

CWP-18559-2016(O&M)
Judgment Reserved on: 30.09.2021
Judgment Pronounced on: 23.11.2021

Union Territory of Chandigarh and Ors. Respondents

Mr. Chetan Mittal, Sr. Advocate (Amicus Curiae) with
Mr. Kunal Mulwani, Advocate.

TEJINDER SINGH DHINDSA, J.

Petitioner is the Residents Welfare Association, Sector 10, Chandigarh.

Instant petition has been filed in public interest seeking issuance of directions to restrain the official respondents/Chandigarh Administration from permitting residential plots in the Union Territory of Chandigarh to be constructed or utilised as apartments. It has been asserted that such activity is not permitted and rather expressly barred under the existing rules, regulations and by-laws of the UT Administration. In the year 2001, Chandigarh Administration notified rules called the Chandigarh Apartment Rules, 2001 (hereinafter 'the Apartment Rules') whereby even 'single residential units' could be sub divided into apartments. There was a huge outcry against the provision for having apartments on the grounds that such activity would completely alter and finish the character of the city and the existing infrastructure in terms of sewerage, water, electricity, parking, traffic etc. was wholly insufficient to take on the extra load. Under such situation the Apartment Rules were repealed vide Notification dated 01.10.2007. In spite thereof a large number of 'single residential units' are being surreptitiously converted into apartments. The residential plots being self contained units cannot be further sub divided into separate units and neither sale of independent units even floor-wise is permissible. A modus is stated to be rampant in the City whereby a builder/developer purchases the entire 'residential unit' and thereafter seeks three individual people/families, inducing them to buy apartments in such composite residential unit viz. Apartment No.1 which normally comprises of the ground floor along with basement, apartment No.2 which is the first floor and apartment No.3 which

is the second floor along with roof rights/barsati. To put such modus in operation, 50% share of the residential unit is got registered in the name of the person choosing to pick up apartment No.1, 30% share in lieu of apartment No.2 and 20% share in lieu of apartment No.3. Thereafter these three separate investors/buyers are made to enter into an internal Memorandum Of Understanding regulating the manner in which the separate floors constructed on one single residential unit are to be utilised.

Mr.Puneet Bali, Senior Advocate has advanced submissions on behalf of the petitioner-association and at the very outset has clarified that he is confining the scope of the petition only to residential buildings. He has briefly touched upon the historic perspective. It is submitted that in March, 1948 the then Government of Punjab in consultation with the Government of India approved the site for the new Capital in the State i.e. Chandigarh. The town was initially planned as an Administrative Town for a population of 5 lakhs and built in two phases. Sectors 1 to 30 formed the first phase and sectors 31 to 47 constituted the second phase of its development. The City was planned on the principles underlying four major city functions i.e. Living, Working, Care of Body and Spirit and Circulation. The renowned French Architect Le Corbusier conceived the Master Plan of Chandigarh. The first phase seen as the City's 'Historic Core' was designed for a population of 1.5 lakhs in low rise plotted development, phase II from Sectors 31 to 47 was for the remaining targeted population of 3.5 lakhs with an increase in the ratio of smaller plots/lesser open areas/nearly four times increase in density. With the coming up of Mohali, a new town on the South of Chandigarh, the gap between Phase II and Mohali was planned as Phase III of Chandigarh in order to integrate and promote planned development

and to continue the sectoral grid and for the development of the land falling between Phase II and Mohali. Phase III comprises of Group Housing Schemes and four storeyed flats built by the Chandigarh Housing Board and Cooperative House Building Societies instead of plots and resulting in higher densities.

The Capital of Punjab (Development and Regulation) Act, 1952 (for short 'the 1952 Act') was enacted to regulate the sale of building sites and to promulgate building rules on the lines of Municipal By-laws. Section 2 (c) defined a 'building' to mean any construction or part of a construction which is transferred by the Central Government under Section 3 of the Act and which is intended to be used for residential, commercial, industrial or other purposes. Section 2 (j) defined the term 'site' to mean any land which is transferred by the Central Government under Section 3. Section 3 vested with the Central Government power in respect of transfer of land and building in Chandigarh. The power vested was to sell, lease or otherwise transfer either by auction, allotment or otherwise any land or building belonging to the Government in Chandigarh on such terms and conditions to be laid down by rules to be made under the Act. Section 4 vested with the Central Government or the Chief Administrator the power to issue directions in respect of erection of buildings for the purpose of proper planning or development of Chandigarh. The power to issue directions under Section 4 could be exercised even in respect of the number of residential buildings which may be erected on any site in any locality and the restrictions regarding use of site for purposes other than erection of buildings. Section 5 contained the bar as regards any person erecting or occupying any building in Chandigarh in contravention of any building

rules made under sub section 2 of Section 5. Section 22 of the 1952 Act vested with the Central Government the power to make rules to carry out the purposes of the Act and including the matters with regard to terms and conditions under which transfer of any right in any site or building may be permitted as also the conditions with regard to the buildings to be erected or sites transferred under the Act.

The Chandigarh (Sale of Sites and Buildings) Rules, 1960 (hereinafter '1960 Rules') were notified on 08.03.1960 in exercise of the powers conferred by Section 2 of the 1952 Act. Rule 14 of the 1960 Rules dealt with fragmentation and laid down that no fragmentation or amalgamation of any site or building shall be permitted. The 1960 Rules were repealed by the Chandigarh Estate Rules, 2007 (hereinafter 'the Estate Rules') notified on 07.11.2007. The bar with regard to fragmentation, however, was carried over by virtue of Rule 16 of the Estate Rules.

Senior counsel has then adverted to the Chandigarh Building Rules (Urban) 2017 (hereinafter 'Building Rules, 2017') which were notified on 25.07.2017 in exercise of the powers conferred under Section 5 (2) and Section 22 (1) of the 1952 Act. Rule 2 of the Building Rules 2017 laid down the scope and applicability of such rules. Clause (i) thereof laid down that erection or re-erection of every building in Chandigarh shall comply with these rules. Clause (vi) clarified that wherever the rules are silent or ambiguous the provisions of the National Building Code/Model Building Bye-laws-2017 and the Chandigarh Master Plan-2031 ('CMP-2031' for short) shall prevail. Rule 3 (15) defined 'building' to mean any construction or part of a construction in Chandigarh which is transferred by the Central Government under Section 3 of the 1952 Act and which is intended to be

used for residential, commercial, industrial or other purposes. Rule 3 (22) defined class of building. Under Rule 3 (22) (a) 'residential building' has been defined to mean a building used or constructed or adapted to be used wholly or principally for human habitation. Rule 3 (45) defines 'Group Housing' to mean a building designed and developed in the form of flats for residential purposes or any building ancillary to group housing. Rule 3 (97) defined 'Zoning Plan' to mean the numbered plan signed by the Chief Administrator defining the lay out of any numbered sector/pocket of the Master Plan of Chandigarh reflecting the streets, boundaries of building plots, open spaces, position of protected trees or other features etc. Rule 4 of the Building Rules 2017 governs 'residential use' Rule 4.1 pertains to Residential (Plotted) and parameter number 6 thereunder stipulates the number of storeys to be three (3). Rule 4.2 lays down the parameters for Residential (Group Housing). Under parameter 35 of Rule 4.2 it is stated that amalgamation/fragmentation is not allowed. Senior counsel would, however, inform the Court that vide notification dated 20.06.2020 amalgamation has since been permitted. Fragmentation continues to be prohibited.

On the strength of the provisions referred to and noticed herein above it is contended that fragmentation is not only limited to any particular site, rather the statute completely bars fragmentation of individual buildings as well. It is argued that by virtue of sale of shares to different persons outside the family and thereby making them co-owners of a single residential building, the same tantamounts to division/fragmentation of the site/building and which is barred under the statute.

Another limb of the argument raised by learned senior counsel

is that the State has exclusive authority provided under the Constitution of India to make laws related to the land (including rights in or over land) as well as land improvements and colonisations. Item 18 of List III (State List) of Schedule VII of the Constitution of India grants such an authority to the State Legislature. Therefore, all urban development laws, municipal laws, bye-laws etc. providing for the development of land (including any restrictions thereto) fall within the power of the State Legislature. Further asserted that the provisions contained in the Transfer of Property Act would fall under Item VI of List III (Concurrent List) of Schedule VII of the Constitution and which would be limited only to provide for the modes of transfer of property whether moveable or immovable, by the act of parties. It is submitted that the Transfer of Property Act was enacted for a specific and a definite purpose viz. to provide law relating to transfer of property by the act of parties. It provides a procedure as to how a property is to be transferred and does not give the power to a transferee to act in any manner with the property which may violate municipal law in force in the area. Learned senior counsel vehemently contends that it is the settled principle of law that specific legislation would supersede general law. Transfer of Property Act is the general law of the land governing as to how the property is to be transferred but the same would not be applicable wherein there is a specific legislation holding the field. It is contended that the 1952 Act, 1960 Rules, the Estate Rules as also the Building Rules 2017 would be in the nature of the specific legislation for development as also restrictions for buildings within UT, Chandigarh and since under the specific legislation a particular activity i.e. fragmentation stands barred, the general law relating to sale and purchase of property cannot override the restrictions and

controls imposed by the specific legislation. In support of such contention reliance has been placed upon judgment of the Apex Court in ***Bharat Petroleum vs. P. Kesavan (2004) 9 SCC 772***. Learned senior counsel has gone a step further to argue that even though under the special law there is no specific bar on sale of share in a site/building, but since fragmentation is not permitted as such the bar on sale of share will have to be read into the statutory provision prohibiting fragmentation itself.

Mr.Bali has then adverted to the Apartment Rules at length. It is submitted that under Rule 2 (a) 'Apartment' was defined to mean each sub- division of a building duly recognised by the Estate Officer along with the proportionate share in common areas and common facilities. Rule 3 dealt with 'Sub-division of Building' and laid down that each sub-division of a building shall be recognised as a distinct, identifiable property to which the owner/lessee shall have title along with proportionate rights in the declared common areas and common facilities. Under sub clause (2) the recognition of each sub-division as an apartment by the Estate Officer shall be accorded by way of a fresh letter of allotment or a fresh conveyance deed. Under Rule 4 (1) any residential building situated on a plot size of less than 1400 square yards may be sub-divided into separate dwelling units with not more than one dwelling unit on each floor of the building. Under sub clause (4) a residential building on a plot of 1400 square yards or more may be sub-divided into two dwelling units on each floor provided the building regulations so permit. It is submitted that the 'Apartment Rules' were repealed vide notification dated 01.10.2007. In spite thereof the sale of shares on a percentage basis of a composite single residential building and thereafter occupation of separate floors commensurate to the share holding

carries on unabated in the City. Precise argument raised is that what could not have been done directly upon repeal of the Apartment Rules is now being done in an indirect fashion. It is vehemently contended that such activity cannot be permitted to continue as it would clearly amount to an evasion of the statute. In this regard reliance has been placed upon ***Jagir Singh vs. Ranbir Singh (1979) 1 SCC 560*** and ***District Collector Chittoor and others vs. Chittoor District Groundnut Traders Association and others , (1989)2 SCC 58.***

Mr. M.L.Sarin, Senior Advocate for respondents No.5 to 7 and Mr.Sunil Chadha, Senior Advocate for intervenors No. 12, 13, 14 and 15 have supported the cause of the petitioner-association. Apart from reiterating the submissions advanced by Mr. Puneet Bali, Senior Advocate a pointed reference is made to the CMP-2031. In such regard it is submitted that initially the Chandigarh Draft Master Plan was issued on 11.07.2013 for inviting objections/suggestions within a period of 30 days. Such period was thereafter extended. A Board of Enquiry/Hearing was constituted to look into the objections/suggestions received. Categorical submission made is that one issue was as regards the proposal of reintroduction of the Apartment Rules in Chandigarh. The objections were heard at length and ultimately the Board resolved as follows:-

“ The Board, therefore, recommends that all references in the Draft Master Plan in respect of reintroduction of Apartment Rules should be deleted and re-densification of any Government residential/institutional pocket in Phase-I sectors should only be done with the prior approval of the Chandigarh Heritage Conservation Committee.”

Thereafter vide notification dated 23.04.2015 the

Administrator, UT, Chandigarh in exercise of the powers conferred by

Section 4 (1) (f) of the 1952 Act and Sections 3, 4, 5 and 11 of The Punjab New Capital (Periphery) Control Act, 1952 and all other powers enabling him in this behalf under Article 239 of the Constitution of India and under the General Clauses Act, 1857 notified the CMP-2031. It is argued that the CMP-2031 has statutory force and for all intents and purposes is the law in force and since it categorically excludes construction of apartments in Chandigarh, the same ought to be meticulously enforced. Mr.Sarin, Senior counsel submits that inspite of such clear embargo as regards a single residential unit being fragmented and apartments being built the developers are having a field day and the Chandigarh Administration is turning a blind eye to such activity. It is asserted that under such circumstances the Court ought not to be a silent spectator and as such positive intervention is the need of the hour failing which the City would disintegrate. Reliance has been placed upon the judgment of the Apex Court in ***Friends Colony Development Committee vs. State of Orissa and others (2004) 8 SCC 733.***

Mr.Sunil Chadha, Senior counsel has even adverted to the Suvidha Hand Book issued by the Chandigarh Administration which contains a compilation of the statutory orders/notifications from time to time, regarding the construction and usage of different category of buildings in Chandigarh on the sites sold by the Estate Office, Municipal Corporation and the Chandigarh Housing Board. Such Hand Book is to facilitate the people of Chandigarh to understand the procedures pertaining to construction and usage of buildings and the various relaxations given by the Chandigarh Administration in a systematic and simplified form. Reference has been made to the format of an Undertaking of the Owner contained in the Suvidha Hand Book and to be submitted at the time of applying for

occupation certificate (appended as Annexure P-6 along with the writ petition). Clause 6 of such format of the Undertaking is coined in the following terms:-

“ I/we do hereby certify that building will be used for residential purposes as per allotment letter and its use will not be changed or converted into Apartments without obtaining written permission from the competent authority.”

It is asserted that inspite of such undertaking having been furnished at the instance of the UT Administration the activity of converting single residential units/buildings into apartments particularly in Phase-I of the City continues without any check.

Mr.Sunil Chadha, learned Senior counsel submits that even though there may not be any statutory bar as regards sale of share by a co-owner of a residential building but seeks issuance of appropriate directions so as to refrain the owners of such residential/dwelling units from selling their share(s) in such a manner that the same leads to fragmentation/division. Two suggestions in such regard have been advanced (i) in any document of transfer of one's share be it through a gift deed, will, relinquishment deed, sale deed etc. a clause be inserted that the vendee would not convert his purchased share into a separate apartment and in the event of he/she doing so the sale deed be treated as null and void; (ii) at the time of sanction of the building plan of any residential building, the Estate Officer, UT Chandigarh to insert a stipulation that in case any part of the plan so sanctioned is converted into apartments then in that eventuality also the building would stand resumed and the property would be escheated to the Chandigarh Administration.

Mr. Anil Mehta, Additional Standing Counsel, UT, Chandigarh has assisted us in the matter on behalf of the Chandigarh Administration. He submits that 'fragmentation' of a site or building is not permitted as per Rule 16 of the Estate Rules. Construction of more than one floor on a site is permitted under the Building Rules, 2017 and does not amount to fragmentation. Further more, there is no prohibition of the occupation of a residential building by more than one family subject, of course, to the rider that the building must be constructed in accordance with the building bye-laws. Further asserted that the Administration approves a building plan for the entire building and not for an individual floor. It is claimed that the Estate Office of the Administration conducts periodic checks on residential houses to check and report regarding additions, alterations and then proceeds against such persons in accordance with law. As far as sale of shares is concerned counsel submits that once the entire sale consideration has been paid, the Chandigarh Administration does not have any interest or title in the site or building qua a freehold property. The Administration does not have any continued control in respect of transfer of rights by the transferee of the Administration. Such transfer is governed by the provisions of the Indian Contract Act, 1872, the Transfer of Property Act, 1882 and to be registered under the Registration Act, 1908 on payment of requisite stamp duty as contemplated under the Indian Stamp Act. Counsel for UT painstakingly took us through the scheme of the 1952 Act, 1960 Rules, Estate Rules and Building Rules, 2017, to contend that there is no bar on alienation/transfer of a share in a property by a true owner. The same is stated to be permissible as per provisions of the enactments and recognised principles of Civil Law. An owner of a freehold residential house is

permitted to sell his share or a part of the share in the said house. However, no floor-wise sale of property is permissible under the provisions of the 1952 Act. Further stand taken is that the Chandigarh Administration does not permit a residential house to be converted into an apartment on account of the fact that the Apartment Rules now stand repealed. Counsel has adverted to the contents of an affidavit dated 20.07.2021 of the Assistant Estate Officer, Chandigarh and duly placed on record to submit that no sale of defined portion/part of building is permissible, nor any such sale has been recognised by the Chandigarh Administration except those registered during the years 2001 to 2007 when the Apartment Rules were in vogue. It has further been deposed that the Chandigarh Administration would take steps to issue an advertisement in the local newspapers to warn the general public against unverified advertisements with regard to sale of immovable property and request them to conduct proper due diligence.

Adverting to the Chandigarh Master Plan-2031 counsel submits that the same was prepared, approved and notified to a large extent under the supervision of this Court in a Public Interest Litigation bearing *CWP No. 4252 of 2008* titled as *Gurbax Singh Shergill vs. Union of India and others*. The CMP-2031 is stated to be an attempt to provide a comprehensive holistic vision document prepared after including an exhaustive stocktaking of the ground realities and emerging future growth and development process. The Master Plan area is spread across the entire 114 Square Kilometers of the area of the Union Territory of Chandigarh. Chandigarh is said to have witnessed unprecedented growth in the past decades and has further momentum for growth which has to be channelised systematically in order to enable the City to sustain itself within its

constraints. The 1952 Act along with the Rules made thereunder including the Estate Rules continue to ensure that all buildings constructed in Chandigarh conform to the highest and most stringent architectural controls and standards. Counsel further claims that Chandigarh Administration maintains strict vigil with regard to constructions that are taking place in the City. Proper processes/checklists have been enumerated in the Suvidha Hand Book published by the Administration. All construction activities that take place are required to be done only after sanction of building plan or revised building plan as the case may be. Learned counsel for UT, Chandigarh prays for the writ petition to be dismissed on the ground that there has been no deviation from the provisions of the 1952 Act, Rules made thereunder as also the CMP-2031.

Respondents No.8, 9, 10, 16 and 17 have contested the instant petition and submissions on their behalf have been advanced by Mr. Amit Jhanji, Senior Advocate, Mr. Salil Dev Singh Bali, Advocate, Mr. Aashish Aggarwal, Senior Advocate, Mr. Anand Chhibber, Senior Advocate and Mr. Gaurav Chopra, Senior Advocate, respectively. We may also take note that vide order dated 17.05.2017, Mr. Chetan Mittal, Senior Advocate was appointed as amicus Curiae and he had gracefully accepted to assist the Court. On 22.07.2021 learned amicus filed a synopsis alongwith the issues which as per him arise for consideration in the instant petition. Alongwith the synopsis he even forwarded certain suggestions for consideration of this Court.

Counsel for the respondents noticed hereinabove as also learned Amicus have advanced submissions which are broadly on a common thread.

It is submitted that under the 1952 Act and the rules framed thereunder 'fragmentation' of a site or a building is specifically prohibited. Rule 14 of the 1960 Rules, containing a bar with regard to 'fragmentation' was held to be ultra vires by this Court in ***Chander Prakash Malhotra vs. V.P. Malhotra 1991 (1) PLR 606*** on the ground that partition by metes and bounds affects the public at large who have the right to shelter to live and it was concluded that non-existence of Rule 14 would not hamper the planned development of the town under the changing scenario. It was also observed that since the said rules were framed three decades back, the Chandigarh Administration should have a second look on such rules and make necessary changes. However, the judgment of this Court to the extent of declaring Rule 14 of the 1960 Rules to be ultra vires was reversed by the Hon'ble Supreme Court in SLP No.10739 of 1991 (***Chandigarh Administration Versus Chander Parkash Malhotra***) decided on 24.11.1992. The Rule against 'Fragmentation' as such still holds good even after the repeal of the 1960 Rules by virtue of the bar having been carried forward under Rules 16 of the Estate Rules 2007. It has been submitted that 'Fragmentation' will only take place where there is a division of the plot or division of the building with an element of exclusive ownership i.e. partition by metes and bounds. Sale of share (s) by an owner or a co-owner of a residential building does not amount to 'fragmentation' as the same would only result in co-ownership. Section 7 of the Transfer of the Property Act is referred to and it is asserted that such provision gives absolute power to an owner to transfer whole or part of the property to the 3rd party by virtue of sale of share (s) by a owner or a co-owner. The vendee may come in possession of a floor or a storey or a part of the building but the status would be that of a

co-owner in exclusive possession of part of the joint property but the same would not amount to partitioning. Still further contended that an internal arrangement amongst the co-sharer as regards utilization of the building or of the floors which otherwise have been constructed in accordance with the building byelaws does not amount to partition by metes and bounds or 'fragmentation'. Yet another submission advanced by counsel is that under the 1952 Act as also the Rules framed thereunder a floor is recognized as a separate habitable dwelling unit. The use of each floor of a residential building constructed as per building bye-laws as a separate unit is not prohibited under the rules. The assertion made on behalf of the petitioner-association that a building is to be used as a single dwelling unit is vehemently opposed on the ground that there is no such concept enshrined either under the 1952 Act or the Rules made thereunder.

As regards the CMP-2031, is concerned, the same is stated to have statutory force. It is urged that the CMP-2031 is a comprehensive plan which provides for the increase in holding capacity of the city while preserving its nature, character and heritage. The Chandigarh Master Plan 2031 envisages three independent dwelling units in a residential building and with each floor having potential of being utilised as an independent unit.

Counsel have even adverted to the Apartment Rules at length. It is submitted that a reading of the various provisions contained under the Apartment Rules which otherwise stand repealed would make it clear that sale of a part of building constituting an "Apartment" must necessarily have right of ownership exclusively of that portion and not merely right of user.

The right of user in such cases was limited to common areas and facilities

which is recognized as an undivided interest. Submission advanced is that unless there is a sale of a apartment with right of ownership recognized by the administration, only then the same would amount to apartmentalization and which may be construed as 'fragmentation' of the building under the rules of the Chandigarh Administration.

Learned amicus submits that apart from the legal position that has been put forth qua 'fragmentation'/sale of shares/single dwelling unit and apartmentalization there are areas of concern which would require attention and intervention by this Court.

In the first instance it is urged that even though there is no specific bar on any owner to sell wholly or partly his share in the residential property but a practice of indirect sale of floors at the hands of builders which would tantamount to 'fragmentation' is being carried out. In such respect amicus has supported the contention that had been raised on behalf of the petitioner-association that after repeal of the Apartment Rules what could not have been done directly is being done indirectly. It is submitted that under the garb of percentage sale of share of a residential building, independent floors are being sold on the strength of an internal Memorandum of Understanding even though not recognized by the Chandigarh Administration. Amicus submits that such issue ought to be dealt with by this Court. The second issue of concern raised by the learned Amicus is with regard to a false representation made to the public at large by insertion of misleading advertisements for sale of independent floors in the newspapers and other social-media forum. In such regard amicus has referred to the different laws/forum that can be invoked/approached to control misleading advertisements and to punish those who indulge in such

practices. By way of instance the Advertising Standards Council of India, The Press and Registration of Books Act 1867, Monopolies and Restrictive Trade Practices Act 1969, the Consumer Protection Act 2019 and certain provisions of the Indian Penal Code have been referred to.

Having heard counsel on either side as also learned Amicus Curiae at length and having perused the voluminous pleadings on record we find that the following issues arise for consideration:-

ISSUE NO.1 What is the meaning to be assigned to the term "Fragmentation" under the 1952 Act and the Rules framed thereunder?

ISSUE NO.2 Is sale of share(s) by owner or co-owner of a residential building prohibited under the 1952 Act or Rules made thereunder?

ISSUE NO.3 Does sale of share(s) by owner or co-owner in a residential building amount to 'fragmentation'?

ISSUE NO.4 What is the status of a co-owner by virtue of purchase of share(s) in a residential building?

ISSUE NO.5 Can occupation/possession of a specific portion of the joint property be termed as apartmentalization?

ISSUE NO.6 Whether the residential building constructed on a residential plot in UT Chandigarh meant for single family use and to be treated as a Single Dwelling Unit?

ISSUE NO.1

What is the meaning to be assigned to the term 'fragmentation' under the 1952 Act and the Rules framed thereunder?

Rule 14 of the 1960 Rules laid down that no fragmentation or amalgamation of any site or building is permitted. The 1960 Rules were repealed by the Estate Rules. Rule 16 of the Estate Rules contains the prohibition as regards fragmentation or amalgamation of any site or

building. As per proviso to Rule 16 fragmentation of any site shall be allowed if such fragmentation is permitted under any scheme notified by the Administration. Concededly no such scheme has been notified and the bar against fragmentation of any site/building continues to be in force. Even though 'site' and 'building' have been defined, the term 'fragmentation' has not been defined under the 1952 Act as also the Rules made thereunder. The term 'fragmentation' has been defined under the Concise Oxford English Dictionary, 11th Edition, 2008 as follows:-

“ Fragment: n. small part broken off or detached, an isolated or incomplete part, v. break into fragments.

Derivatives-fragmentation n.

As per P.Ramanatha Aiyar's Law Lexicon, 2nd Edition, 1997:

Fragmentation :- The action or process of breaking into fragments.”

The dictionary meaning of fragmentation in relation to a 'building' or 'site' would suggest a break up thereof and such 'building' or 'site' being not in a state of sole ownership.

This Court in ***Chander Parkash Malhotra v. V.P.Malhotra, 1991 (1) PLR 606*** had set aside Rule 14 of the 1960 Rules which prohibited fragmentation by observing as follows:-“

Provisions of Rule 14 which bans partition of the property by metes and bounds are arbitrary, unreasonable, capricious and contrary to the objects given in the preamble of the Constitution and Directive Principles of State Policy. The provisions of Rule 14 deny to the citizens right to reasonable residence because the property cannot be divided by metes and bounds. So, Rule 14 is clearly violative of Articles 14 and 21 of the Constitution.

There is another aspect of the matter which also deserves consideration. The aims and objects of the Act, as have been referred to above, are intended only to authorise the State Government to make rules on the pattern of Building Bye-laws framed by the various Municipal Committees. In other words, the Act is intended to make provision for planned development of the town. The Act nowhere deals with the right of inheritance or partition. The act is completely silent on this point.”

SLP having been preferred by UT Chandigarh against the order passed by this Court, the Supreme Court in Civil Appeal(s) No. 4974 and 2305 of 1992 set aside the order of this Court in terms of the following:-

“ *Leave granted.*

In the present case, the residents did not want the partitioning of the plot by metes and bounds. All that they wanted was the partitioning of the building and additions and alterations therein to make separate living units in the same building. Even this partition as well as addition was to be done by them with the approval of the Chandigarh Administration according to its Building Bye-laws. Since no fragmentation of any site including building was involved, there was no question of the violation of Rule 14 of the Chandigarh Administration (Sale of Sites and Buildings) Rules, 1960.

In the circumstances it was not necessary to declare Rule 14 invalid as the High Court has done. To that extent we set aside the order of the High Court.”

From a perusal of the orders passed by this Court as also the Supreme Court referred to herein-above, it would be seen that the term 'fragmentation' was taken to mean partitioning of the site/building by metes and bounds.

It would be apposite at this stage to refer to certain relevant parts of CMP-2031.

Serial No. 5 of the CMP-2031 deals with Demography. Serial No.5.7.3 takes cognizance of Population Projections made by Various Agencies. Under Serial No. 5.7.3 it is stated that by taking various populations projections into account it will be realistic to assume that Chandigarh UT will have a population of 13.5-14.5 lakhs by the year 2021 and 15-16 lakhs by the year 2031.

Table 1.10 under Serial No. 5.7.4 of CMP-2031 deals with the Holding Capacity of UT Chandigarh Based On Master Plan Recommendations. It would be useful to reproduce Table 1.10 which is as under:-

<i>Sr No.</i>	<i>Category</i>		<i>Total Units</i>	<i>Existing Population</i>	<i>Maximum No. of Dwelling Units</i>	<i>Holding Capacity</i>
1	Government Plots		24330	-	29925	111116
2	Private Plots		22788	-	22788 x 3=68364	293965
3	Chandigarh Housing Board	Plot	2255	—	2255 x 3=6765	29090
		Unit	30698	--	30698	132001
4	Others		28963	-	28963	124541
5	Rehabilitation Colonies		61525	-	61525	264558
6	Unauthorised colonies to be Rehabilitated		20911	69047		69000
7	Villages		-	84235		117929
8	Manimajra			117046		136943
9	New Residential areas		-			200328
10	Paramilitary					50000
		Total	1529471			

Sr No.	Category	Total Units	Existing Population	Maximum No. of Dwelling Units	Holding Capacity
Note: (i) Average family size for calculating holding capacity has been taken as 4.3 (ii) In case of sectors 6,12,17, 26E, 53 and 54 existing population in 2001 has been included in the holding capacity (iii) Private plots availing additional FAR/DU's					

Serial No.6 of CMP-2031 deals with Housing. Relevant part of Serial No.6 deals with Additional FAR and Group Coverage to Private Housing. Under this parameter it has been stated as follows under the CMP-2031:-

“ The Chandigarh Administration vide notification dated 16.10.2008 has already permitted increased housing coverage and FAR for all sizes of private residential plots and introduced the concept of zoning in place of frame control. Under these regulations, all private plots can build up to three floors with each floor having potential of having an independent unit. There are approximately 23000 private plots of all categories within the sectoral grid of the Chandigarh Master Plan. Assuming that each plot will eventually be built up to three storeys with one unit per floor, the total dwelling units available will be 69000 which can house approximately 3,00,000 population.

Approximately 9175 units built by the Chandigarh Housing Board are single storey. By permitting the owners to build up to three storeys, another 18350 dwelling units can be added.”

It is the common case of the parties that CMP-2031 is statutory in character and the same cannot be deviated from.

In our considered view, the prohibition as regards fragmentation of a site/building under Rule 16 of the Estate Rules and the

provisions under CMP-2031 permitting construction of up to three floors on all private plots with each floor capable of being utilised as an independent unit would have to be reconciled and harmoniously construed. Such an exercise leads us to conclude that fragmentation of a site/building has to entail an element of permanent severance. Mere construction of three floors on a private plot and utilisation of the same as independent units would not amount to fragmentation. Fragmentation will take place only if there is a division of the site or division of the building with an element of exclusive ownership i.e. partition by metes and bounds and which in turn stands prohibited by virtue of Rule 16 of the Estate Rules.

ISSUE NO.2 Is sale of share(s) by owner or co-owner of a residential building prohibited under the 1952 Act or Rules made thereunder?

ISSUE NO.3 Does sale of share(s) by owner or co-owner in a residential building amount to 'fragmentation'?

ISSUE NO.4 What is the status of a co-owner by virtue of purchase of share(s) in a residential building?

Issues No. 2, 3 and 4 are interrelated and are being taken up together.

The 1952 Act was enacted to lay down law in relation to development and regulation of the new Capital of Punjab i.e. Chandigarh. In the statement of objects and reasons it has been recited that it was considered necessary to vest the State Government with legal authority to regulate the sale of building/site and to promulgate building rules on the lines of Municipal Bye-laws so long as a properly constituted local body does not take over the administration of the City. Under Section 3 of the

1952 Act, the Central Government is empowered to sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under the Act. In exercise of such powers the 1960 Rules were framed. Separate rules were framed to regulate construction of the buildings within the City of Chandigarh such as the Punjab Capital (Development and Regulation) Building Rules, 1952. For the same very purpose the Chandigarh Building Rules (Urban), 2017 were also framed. As owner of the land the Chandigarh Administration is competent to sell the same on such statutory terms and conditions as it may prescribe including to determine the use of the buildings and resumption thereof. Section 2 (k) of the 1952 Act, defines 'transferee' to mean a person (including a firm or other body of individuals, whether incorporated or not) to whom site or building is transferred in any manner whatsoever and includes his successors and assigns. Since the term transferee as defined in the 1952 Act includes the successor and assignee, therefore, the transferees from the allottees or the auction purchasers would also fall within the ambit of transferee within the meaning of Section 2 (k) of the Act and as such would be bound by the same terms and conditions as the original allottees or purchasers were bound to comply in line with the statutory rules framed under Sections 3 and 22 of the 1952 Act. As per definition of the term 'transferee' under Section 2 (k) of the 1952 Act the same does not mean an individual person alone but also includes a 'body of individuals'. Therefore, the first allotment of a site or building under the 1952 Act is permissible not only to a 'person' but even to a 'body of individuals' who may not be related to each other. The concept of joint ownership and that too outside the

family fold as such is recognised under the 1952 Act.

The rights and interest of the Administration in such properties are transferred in terms of the statutory rules and the conveyance executed by the Administration in favour of the allottee or the succeeding purchaser. As per sub-section (3) of Section 3 of the 1952 Act, the Central Government continues to hold interest over any site or building, until the entire consideration money together with interest or any other amount, if any, due to the Central Government, is paid. What follows is that once the entire sale consideration has been paid, the Chandigarh Administration does not have any interest or title in the site or building.

The conveyance deed having been executed the right of the Chandigarh Administration is to ensure that the site or building is used for the purpose it is allotted and that it is constructed as per the building rules so as to have disciplined and regulated constructions as also to avoid haphazard unorganised constructions or buildings. The Administration, however, after conveyance deed having been executed and the consideration amount having been paid in full would not have any continued control in respect of transfer of rights by the transferee of the Administration. We find that under the scheme of the 1952 Act and Rules framed thereunder there is no bar on sale of share(s) by the owner or co-owner of a joint property.

Transfer of share(s) as also percentage of share(s) being permissible would be discernible from a number of documents that have been tabulated by the Administration by way of a checklist followed by the relevant proformas and appended as Annexure R-2 (Colly) along with the reply filed on behalf of the Chandigarh Administration. By way of instance a checklist for submission of documents in the case of grant of

permission/NOC for transfer of lease rights by way of sale/gift/family transfer deed/exchange deed has been furnished. Such checklist including the proforma of a liability affidavit to be furnished by the purchaser/transferee would be relevant and is reproduced hereunder:-

“ **LIABILITY AFFIDAVIT(S)**

(To be furnished by the purchaser/transferee)

I/We _____
Son/Wife/Daughter of _____
Resident of _____
 do hereby solemnly affirm and declare as under:-

1. That **I/We have agreed to purchase/agreed to transfer/gift** of _____ % **share of the following property from its owner** namely
 Sh./Smt. _____ S/o,D/o,W/o

R/O _____

File No. _____
Plot No. _____
Sector _____
Built Upto _____

2. That **I/We hereby undertake to pay all sums due to the Estate Office, U.T.Chandigarh** in connection with the above said property and to abide by the provisions of the capital of Punjab Development & Regulation Act, 1952 and rules framed there under. **I/We also abide by the conditions mentioned in the allotment letter as well.**
3. That the property is constructed upto _____ floor and there is no building violation.
4. That **I/We will not make the fragmentation in the site/property.**
5. That I shall not re-number of the built-up area in case of multiples.
6. That **my/our specimen signatures are as under:-**

Place: Chandigarh

Date:

Deponent(s) ”

Likewise there is a separate checklist for submission of documents in the case of transfer of ownership on the basis of registered sale/gift/exchange/family transfer deed. The proforma for application for transfer of ownership/lease rights signed by all the applicants, relevant extract of the proforma of an indemnity bond to be furnished by the purchaser(s) as also the proforma of an indemnity bond to be furnished by the purchaser(s) seeking transfer of ownership would be relevant and are extracted herein below:-

“To

*The Estate Officer,
 U.T.Chandigarh*

*Subject: **Transfer of property bearing No. _____ Sector_**
(_____ % share), Chandigarh on the basis of
Sale/Gift/Transfer Deed.*

Sir/Madam,

The applicant has purchahsed/accepted the tranfer
of property _____ % share bearing H.No./S.C.F./S.C.O./Booth
No. _____, Sector _____, Chandigarh from its owner
namely Sh/Smt. _____ Son/Wife of Sh.
_____ resident of _____
_____ on the basis of Sale/Gift/Tranfer
Deed registered in the office of Sub-Registrar U.T. Chandigarh
_____ at Sr.No. _____ Book No.
_____ Volume No. _____ Page No. _____ Dated

A copy of the same is enclosed herewith. I/We are also enclosing herewith an Indemnity Bond (Duly attested). You are requested to transfer the Ownership/Lease rights in the above said property in my/our name(s).

Thanking You,
Dated _____
Yours faithfully”

“ **INDEMNITY BOND**

This Indemnity Bond is made at _____ on this _____ day of _____ by Sh./Ms. _____ Son/daughter/wife of _____ Resident of _____ hereinafter called as the Executant(s)

Where the **above said executant(s) have purchased/accepted lease/Free hold** Plot No. _____ Sector _____, Chandigarh, measuring _____ sq.yards _____ from Sh. _____ to the extent of _____ % **share** through Sale Deed/Gift Deed/Transfer Deed dated _____ which is duly registered with the Sub-Registrar, U.T.Chandigarh or _____ at Sr. No. _____ Book No. _____ Volume No. _____ Page No. _____ Dated _____ with full Proprietary rights. **The Executant(s) of this Indemnity Bond hereby applying for the transfer of the property.”**

INDEMNITY BOND

This Indemnity Bond is made at _____ on this _____ day of _____ by Sh./Ms. _____ Son/daughter/wife of _____ Resident of _____ hereinafter called as the Executant(s)

Where the **above said executant(s) of this Indemnity Bond has/have applied for transfer of ownership of _____ % share in respect of _____ No. _____ Sector**

_____, **Chandigarh**. File No. _____ on the basis of Sale/Gift/Family Transfer Deed dated _____.

And whereas the Executant(s) shall be personally liable for settling all the Court cases and dues so levied by the Administration for settling the past liabilities.

*And whereas **the Executant(s) shall obtain the statutory completion/occupation certificate, if not obtained earlier by the previous owner and remove the building violation/misuse, if any.*** ”

Similar is the position with regard to proforma provided in a checklist for submission of documents in the case of transfer of property on the basis of court decree/family settlement.

These proformas/applications clearly spell out that transfer of percentage share(s) is being permitted by Chandigarh Administration in relation to site/building. Since the transfer of share(s), is neither specifically barred nor regulated under the 1952 Act and Rules framed thereunder, such transfer would be governed by the principles of Civil Law and under the provisions of Indian Contract Act, 1872 as also Transfer of Property Act, 1882.

We find the submission advanced on behalf of the petitioner-association that the provisions of Transfer of Property Act being general law of the land as not applicable since there being specific legislation i.e. 1952 Act and Rules framed thereunder governing transfer to be without merit. We may reiterate that there is no provision under the 1952 Act or Rules framed thereunder governing transfer of shares in relation to a site or building whether owned singly or under joint ownership and as such it is the general law which would apply. Even the reliance placed upon judgment of the Apex Court in *Bharat Petroleum (supra)* is misplaced. In the case of

Bharat Petroleum (supra) the question which fell for consideration was whether in view of the provisions of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, Bharat Petroleum Corporation Ltd. was entitled to a renewal of lease. A view was taken that the right of renewal of lease of an immovable property was specifically governed by a provision of the special law i.e. Section 5 (2) read with Section 11 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and as such the special law would prevail over the general law i.e. Section 107 of the Transfer of Property Act.

In our considered view the submission and contention on behalf of the petitioner-association that sale of share(s) in respect of a building or site to different persons and that too outside the family making them co-owners of a single residential building being bad in law proceeds on the erroneous premise that the same amounts to fragmentation of the site/building and which, in turn, is barred under Rule 16 of the Estate Rules. In this regard it is observed that since sale of share out of a building/site by the allottee(s)/transferee(s) is not barred and rather is permissible under the general Civil Law, upon transfer of such share, co-sharers/co-owners in respect of the building/site come into being. The status of such building/site, however, even after sale of share(s) continues to be under joint ownership. As per the meaning assigned by us to the term fragmentation under Issue No.1, mere sale of share(s) in a site/building does not result in any permanent severance of the same. Fragmentation would take place only upon partition of the building/site amongst share holders by metes and bounds.

The issue as regards *inter-se* rights and liabilities of co-sharers

in a joint property is no longer *res integra*. A Division Bench of this Court in **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram**, AIR 1961 Punjab 528 had held as follows:-

“ (1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other. (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.”

It is also well settled that a co-owner has an interest in the entire property and also in every parcel of the joint holding. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the

joint property. A sale, therefore, of specific share which otherwise is a part of the joint holding, in view of the nature of the rights conferred upon the co-sharer shall be deemed to be sale of the share from the joint property and such vendee would be deemed to be a co-owner/co-sharer in the entire joint holding irrespective of the artificial divisions that may have been made in such joint holding. Still further in the case of joint property where a co-owner is in possession of a specific portion of the joint holding and he transfers any right, title or interest from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the property so transferred and possessed, till such time as the joint holding is not partitioned. Reference in this regard may be made to a Full Bench decision of this Court in **Ram Chander vs. Bhim Singh and others, 2008(3) RCR(Civil) 685**. In other words a person who is in possession of a floor or a part of the building is merely a co-owner in exclusive possession of part of the property and the same does not amount to partitioning.

To conclude sale of share(s) by owner or co-sharer of a residential site/building is not prohibited under the 1952 Act or Rules framed thereunder. A sale of share does not amount to fragmentation. Fragmentation will take place only if there is a division of the site or division of the building with an element of exclusive ownership i.e. partition by metes and bounds. A co-owner can occupy specific/separate portions of the joint holding. The status of such property/building would remain joint and such joint status would come to an end only upon severance of ownership. Such severance of ownership can only be by way of partition by metes and bounds which in turn would fall within the scope

and ambit of the term 'fragmentation'.

ISSUE NO.5:- Can occupation/possession of a specific portion of the joint property be termed as apartmentalization?

As a sequitur to our findings returned on issues No.2, 3 and 4, it would be permissible for the co-owners to enter into an internal arrangement/understanding as regards utilisation of the residential building which is under joint ownership. This would be subject to the rider that the building has been constructed as per applicable building byelaws.

The question that now arises is whether by way of operation of such arrangement/adjustment and a co-owner occupying a specific portion of the joint property, the same can be termed as 'Apartmentalization'.

The answer to such a poser lies in the Chandigarh Apartment Rules 2001 (since repealed) vide notification dated 01.10.2007. Rule 2 (a) (b) (d), Rules 3 and 4 of the Apartment Rules would be relevant to the issue at hand and the same are extracted hereunder:

2. Definitions:

(a) “Apartment” means each sub-division of a building duly recognized by the Estate Officer, alongwith the proportionate share in common areas and common facilities, as well as any other property rights appurtenant thereto, shall constitute an Apartment.

(b) “Building” means any construction or part of construction or proposed construction in Chandigarh as defined in Clause (x) of Rule 2 of the Punjab Capital (Development and Regulation) Building Rules, 1952.

(d) “Common areas and common facilities” means the common areas and common facilities in relation to a building shall include the land covered by the building and all easements, rights of access and other similar rights belonging to the land and the building. The common structures such as foundations, columns, beams, supports, main valves, common roofs, corridors, staircases, fire escapes, entrances and exits of the building. Such parking areas, passages, driveways, gardens, storage spaces, spaces for security, as are required or specified for common use. Installations of common services such as power, light gas, water heating refrigeration, air conditioning, sewerage, elevators, tanks, pumps, ducts and such other common facilities as may be prescribed from time to time. All other parts of the building and land necessary for maintenance, safety and common use.

3 Sub-division of Building:

(1) Every building subject to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the separate and independent units in accordance with these rules. Each such sub-division of a building shall be recognized as a distinct, identifiable property to which the owner lessee shall have title along with proportionate rights in the declared common areas and common facilities. Each sub-division along with common areas, common facilities, rights of access easements and other ownership rights shall constitute a single, distinct identified, property which may be used transferred or disposed by the owner/lessees in accordance with the applicable law and

rules.

(2) A building may be sub-divided through a declaration made by the owners/lessees to the Estate Officer in the prescribed form (Form- D). The Estate Officer shall, if he is satisfied with the completeness and correctness of information provided with the declaration and after, having the building inspected, if necessary, recognize the sub-divisions of the building and the owners/lessees thereof, upon payment of such fee as may be notified by the Administration from time to time.

The recognition of each sub-division as an apartment by the Estate Officer under these rules shall be accorded by way of a fresh letter of allotment or a fresh conveyance deed, as the case may be, in suppression of, the previous letter of allotment or conveyance deed. Such letter of deed shall recognize the owners/lessees of the apartment as the owners/lessees thereof, who shall be liable to comply with all the provisions of the Capital of Punjab (Development and Regulation) Act, 1952, and rules and regulations and orders framed there under. All the covenant and liabilities contained in the original allotment letter and in the conveyance deed pertaining to the building or site, shall be construed to be contained in the subsequent letter or deed, as the case may be, even though no specific mention may have been made therein

(3) Each sub-division, after it has been recognized as an apartment by the Estate Officer, consequent upon the filing of prescribed declaration, shall be the sole and exclusive property

of the declared owners/lessees. Such owners/lessees shall be fully and exclusively responsible and liable for complying with all provisions of the Capital of Punjab (Development and Regulation) Act, 1952, rules and orders framed thereunder, and covenants of the allotment letter and conveyance deed pertaining to the site or the building. All these provisions of rules, orders and covenants shall apply, pari passu, to the apartment and to the owners/lessees thereof, as they did and would have, to the site or building and the owners/lessees thereof.

(4) Each apartment shall be entitled to separate utility connection such as water supply, sewerage and electricity, subject to building regulations.

(5) Where sub-divisions of a building with more than one storey have been allotted, sold or leased by the Estate Officer, the Estate Officer may after giving notice to the owners/lessees of such sub-divisions, declare such sub-divisions as apartments, to which the provisions of these rules shall apply.

4. Sub-Division of Residential Buildings:

(1) Any residential building situated on a plot size of less than 1400 square yards may be sub-divided into separate dwelling units with not more than one dwelling unit on each floor of the building. Each such dwelling unit shall constitute a sub-division.

(2) The basement, if any, allowed in a residential building shall not constitute a separate sub-division. The basement shall form a part of the sub-divisions on the ground floor. In case more than one sub-division is allowed on the ground, each such sub-division

may have a separate basement if building regulations so permit. Except in the case where the basement provides for facilities such as parking area at the end or other plant and equipment required for apartments in the building, the basement or portions therein may constitute a part of the sub-division on floors, other, ground floor.

(3) The garage, servant quarters, outhouse, mali hut, store, open spaces etc, not forming part of the main residential building shall not form a separate sub. division (s) and shall form part of one or more of the apartments of the main building

(4) A residential building on a plot of 1400 square yard or more may be sub- divided into two dwelling units on each floor provided that building regulations so permit.”

It clearly emerges from a perusal of the rules that for being recognized as an “Apartment” or to express that the activity of “Apartmentalization” is being carried out in the city, certain pre-requisites have to be met i.e. there has to be a sub division of a building duly recognized by the Estate Officer alongwith proportionate share in common areas and common facilities; each sub division of a building to be a distinct, identifiable property to which the owner/lessee shall have title; the recognition of each sub division as an apartment by the Estate Officer would be accorded by way of a fresh letter of allotment or a fresh conveyance deed and pursuant to such recognition such sub division/apartment to be the sole and exclusive property of the declared owner/lessee. However, in the matter at hand all of the pre-requisites noticed hereinabove are missing. By virtue of sale of share(s) by a co-owner and thereafter the purchaser/vendee

occupying a specific portion of the building on the basis of an internal arrangement/understanding, “sub division of building” as laid down under the Apartment Rules 2001 does not take place. The specific portion under the occupation of a co-owner is not accorded any recognition by the Estate Officer in any manner and neither does the co-owner become the sole and exclusive owner of such specific portion under his occupation.

An illustration may be given to shed further clarity. In the case of “sub division of a building” and creation of an apartment the brunt of any coercive/penal steps on account of violation of a building byelaw would have to be borne by the sole and exclusive owner of such apartment and who has been accorded such recognition by the Estate Officer. To the contrary in the case of a joint property whereunder a co-owner is an occupation/possession of a specific portion and a building violation takes place, the coercive/penal consequences including resumption would be on the entire building which otherwise is under joint ownership.

For the reasons recorded above, we reject the contention raised on behalf of the petitioner-association that occupation/possession of a specific portion be it a floor of a joint property by a co-owner amounts to 'apartmentalization'.

The judgments cited in *Jagir Singh* and *District Collector Chittoor (supra)* would have no applicability in the present case. Even though there can be no quarrel with the proposition that what can not be done directly, can not also be allowed to be done indirectly as the same would amount to an evasion of the statute, yet we find that by virtue of occupation of a specific portion/floor of a joint property by the co-owner on the strength of an internal arrangement/understanding, neither is any law

being impinged upon nor does the same amount to creation of apartments and thereby leading to an activity which ought not to be carried out by virtue of repeal of the Apartment Rules.

The judgment in *Friends Colony Development Committee (supra)* has been cited in the context of the officials of the Chandigarh Administration being negligent and turning a blind eye towards construction of apartments and thereby fragmenting residential buildings. The issue raised in *Friends Colony Development Committee(supra)* before the Hon'ble Supreme Court was of illegal and unauthorised constructions in the City of Cuttack, Orissa. It was noticed that builders are violating with impunity the sanctioned building plans and indulge in deviations to the prejudice of the planned development of the city and at the peril of the occupants of the premises as also of the inhabitants of the city at large. The conduct of the builder had come under scrutiny wherein inspite of being aware of the permissible construction area/limits as per the sanctioned building plans, such builder had not only constructed additional built up area on each floor but had also added an additional fifth floor on the building and such floor being totally unauthorised. Sill further inspite of disputes and litigation pending, the builder in question had parted with his interest in the property and inducted occupants on all the floors, including the additional unauthorised one.

In the present case it is not a case of unauthorised construction or of construction being not as per sanctioned building plans. This is not even the pleaded case on behalf of the petitioner-association. The judgment as such would have no relevance.

ISSUE NO.6:- Whether the residential building constructed on a

residential plot in UT Chandigarh, meant for single family use and to be treated as a Single Dwelling Unit?

Under the 1952 Rules the words 'residential building' and 'storey' are defined under Rules 2 (xlii) and (xlvi) respectively and the same read as follows:-

(xlii) “Residential Building” shall mean a building used or constructed or adapted to be used wholly or principally for human habitation and includes all garages, stables, or other out-buildings appurtenant thereto.

(xlvi) “Storey” shall mean any horizontal division of a building, so constructed as to be capable of use as a living apartment, although such horizontal division may not extend over the whole depth or width of the building but shall not include mazzanine floor.

The terms 'building', 'class of building', 'residential building', 'dwelling unit', 'floor' and 'storey' have been defined under the 2017 Building Rules and the same are reproduced hereunder:-

Rule-3 DEFINITIONS

In these Rules, unless the context otherwise requires the definition given shall have the meaning indicated against each term, those not defined shall carry dictionary meaning.

15) Building:- *means any construction or part of a construction in Chandigarh which is transferred by the [Central Government] under Section 3 of the Act and*

which is intended to be used for residential, commercial, industrial or other purposes, whether in actual use or not and includes any out-house, stable, cattle shed and also include any building erected on any land transferred by the Central Government under Section 3 of the Act.

*22) **Class of building:-** shall mean a building in one of the following categories-*

*(a) **Residential building:-** shall mean a building used or constructed or adapted to be used wholly or principally for human habitation and includes all garages, or other out-building appurtenant thereto.*

*32) **Dwelling Unit:-** means a building or a part thereof which is used or is intended to be used by a person or family for habitation comprising of kitchen, toilet and room.*

*(38) **Floor-** The lower surface in a storey on which one normally walks in a building, and does not include a mezzanine floor. The floor at ground level with direct access to a street or open space shall be called as ground floor (level-0); the floor above it shall be termed as level+1, with the next higher floor being termed as level+2, and so on upwards. The floor lower than this shall be termed as level-1, level-2 and so on.*

*82. “**Storey**” shall mean any horizontal division of a building so constructed as to be capable of use as a living apartment, although such horizontal division*

may not extend over the whole depth or width of the building but shall not include mezzanine floor.

Rule 4 governs Residential Use. Rule 4.1 relates to residential (Plotted) and parameter No.6 thereof governs No. of storeys and the same to be – 3 (Three).

A conjoint reading of the relevant rules reproduced hereinabove clearly indicate that a residential building as defined under the 1952 Rules (since repealed) and under the 2017 rules means a building used or constructed or adapted to be used wholly or principally for **human habitation**. The definition of 'storey' under the 1952 Rules as also 2017 Rules is pari materia and has been defined to mean any horizontal division of a building and so constructed as to be capable of use as a living apartment. A dwelling unit has been defined under the 2017 Rules to mean a building or a part thereof and which is used or is intended to be used by a person or family for habitation comprising of kitchen, toilet and room.

Under the CMP 2031 and which carries statutory force, three floors can be built on all private plots with each floor having potential of having an independent unit. In the CMP 2031 itself the decision of the FS-cum-Chief Administrator, UT Chandigarh dated 21.12.2009 has been incorporated to the following effect:-

“Each plot/site meant for residential purpose other than group housing shall be considered as one residential unit having maximum of three floors with one kitchen per floor. Maximum of three kitchens per residential dwelling unit shall be permitted”.

As per the 2017 rules and CMP 2031 a residential building is viewed to be used/constructed/adapted for human habitation. A dwelling unit on the other hand means a building or a part thereof to be used by a person or family for habitation comprising of kitchen, toilet and room. Three storeys are permitted under the rules for residential (plotted) under Rule 4 governing residential use under the 2017 rules and a 'storey' stands defined as a horizontal division of a building to be capable of use as a living apartment. A plain reading of the rules and relevant parts of the CMP 2031 bring forth that “residential building” and “dwelling unit” are two separate concepts. More than one dwelling unit is envisaged within a 'residential building' and concept of single family use is only relatable to a 'dwelling unit' and not to a 'residential building'.

In view of the above, we would have no hesitation in holding that the residential building constructed on a residential plot in UT Chandigarh cannot be confined for single family use as is sought to be projected on behalf of the petitioner-association. Such a proposition being canvassed before us would be alien to the provisions of the rules as also CMP 2031.

For the reasons recorded and findings returned on the issues that were culled out we do not find any merit in the writ petition.

The same as such must fail.

However, there is one area of concern which we must address.

INTEREST OF THE HOME BUYER

It was vociferously contended on behalf of the petitioner-association that under the garb of sale of share(s) in a residential building,

independent floors are being sold. However, no material has been adduced on record to substantiate change of ownership/transfer of title of any floor/specific portion of a residential building pursuant to the vendee having purchased a share. Chandigarh Administration takes a stand that floor-wise sale of a building is not permitted. The only exception being when the Apartment Rules were in vogue from the years 2001-2007.

Since the instant petition has been filed in public interest and the nature of jurisdiction exercised in such matters is inquisitorial in nature as opposed to adversarial, this Court took upon itself the task of scanning through some advertisements that may have been carried in the News Dailies in the recent past and having circulation in the city to find out whether any floor-wise sale of residential buildings is contemplated. A large number of such advertisements were noticed. Vide order dated 27.07.2021 this Court directed the Chandigarh Administration to carry out an exercise whereby in the first instance residential buildings were to be identified wherein sale of share(s) be it to the extent of 50%, 30% or 20% has taken place and secondly to proceed with a physical inspection to find out whether the sale of such share(s) has translated into the buyer occupying an independent floor/portion commensurate to the share holding. It was in the nature of a fact finding sample exercise and confined to the period i.e. date of filing of the petition and up to 31.12.2019.

The survey report has been placed on record. 891 residential buildings have been identified where sale of share(s) has taken place within the stipulated time frame. A number of instances have been given where the share holder is occupying a particular floor in the building. We may take note that Mr.Gaurav Chopra, Senior counsel has informed us that his

client/respondent No.17 had purchased 20% share of a residential building and is in exclusive occupation/possession of the top floor.

It would be a matter of concern whether such home buyer/vendee who has purchased a share in a residential building and pursuant thereto has been put into possession of a particular floor/specific portion understands that he cannot assert exclusive ownership to such floor/specific portion. Does he understand that by virtue of purchase of a share he has only become a co-owner/co-sharer in the entire building to the extent of his shareholding? Does he understand that in the eventuality of a dispute arising between the co-sharers/co-owners the only remedy would be to put the property to auction and the sale proceeds thereafter to be distributed amongst the co-sharers/co-owners as fragmentation/division of the building by metes and bounds is specifically prohibited? In our view most home buyers/vendees do not. To state the obvious a real estate agent/developer/seller in order to extract maximum premium would paint a picture to the prospective buyer that by virtue of purchase of a share in the building and the same having been recorded in the record of rights, not only exclusive possession but even ownership rights would vest by entering into a Memorandum of Understanding *inter se* the share holders.

This is an aspect which ought to have caught the attention of the Chandigarh Administration. This Court had discovered as many as 24 advertisements for floor-wise sale in the Sunday Tribune dated 25.07.2021. The same were incorporated in our order dated 27.07.2021. Surely such like advertisements spread over a period of time would be manifold. The Administration chooses to stay smug, taking a stand on paper that floor-wise sale of residential building is not permissible while residential floors

are being advertised for sale right under its nose. In an affidavit of the Assistant Estate Officer duly placed on record it has been deposed that the Administration would take steps to issue an advertisement in the local newspapers to warn the general public against unverified advertisements with regard to sale of immovable property and to request them to conduct proper due diligence. Be that as it may, it stands conceded that no such public notice has been issued till date. During the course of hearing a specific query in such regard was put to Mr. Anil Mehta, Additional Standing Counsel, UT, Chandigarh and the response was '*matter is being deliberated upon.*'

Such a stand constrains us to observe that the Chandigarh Administration is deliberately choosing to look the other way and thereby failing to discharge the onus of being the guardian of the interests of the residents of the city.

Certain proactive steps are required to be taken.

The Chandigarh Administration is directed to take the following steps forthwith:-

1. A public notice be carried at periodic intervals in the Newspapers having circulation in the region (both in English and Vernacular) for purposes of sounding a word of caution and educating such home buyers who have already purchased a share in a residential building/site as also the prospective home buyers and the notice be drafted by the Administration and to include the following:-

- (i) Fragmentation of site/building is specifically prohibited under the Chandigarh Building Rules, 2017;

- (ii) Chandigarh Administration does not recognise ownership

rights over any floor/part of any site/building by virtue of purchase of a share thereof or on account of a Memorandum of Understanding having been entered into between the co-sharers. The purchaser only becomes a co-owner/co-sharer in the entire site/building which remains in joint ownership;

(iii) It be understood that in case a dispute arises between the co-sharers/co-owners the only remedy would be to put the property to auction and the sale proceeds thereafter to be distributed as fragmentation/division of the building/site by metes and bounds is specifically prohibited.

2. Similar stipulations to be incorporated compulsorily in the Affidavit to be submitted by the purchaser/vendee at the time of execution and registration of the sale deed as also at the stage of submitting transfer applications for entering of mutation in the name of purchaser in the records of the Estate Office.

3. Likewise such stipulations be made a part of the Transfer Letter to be issued by the Estate Office.

4. The Administration to initiate necessary steps to criminally prosecute in accordance with law such persons who may misrepresent through any medium as regards sale of floor/storey/specific portion of a site/building.

The aforementioned steps as have been directed are indicative and may not be treated as exhaustive.

But for such directions issued to the Chandigarh Administration, we dismiss the writ petition.

Before parting with the judgment we record our appreciation

for the valuable assistance rendered in the matter by learned amicus curiae

Mr.Chetan Mittal, Senior Advocate.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

November 23rd, 2021
sunita/shweta

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No