annexures R2, R3 and R4 respectively. It is submitted that a perusal of the same would reveal that the Nursery School site was also earmarked at the same location on which it was earmarked in the layout plan as approved on 20.12.1994 though the area of the Nursery School site was increased from 0.20 acre to 0.303 acre. The site in question is shown in blue colour in the said layout plans (i.e. the area depicted by the letters 'NS' in the above drawing). The 18 metres wide roads (i.e. the vertical and horizontal 18 metres wide roads as shown in the above drawing) are shown in yellow colour. It is further mentioned that even the layout plan of Sector 45, Gurgaon of HUDA (Annexure P1) was approved after the grant of license to Unitech Ltd. (respondent No. 4) in the year 1992 and approval of the layout plan was granted in the years 1992 and 1994. Therefore, the question of extending 18

metres wide road as shown in pink colour in Annexure P5 to the licensed area of Unitech Ltd. (respondent No. 4) did not at all arise. It has been clarified that the HUDA could plan and construct 18 metres wide road only through its own land and not extend this road to the area falling within the licensed area of any other private developer unless it had been proposed and constructed before grant of license to the private colonizer. Therefore, the plea raised by the petitioner that earmarking of the Nursery School site in their licensed area by the Principal Secretary, Town and Country Planning Department, Haryana and Unitech Ltd. (respondents No. 3 and 4) had adversely affected their right or non-extension of 18 metres wide road from Sector 45 to Sector 40, Gurgaon leading to Netaji Subhash Marg amounts to encroachment of land of the HUDA by Unitech Ltd. and Science Olympiad Foundation (respondents No. 4 and 5) is totally misconstrued (sic - misconceived) and hence liable to be rejected. The demand of the petitioner-Association for extension of 18 metres wide road through the licensed land of Unitech Ltd. (respondent No.4), it is submitted, cannot be accepted as it would amount to usurping or encroaching the land of Unitech Ltd. (respondent No. 4). The site had been earmarked for Nursery School in the layout plan of the licensed area and Unitech Ltd. (respondent No. 4) had already created third party rights on the said land by selling the same to Science Olympiad Foundation (respondent No. 5) and the allottee had started construction at the site. Basement and ground floor were complete and first floor up to roof level had been constructed. Therefore, the request of the petitioner-Association, it is submitted, could not be acceded to being illegal and encroaching upon the right of private respondents.

We have heard learned counsel appearing for the parties at full length and given our thoughtful consideration to the entire matter. It is indeed undisputed and as has already been noticed that the dividing line of Sector 45, Gurgaon i.e. the line showing the boundary of plotted colony, which has been shown in the above drawing is between the land which is owned by the HUDA and the area which is owned by Unitech Ltd. (respondent No. 4) and other private developers including Science Olympiad Foundation (respondent No.5). The land from point 'X', which is along the vertical 18 metres wide road on which a Nursery School has been constructed and a prayer for connecting the same to the horizontal 18 metres wide road i.e. Netaji Subhash Marg has been made, admittedly belongs to Unitech Ltd. (respondent No. 4) and other private developers.

In fact, it has been pointed out by Mr. Vikas Bahl, learned Senior Counsel appearing for Unitech Ltd. (respondent No. 4) that the petitioner-Association itself was well aware of this fact in view of its letter dated 22.09.2005 (Annexure P6 colly.) addressed to the Chief Administrator, HUDA, Panchkula, Chandigarh. In the said letter, on the subject of 'approach road to Sector 45, Gurgaon', it has *inter alia* been mentioned that there is a direct road coming from DPS (Delhi Public School) side and it terminates near the site marked for primary school. This site for primary school, it is mentioned, is under the jurisdiction of Unitech Ltd. (respondent No. 4), a private builder. If the said small piece of land marked for primary school is exchanged with some other land or some other understanding is reached at with Unitech Ltd. (respondent No. 4), then the existing HUDA road gets connected to the main road.

Indeed, a perusal of the said letter dated 22.09.2005 (Annexure P6 colly.) shows that the petitioner-Association was fully aware that the portion of land marked by letters 'NS', which is along the 18 metres wide vertical road as shown in the above drawing terminates near the site marked for primary school and it was represented by the petitioner-Association for exchanging the said land with some other land so that the road gets completed.

The position, therefore, is that the land from point 'X' to the horizontal 18 metres wide road i.e. Netaji Subhash Marg is owned by and belongs to Unitech Ltd. (respondent No. 4) is not disputed by the petitioner-Association ever since 22.09.2005 i.e. since the writing of the letter dated 22.09.2005 (Annexure P6 colly.). The said letter has been filed by the petitioner-Association itself. In the circumstances, in case the layout plan (Annexure P5) had been sanctioned on 27.04.1994 and it shows the land from point 'X' to be a road to the horizontal 18 metres wide road i.e. Netaji Subhash Marg, it cannot be said that the land vested in the Town and Country Planning Department, Haryana or the HUDA for the construction of a road. The proper course to construct the road was to acquire that land in accordance with law. However, the stand of the Chief Town Planner, Department of Town and Country Planning, Haryana is that the layout plan for the Nursery School had already been sanctioned.

Mr. Puneet Bali, learned Senior Counsel for Science Olympiad Foundation (respondent No. 5) has submitted photographs of the School, which is now complete after its construction and is functioning. It is submitted by Mr. Bali that the allotment of the land was for an amount of Rs.2,91,00,000/- (Rs. Two crore and ninety-one lac only); besides, an amount

of about Rs.7,00,00,000/- (Rs. Seven crore only) has been spent on the construction thereon. The photographs that have been shown indeed show that the building is complete after its construction. Therefore, at this stage, it would be impractical to order the demolition of the said building for the construction of a road on an area of land which is owned by Science Olympiad Foundation (respondent No. 5) and which has got the said land in accordance with law, besides, also got the site plan and building plan sanctioned for the construction of the school.

It may be noticed that at the time of motion hearing, the Bench hearing the case had initiated steps to find a solution to the impasse due to which the residents of Sector 45, Gurgaon had been suffering. In terms of the order passed on 23.04.2015, the case was adjourned to 29.04.2015 to explore the possibility of connecting the 18 metres wide road of Sector-45, Gurgaon to Netaji Subhash Marg through Green Wood Society. The case was taken up on 29.04.2015, on which date learned counsel for the parties sought more time to explore the possibility of connecting the 18 metres wide road of Sector 45, Gurgaon to Netaji Subhash Marg through Green Wood Society. The case was then adjourned to 08.05.2015. In the meanwhile, all the concerned parties, i.e. the developer, HUDA and the Town and Country Planning Department, Haryana were asked to sit together to explore for an amicable settlement. The President of the petitioner-Association, it is recorded, may also attend such a meeting that was to be held. The case was then taken up 08.05.2015, on which date the minutes of the meeting that was held on 06.05.2015 were submitted which read as follows:-

“On the subject cited matter, the meeting was held under the Chairmanship of Administrator, HUDA on 06.05.2015

and later on DTP (P), Sh. Sanjay Kumar, Gurgaon, XEN, HUDA, Division-V, Sh. R.S. Bishoni, ATP, Gurgaon, Sh. R.S. Batth, JE's of the office of DTP (P), representatives of Unitech Ltd., representatives of RWA and of the School constructed at site, visited the site. It was found that the connectivity of 18.0 mtr wide HUDA road cannot be linked with further internal sector roads passing through the licensed colony as the primary school as approved by Town & country Planning Department in the licensed land has been constructed after getting the building plans approved. It was contended by the RWA to work out the best possible solution by planning the roads, so that this connectivity could be made feasible. The planning so proposed should be safe and lead to smooth flow of the traffic. It was accordingly decided that since the situation is typical, it would be appropriate to get the total station/Plane table survey for the area in question along with revenue patwari, HUDA, officials so that the status of roads planned by HUDA as well as the ownership status of surrounding area shall be verified and thereafter this office will work out the alternatives for planning of roads.”

In view of the above-said minutes of the meeting, learned counsel appearing for the HUDA as well as the State submitted that a meeting would be fixed within two weeks and a final decision for providing an alternative road connecting the 18 metres wide road of Sector 45, Gurgaon to Netaji Subhash Marg would also be taken. The case was adjourned to

07.07.2015. It was then taken up on 11.08.2015, on which date learned counsel for respondents No. 1 and 2 as well as learned counsel appearing for respondent No. 3 - State sought more time to file affidavit in terms of the order dated 08.05.2015.

An additional affidavit of the Chief Town Planner, Department of Town and Country Planning, Haryana, on behalf of Principal Secretary, Town and Country Planning Department, Haryana (respondent No.3) was filed in Court on 20.10.2015, which was taken on record. The case was then taken up on 11.12.2015, on which date it was adjourned. The case was then admitted on 07.01.2016. It was made clear that there was no stay in this case. The petitioner-Association impugned the order of admission by way of SLP (C) No.13672 of 2016, which was disposed of by the Hon'ble Supreme Court on 04.07.2016, requesting this Court to expedite the hearing of the writ petition filed by the petitioner-Association as far as possible within a period of two months from the date a copy of this order was placed before this Court. The case was taken up on 05.08.2016, on which date on the request of counsel for the petitioner stating that he is to come from Delhi, the case was adjourned for today and is being disposed of.

In terms of the said additional affidavit of the Chief Town Planner, Department of Town and Country Planning, Haryana filed on behalf of respondent No.3 in Court on 20.10.2015, it has *inter alia* been mentioned that in compliance of the order passed on 08.05.2015, a Committee was constituted under the Chairmanship of the Administrator, HUDA, Gurgaon wherein the Senior Town Planner, Gurgaon and the representative of the developer for the licensed colony and representative of the Residents Welfare Association were designated as members. The said Committee submitted its

report dated 06.07.2015 (Annexure R/1). In the report dated 06.07.2015 (Annexure R/1), it was mentioned that the Senior Town Planner, Gurgaon had forwarded a proposal for alternate connectivity of 18 metres wide road in Sector 45, Gurgaon, which discontinued (sic. - terminated) in the licensed colony of M/s Unitech Ltd. (respondent No. 4) because in the layout plan of licensed colony, this 18 metres wide road had not been maintained (sic. - provided for). It was evident from the revised layout-cum-demarcation plan of Sector 45, Gurgaon, in which layout plan of the licensed colony had also been shown in dotted line, the 18 metres wide road which had been shown to be continuing in the licensed colony in fact terminated at the Nursery School. This was approved in the layout plan of the licensed colony. The site of Nursery School had been approved in the layout plan of licensed colony much prior to the layout plan of Sector 45, Gurgaon developed by the HUDA. Due to the fact that Nursery School had already been constructed at the site with prior approval from the Director General, Town and Country Planning Department, Haryana, there was no possibility of continuing the said 18 metres wide road further in the licensed colony as the Nursery School was situated at the site.

The alternate proposal that had been received from the Senior Town Planner, Gurgaon was based on the joint survey report as per which the 18 metres wide road in the HUDA area had been proposed to be linked through 18 metres wide road of licensed colony through 10 metres wide internal road which was already approved in the layout plan of Sector 45, Gurgaon. It is further mentioned that the 10 metres wide internal road would be feasible at site except at point 'X' where the available width of the road is 8.05 metres and at point 'Y' where the small portion of the road had been

proposed in the land pocket earmarked as green in the layout plan of licensed colony. The proposal forwarded by the Senior Town Planner, Gurgaon, it is mentioned, was based on the survey plan copy of which had been enclosed and was found in the order because there was no other feasible alternative for linking the said road. The proposal along with copies of layout plan-cum-demarcation plan of Sector 45, Gurgaon and survey plan were forwarded for approval.

In terms of the above, it is evident that the perpendicular 18 metres wide road as shown in the above drawing, which while coming downwards to point 'X' and from there turns to the right and then again to the left. In this manner, the 18 metres wide perpendicular road from point 'X' connects with the 10 metres wide road, which goes horizontally. Then from the 10 metres wide road to point 'Y' of the 18 metres wide horizontal road, i.e. the Netaji Subhash Marg, is the green space of Unitech Ltd. (respondent No. 4) and is maintained by them. Through this green space, the road is to be constructed which would connect the 10 metres wide horizontal road to point 'Y' of the horizontal 18 metres wide road, i.e. the Netaji Subhash Marg.

Mr. Vikas Bahl, learned Senior Counsel appearing for Unitech Ltd. (respondent No. 4) submits that since Unitech Ltd. was a part of the proposal for the settlement of the issue in the meeting that was held and the proposal given, he would stand by it and would have no objection if the road is constructed on the land of Unitech Ltd. (respondent No. 4) which though was to be maintained as green area. However, a mention has been made to the additional affidavit of Mr. Dilbag Singh Sihag, Chief Town Planner, Department of Town and Country Planning, Haryana, Chandigarh wherein a reference has been made to the case of M/s Pioneer Profin Ltd. v. Residency

Greens Residents Welfare Association, RSA No. 4579 of 2009, in which this Court passed the following order:

“From the above narrated facts, it seems that there is a nexus between the appellant/colonizer and the Department of Town and Country Planning, Haryana, which needs to be probed. The colony of defendants i.e. Residency Greens had already been developed and the common area left vacant for parks, street etc. vests in Govt./Municipal Corporation still the DTCP has sanctioned the plan of vista villa vide Ex. P-7 to include the disputed area, which has already vested in Govt; in that colony. The DTCP had no such Authority to act against the interest of the State.

In this view of the matter, let a copy of this judgment be sent to the Chief Secretary of the State of Haryana to initiate suitable fact finding inquiry and take action thereafter in accordance with law and compliance report be submitted to this Court.”

It is submitted by the Chief Town Planner, Haryana, Department of Town and Country Planning, Haryana that in view of the above order, an inquiry was conducted on which directions were issued for restoration of the green areas as per the layout plan approved in the year 1999. In compliance of the inquiry report, the layout plan has been revised by restoring all such disputed areas back to their original use, i.e. open space. It is further mentioned that in the same residential colony a proposal (Annexure R/1) has been enclosed, which has been forwarded to the Empowered Committee

wherein road has been proposed on the green area marked as 'Y' on the plan. In view of the submissions made in para No. 4, it is submitted that it is imperative that no such change could be allowed by the office of Chief Town Planner, Department of Town and Country Planning, Haryana without orders from this Court. It has been prayed that necessary orders in this regard may be issued to enable necessary action by the Chief Town Planner, Department of Town and Country Planning, Haryana.

Mr. Ajay Gupta, learned counsel for the petitioner-Association objects to the proposal and according to him the road that is to be constructed through the green space of Unitech Ltd. (respondent No. 4) would be only 10 metres wide road, which would be too narrow and the same should be increased to at least 12 metres in width.

The road to be constructed through the green space of Unitech Ltd. (respondent No.4) would connect the area of Sector 45, Gurgaon from the 10 metres horizontal road within Sector 45 to the 18 metres wide horizontal road i.e. the Netaji Subhash Marg. In case, the suggestion of Mr. Ajay Gupta, learned counsel for the petitioner-Association is to be accepted or considered that would mean that the land which is owned and possessed by the Science Olympiad Foundation (respondent No. 5) would have to be acquired or purchased.

According to Mr. Puneet Bali, learned Senior Counsel for the Science Olympiad Foundation (respondent No. 5), in case the land of Science Olympiad Foundation (respondent No. 5) is taken or acquired, the building portion constructed thereon would also be affected. It is submitted that the site has been constructed with due approval by spending huge amounts and it

would be unfair for it to be subjected to this treatment as this action would affect the rights of Science Olympiad Foundation (respondent No. 5).

We are of the considered view that it would not be possible for this Court to go into this question and it would rather be just and expedient in case the proposal as given by the Chief Town Planner, Department of Town and Country Planning, Haryana, in his additional affidavit dated 20.10.2015 is accepted and necessary sanction is given to the Senior Town Planner, Gurgaon for construction of road from the 10 metres wide horizontal road within Sector 45 to point 'Y' on the 18 metres wide horizontal road i.e. the Netaji Subhash Marg through the green belt. This would resolve the issue and impasse. This in fact at this stage seems to be the only possible solution. This proposal, however, is not acceptable to the petitioner-Association and it has pressed for construction of the 18 metres wide road through the area of the Nursery School only.

Mr. Puneet Bali, learned Senior Counsel appearing for Science Olympiad Foundation (respondent No. 5) submitted that the petition has been filed at a belated stage and in all likelihood for extraneous reasons only to pressurize Science Olympiad Foundation (respondent No. 5). He has placed reliance on **R & M Trust v. Koramangala Residents Vigilance Group and others**, (2005) 3 SCC 91. In the said case, the Supreme Court after referring to earlier judgments held that delay is a very important factor while exercising extraordinary jurisdiction under Article 226 of the Constitution and the third party interest created on account of delay cannot be disturbed. Even otherwise, it was observed, that why should the Court come to the rescue of a person who was not vigilant of his rights. In the said case, the respondent Koramangala Residents Vigilance Group filed a public interest petition

challenging the building license issued for construction of multi-storied/ multi-apartment on sites No. 403 and 443 in IInd and IIIrd Cross in III Block, Koramangala Layout, Bangalore on the ground that it was illegal, void and prayed for quashing of the license and demolition of the building already constructed on the site. It was submitted that the residents in the area had acquired sites and built houses on the understanding and under the bona fide belief that the layout would be developed and maintained in accordance with law. The Supreme Court held that delay in the case was fatal. The construction had already been started by the appellant-Trust in 1987 and the building had come up to three floors. Thereafter, it was stopped in 1988 and in March, 1991 it resumed after permission had been granted. The writ petition was filed in November, 1991 and in the meanwhile, the construction was almost complete. Therefore, delay was fatal and the learned Single Judge rightly held it to be so. It was also brought to the notice of the Hon'ble Supreme Court that forty-six multi-storied buildings had come up in the area. Photographs showing the buildings more than three and four floors had been constructed around the area were submitted. The appeal of the R & M Trust was dismissed holding that challenge to grant of building license to a builder for construction of multi-storied building would not be maintainable where third party interest had been created on account of delay.

Indeed delay in approaching the Court is a factor which is to be taken into consideration as to whether the powers under Article 226 of the Constitution are to be exercised. Generally, there is no period of limitation for exercise of powers under Article 226 of the Constitution; however, the principles of *laches* are applied and it is even otherwise considered sound and wise not to exercise jurisdiction or refuse to exercise extra ordinary powers in

favour of those who do not approach the Court within a reasonable time and then rake up stale matters so as to unsettle the settled position.

In the present case, however, there are even otherwise no rights which are shown to be vested in the petitioner-Association so as to put a claim for which it had no right whatsoever leave alone a semblance of right.

Mr. Ajay Gupta, learned counsel for the petitioner-Association has raised serious objection to the contentions raised by the learned counsel for the respondents making remarks against the petitioner-Association regarding filing of the petition for extraneous considerations. However, as already noticed, the petitioner-Association had itself written letter dated 22.09.2005 (Annexure P6 colly.) to the Chief Administrator, HUDA, Panchkula, Chandigarh that the direct road coming from DPS side terminates near the site of the Nursery School. From this it is quite evident that the petitioner-Association was all along well aware that the site for Nursery School had been earmarked prior to the year 2005 but despite that it came to the Court in the year 2014 when the construction on the School site had already started.

In the circumstances, the only equitable solution we find to the impasse and for which relief can be granted to the petitioner-Association is that the proposal contained in the additional affidavit of Mr. Dilbag Singh Sihag, Chief Town Planner, Department of Town and Country Planning, Haryana, Chandigarh appended as Annexure R/1 is implemented in the larger interest of the public. Though this is not acceptable to Mr. Ajay Gupta, learned counsel for the petitioner but notwithstanding the same we feel that this is the best solution which would resolve the impasse.

The writ petition is accordingly disposed of and the objection as raised with regard to delay and *laches* is not being gone into so as to provide a reasonable solution to the residents of the area and the proposal contained in the additional affidavit of Mr. Dilbag Singh Sihag, Chief Town Planner, Department of Town and Country Planning, Haryana, Chandigarh appended as Annexure R/1 shall be implemented by the construction of a 10 metres wide road on the green belt owned by Unitech Ltd. (respondent No.4) from the 10 metres wide horizontal road within Sector 45 to point 'Y' on the 18 metres wide horizontal road, that is, the Netaji Subhash Marg, Gurgaon and this road shall be constructed by HUDA (respondents No.1 and 2); besides, the judgment and order passed in RSA No.4579 of 2009, titled 'M/s Pioneer Profin Ltd. v. Residency Greens Residents Welfare Association', shall not come in the way. There shall be no order as to costs.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

24.08.2016
Ramesh

<u>Note:</u>	1.	Whether speaking/reasoned	:	Yes
	2.	Whether reportable	:	Yes