

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

201

**CWP-13455-2021 (O&M)
Date of decision: 14.12.2021**

M/S COUNTRY COLONISERS PVT. LTD.

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. Tejeshwar Singh, Advocate for the petitioner.
Mr. Suveer Sheokand, Addl. AG, Punjab.
Mr. Vipul Joshi, Advocate for respondent No.2.
Mr. J.S. Khara, Advocate for respondent No.3.
Mr. Sanjeev Sharma, Advocate for respondents No. 4 to 6.

VINOD S. BHARDWAJ, J.(Oral)

CM-15060-CWP-2021 & CM-18005-CWP-2021

The application CM-15060 of 2021 has been filed for directing the petitioner-company to place on record copies of the Income Tax returns/balance sheets of the petitioner-company.

The application CM-18005 of 2021 has been moved on behalf of the petitioner for placing on record Annexures P-12 to P-17 which includes the balance sheet dated 14.09.2021 of the petitioner-company as on 31.03.2021. The application bearing No. CM-18005 of 2021 is allowed and the documents P-12 to 17 are taken on record.

In view of the additional documents having been placed on record by the petitioner, learned counsel for the respondent does not press

the application. No further directions are required to be issued in CM-15060 of 2021 and the same is dismissed as not pressed.

Main case

The writ petition had been filed on behalf of the petitioner-company raising various challenges and making diverse prayers. However, during the course of preliminary hearing on 26.07.2021, the following order was passed:

“This case has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Counsel at the very outset confines the scope of the instant writ petition only with regard to reducing the condition of pre-deposit as per mandate under Section 43 (5) of the Real Estate Regulatory Authority Act so as to prefer an appeal against the order dated 15.04.2021 (Annexure P-9) passed by the Adjudicating Officer, RERA, Punjab.

Counsel submits that in the facts and circumstances of the present case, the petitioner-Company would be obligated to deposit an amount of `2,25,000,00/- approximately to comply with the pre-condition deposit and such condition is rather onerous.

In support of such limited relief that has been sought, counsel has placed reliance upon a Division Bench judgment rendered by this Court in CWP-17133-2020 decided on 16.02.2021 titled as Nirmal Singh vs. State of Punjab and others (Annexure P-11).

Issue notice of motion on such limited aspect returnable for 26.08.2021.

Mr. Suveer Sheokand, learned Additional Advocate General, Punjab accepts notice on behalf of respondent No.1 and waives service.

Complete copy of the petition already stands furnished.

Process dasti for effecting service on respondents No.2 to 6.”

2. Upon issuance of notice, the respondents were duly served and written responses were filed. The counsel for the allottees/private respondents objected to the petition and the relief prayed for on various counts. In the written statement filed by private respondents, various objections were raised including an objection that there is no tangible material to demonstrate any hardship as would justify any relaxation of the statutory condition enshrined under Section 43(5) of the RERA Act, 2016. The relevant objection as taken in Para Nos.2, 3, 9 and 10 of the preliminary submission as extracted as under:

“2. That the present Civil Writ Petition seeking directions from this Hon’ble Court to Respondent No.2 to entertain the appeal sought to be filed by petitioner without pre-deposit as mandated under section 43(5) of the RERA Act, 2016 or in the alternative, the said condition of pre-deposit to be reduced is not maintainable and is liable to be dismissed. That the Petitioner is an large company with operations and large land banks having Presence Across Nation. That the petitioner company (part of Wave Group) is having Huge income and Assets in Thousands of Crores and have filed this frivolous Civil Writ Petition wherein they have claimed that they do not have funds to deposit a meager sum of Rs. 2,25,00,000/- approximately. That it is appropriate to mention here that the Petitioner have filed the present Civil Writ Petition in a casual manner and have ignored to file even an calculation sheet so as to show the amount due and to be deposited by them, and only amount has been mentioned without any proper calculation sheet and to explain what amount they have to actually pay to answering respondents.

3. That the present Civil Writ Petition is not maintainable and is liable to be dismissed as the Petitioner has not placed on record any documents and nor has pleaded any facts that could establish that the present civil writ petition has been filed by them due to EXTREME HARDSHIP being faced by them and how the deposit of amount is Onerous. That on a bare perusal of the entire Civil Writ Petition, not even a single instance could be found out wherein the petitioner has pleaded and shown any hardship what to talk of the Extreme Hardship to the petitioner company. That further it is appropriate to mention here that the **Respondents No.4, No.5 and No.6 have paid a sum of Rs. 1,33,93,761/- to the Petitioner since purchase of the unit in year 2013 and thus out of the amount of Rs.2,25,00,000/- mentioned by petitioner (without annexing any document to show that how amount of Rs. 2,25,00,000/- has been claimed by petitioner), a sum of Rs. 1,33,93,761/- has been paid by Respondents no.4, 5 and 6** and further the answering respondents are being burdened with payment of Installments to the HDFC Bank/Financial Institution from which they have availed home loan of Rs. 97,00,000/-. That even after order of refund has been passed by the Hon'ble Adjudicating Officer, the Petitioner is harassing the answering respondents by filing frivolous litigation and prolonging the matter. That the petitioner has already delayed the proceedings before RERA and the matter which was filed in year 2019 has been delayed by petitioner and order could be passed only in year 2021.

9. That it is respectfully prayed that the Petitioner be directed to place on record the balance sheet/income tax returns filed by it in last three years and also to place on record the sales made by it in last three years and money collected from sales in last three years. That, it is not out of place to mention here that the petitioner company has increased the prices of all of its apartments/plots/floors in last few years and

have collected huge amounts. That even a bare perusal of partial Occupation certificate annexed by Petitioner (annexure P-1 and P-2) would show that it had sold 174+204 apartments ie Total 378 apartments in 8 of its towers and prices of these apartments vary from 40 lakhs to Two crores of rupees and thus the petitioners have collected huge amount, in crores, by way of sales of units and in addition to that the petitioner company has sold plots, villas, Independent Floors and many commercial shops, show rooms, Hospital sites, school sites etc at their projects also. That after collecting hundreds of crores of rupees, the Petitioner company could not be allowed the concession of waiver of deposit of amount for filing of filling before appellate tribunal, as it has failed to show how the deposit of amount would be onerous or cause extreme hardship to it and thus the present Civil writ Petition deserves to be dismissed, after calling for records of sales and amount collected in last three years by petitioner company.

10. That a perusal of order dated 26.07.2021, passed in the present Civil Writ Petition, reveals that the petitioner has confined the scope of present petition with regard to reducing the condition of pre-deposit as per mandate under Section 43(5) of the Real Estate Regulatory Authority Act, so as to prefer an appeal against the order dated 15.04.2021, so the answering respondents are also limiting their arguments/averments qua the waiver of pre condition of deposit and as to how such conditions are onerous as claimed in the present writ petition, without advertng much about the facts and other points involved in the matter. That the relief of waiver cannot be granted to the petitioner as this would result in encouraging the unscrupulous builders to further harass the allottees, against the mandate of Act. That the Petitioner company has already delayed the possession inordinately, did not develop the project as promised and are presently harassing the Answering respondents by delaying the legal proceedings and now the

*petitioner is seeking waiver from deposit of amount and this practice would lead to a dangerous trend wherein all builders/developers would be approaching this Hon'ble High Court for waiver of amount without showing anything substantial as to how the deposit of amount is Onerous or is extreme hardship to them. Thus the present civil Writ Petition. deserves to be dismissed and no relief shall be granted to petitioner herein as the present case not an exceptional one involving genuine hardship and only. **That Hon'ble Supreme Court has held in Hardevi Asnani vs State of Rajasthan and others (2011) 14 SCC 160 has held that High Court can entertain a petition permitting by passing of the remedy of appeal requiring pre-deposit only after examining and satisfying itself that the demand is exorbitant, so as to call for interference under Article 226 of constitution.** That the present Civil Writ Petition does not come within definition of exorbitant demand or exceptional one involving genuine hardship and nothing has been placed on record by the petitioner as to be examined by this Hon'ble Court as to involving genuine hardship or extreme hardship to Petitioner and merely by relying upon CWP 17133 of 2020 no relief can be granted to petitioner and the petitioner company has to stand on its own legs and make out its own case, which it has failed to do and the present CWP deserves to be dismissed."*

3. The learned Counsel appearing on behalf of the petitioner was confronted with the aforesaid preliminary objection taken in the written statement by the private respondents during the resumed hearing on 23.11.2021 and the following order was passed:

"Counsel for the petitioner seeks a short accommodation to complete instructions and respond to the categoric averments made in para 9 of the written statement filed and placed on behalf of respondents No.4 to 6.

List in the week commencing from 29.11.2021 but on a day when physical hearings are slated before this Court.”

4. It was in the said background that the Civil Miscellaneous Application bearing No. CM-18005 of 2021 had been filed.

5. Advancing arguments, learned Counsel appearing for the petitioner has referred to the balance-sheet of the company for the year ending 31.03.2021 to contend that the revenue receipts from operations during the said financial year has been only Rs. 17,285.94 lakhs and the expenses towards cost of construction/development are to the tune of Rs. 15,253.56 lakhs.

6. It was also argued that various other expenses are required to be incurred by the petitioner-company for carrying out its operations resulting in the total profit after tax at a meager Rs. 144.91 lakhs. It has been submitted that the profit in question has fallen down steeply compared to the year ending 31.03.2020 when the profit after tax was Rs. 271.01 lakhs. An argument was thus made that as the revenue receipts from operations of the company has met a severe short fall and that the profit after tax is lower than the pre-deposit required to be made by the petitioner-company, hence, the petitioner-company is not in a position to make good the said pre- deposit. The said condition of pre-deposit becomes onerous in light of the precarious financial health of the company.

7. Learned Counsel for the petitioner was confronted with the contents of the balance sheet showing the status of assets and liabilities. The total assets of the company have been placed at Rs. 81,305.73 lakhs. The total equities and liabilities are shown at Rs. 55,970.66 lakhs. Learned Counsel appearing on behalf of the petitioner was confronted with the assets

position of the company and specifically asked as to why the assets and liabilities of the company could not be taken into consideration for determining as to whether the company is in financial distress or not. The same has not been responded to satisfactorily and only by way of fall in the revenue receipts.

8. The respondents have on the other hand opposed the petition being an abuse of the process of law. It has been vehemently argued that the petitioner-Company is a group Company of 'Wave Group' and that it is not in dearth of funds. Rather, Company has a huge inventory and has heavily invested in landed property. All such assets need to be taken note of in order to determine the financial health of the Company and to conclude whether pre-deposit is onerous or not.

9. We have heard learned counsel appearing for the parties and have gone through the pleadings with their assistance. Upon consideration of the rival submission advanced by the parties, we do not find ourselves to be in agreement with the petitioner and find no sufficient reason to waive/exempt the petitioner from making a pre-deposit. We are also of the view that the petitioner has failed to establish that the pre-deposit is onerous for the petitioner.

10. A plain meaning of 'Onerous' is a task or responsibility involving a great deal of effort, trouble or difficulty, Black's Law Dictionary; (9th edition) define 'Onerous' to means as:-

"1. Excessively burdensome or troublesome; causing hardship.

2. Having or involving obligations that outweigh the advantages.

11. The obligation thus is cast upon the petitioner to establish that the discharge of statutory obligation would be 'Onerous' and that the writ Court must come to the rescue of the petitioner out of statutory mandate and intent.

12. We have considered the balance sheet filed by the petitioner. In order to determine the financial health of a company, the following are amongst some of factors to be taken into consideration:-

- i) Sufficient Inventory (stock and material/final product)
- ii) Account recoverables
- iii) Net income
- iv) Working Capital
- v) Sales activity
- vi) Fixed assets
- vii) Current liabilities

All the above factors are *inter alia* amongst the aspects that would indicate the financial health of a company. Any singular factor can not be read in isolation to record any finding about the financial condition of a Company. A perusal of the balance sheet reflects that the Company has a satisfactory financial health and has not eroded its net-worth. Balance sheet also shows that the financial assets of the company show cash and cash equivalent at Rs. 714.96 lakhs. The note No.13 to the audit report reads that the said amount is in the nature of monies available in the current accounts and towards the cash in hand. The company has shown trade receivable at Rs. 6.99 lakhs. It has a further amount of Rs. 137.61 Lakhs in deposits with maturity of more than 12 months. An amount of Rs. 510.62 lakhs has been shown as loan to related parties and employees. The company further shows Service Tax receivables to the tune of Rs. 242.50 lakhs and GST receivables at Rs. 358.95 lakhs. A mere look at the aforesaid cash and current assets

shows that the financial health of the company is sturdy. A mere decline in revenue receipts in the current financial year on account of reduced operations or a dipping market scenario cannot be construed as a circumstance that would render the condition of pre-deposit onerous. Besides, the other income component during the financial year ending on 31.03.2021 has shown a substantial increase. The same includes a substantive increase in the interest income on fixed deposit which has been increased from Rs. 33.11 lakhs in the year ending on 31.03.2021 to Rs. 70.81 lakhs in the year ending on 31.03.2021. Similarly, the Income Tax refund has increased from 0.44 lakhs in the year ending 2020 to Rs. 16.29 lakhs in the year ending 31.03.2021.

13. The attempt made by the petitioners to plead obligation of pre-deposit to be onerous on the strength of the Balance sheet is thus not established. A mere inconvenience or some hardship in diverting funds cannot be construed as a circumstance which is onerous to justify waiver/relaxation of a statutory mandate.

14. While seeking exemption from compliance of statutory mandate, the party must make out an exceptional case to justify an exemption from compliance of the statutory mandate. No such circumstance has been *prima facie* brought on record and the pleading falls short of demonstrating any difficulty in making a pre-deposit, leave apart the same being onerous for the petitioners. The documents relied upon by the petitioner fail to dispel the ability of the petitioner-company to make the pre-deposit.

15. Needless to mention that the Supreme Court has upheld the condition of mandatory Pre-deposit under Section 43(5) of the RERA Act,

2005 and has held that imposition of such condition is neither harsh nor onerous. The relevant extract of the judgment of the Hon'ble Supreme Court rendered in the matter of M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P and others etc. decided in Civil Appeal Nos. 6745-6749 of 2021 decided on 11.11.2021, the relevant extract of the said judgment is as under:

“Question No.4:- Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?”

122. It may straightway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to the paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.

123. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of authority/adjudicating officer cannot remain dependent on fulfillment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

124. Learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30 per cent of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the authority/adjudicating officer. The right of appreciation of his defence at appellate stage which is made available to him under the statute became nugatory because of the onerous mandatory requirement of pre-deposit in entertaining the appeal only on the promoter who intends to prefer under Section 43(5) of the Act which according to him is in the given facts and circumstances of this case is unconstitutional and violative of Article 14 of the Constitution of India.

125. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have been imposed on the promoters i.e. registration, duties of promoters, obligation of promoters, adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the Act, 2016. This classification between consumers and promoters is based upon the intelligible differentia between the rights, duties and obligation cast upon the allottees/home buyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers vis-a-viz, the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act.

126. Therefore, the question of discrimination in the first place does not arise which has been alleged as they fall under distinct and different categories/classes.

127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him.

128. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or his defence has not been properly appreciated at the first stage, would prefer an appeal for re-appraisal of the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage.

135. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfillment of pre-condition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation case upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Article 14 or 19 (1)(g) of the Constitution of India.

16. It is thus for the Court to ensure compliance of the statutory provisions unless the petitioner sets up an exceptional case/circumstances necessitating an intervention by the Court in exercise of writ jurisdiction, which the petitioner has failed to establish.

17. The counsel for the petitioner has also sought to argue that there may be several orders against the Company and that such a contingency has

not been adverted to in the statute. Collectively taken, the requirement of such pre-deposit may thus be very harsh.

18. The said argument does not impress upon us. Firstly, the petitioner has not raised any challenge to *vires* of Section 43 (5) of RERA Act, 2016 and secondly that such a challenge has already been rejected by the Supreme Court. Besides, the power of judicial review in matters of statute have been adjudicated in numerous precedents.

19. The Supreme Court had summed up the principles of interpretation of statutes in the judgment of **State of Jharkhand Vs. Govind Singh**, Civil Appeal Nos.1405 of 2004 decided on 03.12.2004. The principles as summed up by the Supreme Court for interpretation of statutes are as under:-

1) Courts cannot aid the Legislature's defective phrasing of an Act- Court cannot add, or mend and, by construction make up deficiencies which are left there.

2) Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provisions.

3) Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour.

4) A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity.

5) Court cannot reframe the legislation as it has no power to legislate.

6) *“Statutes should be construed not as theorems of Euclid”, Judge Learned Hand said, “but words must be construed with some imagination of the purposes which lie behind them”*

7) *While interpreting a provision the Court only interprets the law and cannot legislate it – If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.*

8) *Two principles of constructions – One relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled – Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statutes itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute of section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.'*

20. It would also be essential to refer to the judgment of Supreme Court in the matter of **State of Kerala And Another Vs. P.V. Neelakandan Nair And Others**, Civil Appeal Nos.3603-3605 of 2005 decided on 11.07.2005. The relevant observations of the Supreme Court as regards statutory interprets are extracted as under:-

'7. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

8. *Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr., AIR (1998) SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, (1846) 6 Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr., JT (1998) 2 SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd., (1978) 1 All ER 948 HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act or Parliament unless clear reason for it is to be found within the four corners of the Act itself. Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans, (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors., AIR (1962) SC 847).*

9. *The question is not what may be supposed and has been intended but what has been said, "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See*

Lenigh Valley Coal Co. v. Yensavage, 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama, AIR (1990) SC 981)

10. In D.R. Venkatachalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc., AIR (1977) SC 842, it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

11. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain, [2000] 5 SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process.

13. It is then true that, `` when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." ``But," on the other hand, `` it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton, (1858) XI Moore, P.C. 347). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature,

or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute-Casus omissus et oblivioni datus dispositioni communis juris relinquitur; ``a casus omissus," observed Buller, J. in Jones v. Smart, 1 T.R. 52, ``can in no case be supplied by a court of law, for that would be to make laws."

14. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: ``The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson, (1857) 6 H.L. Cas. 61). The latter part of this ``golden rule" must, however, be applied with much caution. ``if," remarked Jervis, C.J., ``the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale, 11, C.B. 378).'

21. In view of the above judicial pronouncements and the affirmation of Section 43 (5) by the Supreme Court in the matter of M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P and others (supra), we would first prefer the plain reading of the statute and the

requirement prescribed by it. The plain reading mandates a pre-deposit for preferring an appeal. A petitioner seeking indulgence of Writ Court to seek exemption from statutory mandate must establish strong reasons to establish denial of its statutory remedy of appeal and demonstrate to the satisfaction of Court, its inability to arrange for pre-deposit despite all reasonable efforts. Acceptance of such an argument that cumulative impact of all orders directing refund/interest or compensation shall be onerous is rather likely to give rise to developer being prompted to commit multiple defaults and then to plead commuted hardship. Such an interpretation if accepted, is likely to run contrary to the intent behind Section 43(5) of RERA Act, 2016 which is aimed to protect interest of the allottees. We have no reason to assume that the legislature has committed an oversight or was not aware of the same. The legislature has consciously provided for a mandatory pre-deposit without exceptions in order to ensure due completion of projects to avoid undue appeals. The parting argument of the petitioner thus lacks merit and its acceptance is more likely to perpetuate a mischief than remedy a wrong.

22. We are thus of the view that the petitioner has not been able to demonstrate existence of any extreme hardship to conclude that the condition of pre-deposit for the petitioner is onerous and deprives the petitioner to its statutory remedy of appeal. The contentions of the petitioner are thus devoid of merit and writ petition deserve to be dismissed.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

14.12.2021

Vishal Sharma

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