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

(i) CWP-12971-2023 (O&M)

M/s Maximal Infrastructure Pvt. Ltd. ...... Petitioner

Versus

State of Haryana and others ...... Respondents

(ii) CWP-19954-2022 (O&M)

Akhil Mahajan ...... Petitioner

Versus

State of Haryana and others ...... Respondents

Reserved on : 31.07.2024
Pronounced on : 29.10.2024

CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Chetan Mittal, Sr. Advocate with
Mr. Anand Chhibber, Sr. Advocate,
Mr. Amit Jhanji, Sr. Advocate with
Mr. Kunal Mulwani, Advocate;
Ms. Eliza Gupta, Advocate;
Mr. Deepak Aggarwal, Advocate;
Mr. Udit Garg, Advocate;
Ms. Sehej Sandhawalia, Advocate;
Ms. Ateevraj Sandhu, Advocate;
Mr. Ritvik Garg, Advocate,
Mr. Utkarsh Khatana, Advocate
Mr. Anhad Batta, Advocate and
Ms. Shifali Goyal, Advocate

for the petitioner in CWP No.12971-2023.

Sh. Akhil Mahajan petitioner in CWP No.19954 of 2022 and respondent No.5 in CWP No.12971 of 2023 in person with Dr. Anju Sharma, Advocate-Legal Aid Counsel.

Mr. Ankur Mittal, Addl. A.G. Haryana;
Mr. Pardeep Chahar, Sr. DAG, Haryana;
Mr. Saurabh Mago, DAG, Haryana;
Mr. Karan Jindal, AAG, Haryana;
Ms. Kushaldeep Kaur, Advocate and
Ms. Saanvi Singla, Advocate.

Mr. Aashish Chopra, Sr. Advocate with
Mr. Sourabh Goel, Advocate
Ms. Mehar Nagpal, Advocate
Ms. Geetika Sharma, Advocate and
Mr. Shivani Sahni, Advocate
for respondents No.3 and 4.

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VIKRAM AGGARWAL, J

1. This judgment shall dispose of the aforesaid two writ petitions for the issue arising in both writ petitions is the same. The facts are being derived from CWP No.12971 of 2023.

The petitioner has prayed for the following substantive relief:-

"Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of Writ in the nature of Certiorari for setting aside the impugned orders dated 25.05.2023 (Annexure P/48) passed by respondent no.2 whereby the impugned orders dated 09.12.2021/10.12.2021 (Annexure P-29) and order dated 07.03.2022 (Annexure P-33 & Annexure P-34) have been illegally, erroneously and arbitrarily upheld inter-alia on the ground that the petitioner had withdrawn its writ petition bearing CWP No.4383 of 2022 and CWP No.5386 of 2022 in

bonafide belief based on the statement made by the counsel for official respondent that the Respondent No.2 shall be considering the matter afresh after giving due opportunity of hearing, however, a non-speaking order keeping intact the previous orders dated 07.03.2022 (Annexure P-33 & Annexure P-34) and 09.12.2021/10.12.2021 (Annexure P-29), has been passed without considering the true facts and circumstances, and further on the ground that the same has been passed without considering the genuine grievances of the petitioner.

AND

Further, for issuance of Writ in the nature of Certiorari for setting aside the impugned orders dated 07.03.2022 (Annexure P/33 and Annexure P/34) passed by Respondent no.2 whereby, the request of Respondent No.3 and 4 for the change in beneficial interest/assignment of joint development and marketing rights has been approved, inter-alia on the ground being illegal, and further, arbitrary conditions have been imposed on the petitioner, without appreciating the true facts and circumstances of the case. Further, that the conditions so imposed upon the petitioner vide impugned order dated 07.03.2022 (Annexure P-33 & Annexure P-34) are itself contrary to the conditions laid down for the in-principle approval vide letter dated 10.12.2021 (Annexure P-35 & Annexure P-36), furthermore that the Respondent No.2 had illegally waived off the mandatory requirement of NOC for

change in beneficial interest from the owner/licensee, petitioner herein, in contravention to policy dated 18.02.20215 (Annexure P-6) vide order dated 09.12.2021/10.12.2021 (Annexure P-29) which has been upheld in appeal vide order dated 21.02.2022 (Annexure P-31) and has illegally imposed entire responsibility on the petitioner vide the impugned order dated 07.03.2022 (Annexure P-33 & Annexure P-34), thereby causing illegal benefit to the Respondents No.3 & 4 without any responsibility/liability, and as the entire liability has been fasten on the petitioner without any right or even without the concurrent/consent, further the impugned order dated 07.03.2022 (Annexure P-33 & Annexure P-34) being prejudicial to the interest of the petitioner and giving undue benefit to the Respondent No.3 & 4, further that the impugned order dated 07.03.2022 (Annexure P-33 & Annexure P-34) illegally imposes a vicarious liability on the petitioner, without there being any provision in law for the same and also being in violation of principles of natural justice and further that the impugned order has been passed in pursuance to the order dated 09.12.2021/10.12.2021 (Annexure P-29) passed by Respondent No.2 which has been upheld in appeal vide order dated 21.02.2022 (Annexure P-31), which has now been upheld by the impugned order dated 25.05.2023 (Annexure P/48),

AND

Further, for issuance of Writ in the nature of Certiorari for

setting aside the impugned order dated 21.02.2022 (Annexure P/31) passed by Respondent no.1 whereby appeal filed by petitioner under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975, against the order dated 09.12.2021/10.12.2021 (Annexure P/29) passed by the Respondent No.2, has been dismissed by Respondent no.1, inter-alia on the ground that while passing the impugned order dated 21.02.2022 (Annexure P/31) and Respondent No.1, without appreciating the true and correct intent of the orders dated 24.04.2022 (Annexure P-24) and 09.10.2020 (Annexure P-25) passed by the Hon'ble Supreme Court in Contempt Petition No.34/2016 in WP (Crl) no.5/2015 titled as "Ashish Seth Vs. Sumit Mittal & Others," and misread and misconstrued the same, further the Respondent exceeded the jurisdiction vested with him and assumed the jurisdiction vested with the Civil Court, and further failed to abide by the mandatory provisions of the policy dated 18.02.20215 (Annexure P/6), so promulgated by the Respondent No.2 Department itself and further that the order has been passed without appreciating the true facts and circumstances of the case, in violation of the principles of natural justice, being illegal arbitrary and against the provisions of law.

AND

Further, writ in the nature of Mandamus restraining official respondents from giving effect to the application of private

respondent no.2 and 3 for change in beneficial interest and joint development rights.

AND

Further, for the issuance of the Writ in the nature of mandamus calling the entire records of the office of the Respondent No.2, after passing of the order dated 12.12.2022 (Annexure P-43 & Annexure P-44), whereby the writ petitions bearing No.CWP 4383 of 2022 and CWP 5386 of 2022 were withdrawn."

Once again, the dispute is between a Colonizer-Builder-Promoter and hapless and helpless allottees. The petitioner is aggrieved basically by the decision taken by the official respondents in permitting the transfer of beneficial interest to the third and fourth respondents whereas the allottees are aggrieved of they having invested their life savings, being desirous of having a roof over their heads but not having been given the possession of the flats for which they had spent their entire life savings.

FACTUAL MATRIX

2. The facts, as emanating from the writ petition and as projected by the petitioner, are that the petitioner (M/s Maximal Infrastructure Private Limited) previously known as M/s Triveni Ferrous Infrastructure Private Limited (TFIPL) alongwith others namely M/s Sumit Mittal and M/s Ferrous Alloys Forgings Pvt. Ltd. were granted licences No.34, 35 and 36 of 2007 **(Annexure P-1)** for the development of a Group housing colony over an area measuring 48.038 acres in Sector 89, Faridabad in terms of the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the 1975 Act').

3. Having obtained the licences, the petitioner-licencee entered into further agreements **(Annexures P-2 and P-3)** with respondents No.3 and 4 namely M/s Heritage Cottages Pvt. Ltd. & M/s ORS Infrastructure Pvt. Ltd. on 18.02.2008 and 01.09.2008 respectively vide which the development and marketing rights for the purpose of construction of the group housing colony were transferred to respondents No.3 and 4. Power of attorneys dated 28.04.2008 and 01.09.2008 **(Annexures P-4 and P-5)** were also executed in favour of respondents No.3 and 4 respectively.

4. The department of Town & Country Planning, Haryana -respondent No.2 (for short 'DTCP, Haryana') (hereinafter referred to as 'the respondent-DTCP, Haryana came out with a policy dated 18.02.2015 regarding change in 'beneficial interest'. The detailed procedure for allowing change in benefical interest viz. change in developer; assignment of joint development rights and/or marketing rights etc. in a licence granted under the 1975 Act was laid down in the said policy. It is the case of the petitioner that change of 'beneficial interest' in favour of respondents No.3 and 4 could have only been approved after complying with the mandatory terms and conditions of the said policy. It is the further case of the petitioner that as per the Policy of 2015 (hereinafter referred to as 'the 2015 Policy'), a fresh agreement LC-IV and bilateral agreement were to be executed on behalf of the new entity and the LC-IV bilateral agreement, proforma of which has been annexed as **Annexure P-7**, could have been executed only by the owner of the land. The petitioner maintains that respondents No.3 and 4 are not the owners of the land as the title was never transferred in their favour and no fresh agreement was executed as per the mandate of the Policy. The petitioner also maintains that infact even the previous agreements had been suspended/terminated in 2016 and the same had never been challenged by respondents No.3 and 4.

5. Several disputes are stated to have arisen amongst the petitioner and respondents No.3 and 4 on account of which, as per the petitioner, the development agreements and general power of attorneys executed in favour of respondents No.3 and 4 were terminated/cancelled. Reference has been made to the termination clauses in the concerned agreements. The cancellation/suspension deeds qua respondents No.3 and 4 have also been placed on record as **Annexures P-8 and P-9** respectively. Certain communications/notices dated 21.04.2016 **(Annexures P-10 and P-11)** were also issued by the petitioner. The petitioner also maintains that the cancellation of the agreements and GPAs was also notified to the general public by way of public notice dated 17.06.2016 **(Annexure P-12)** and to respondent No.1 vide letters dated 20.06.2016 **(Annexures P-13 and P-14)** and due notice of the same had been taken by respondent No.1 on 04.07.2016 vide communication **Annexure P-15**. While suspending the agreements and the GPAs, the petitioner claims to have issued a cheque dated 08.06.2016 amounting to Rs.26,56,99,525/- to respondent No.4 and cheque dated 08.06.2016 amounting to Rs.9,20,31,356/- to respondent No.3. However, neither respondent No.3 nor respondent No.4 got the cheques encashed.

6. It has been averred in the petition that M/s Triveni Ferrous Infrastructure Private Limited was a joint venture company consisting of two groups i.e. Seth Group and Mittal Group. On account of certain disputes having arisen, various litigations arose including writ petition (Criminal) No.5/2015 and Writ Petition (Criminal) No.11/2015 in the Supreme Court of India. The matter was eventually referred for mediation. A Memorandum of Settlement was executed between the Seth Group, Mittal Group and M/s Triveni Ferrous Infrastructure Private Limite. The said memorandum of settlement was produced before the Supreme Court of India in pursuance of which order dated 05.05.2015 **(Annexure P-16)** was passed vide which the writ petitions were disposed of in terms of the memorandum of settlement. Respondents No.3 and 4 were, however, not parties to those proceedings.

7. Respondents No.3 and 4 moved applications dated 30.10.2015 for independent development rights under the 2015 Policy. However, the said applications were rejected vide orders dated 13.10.2016 **(Annexures P-17 and P-18),** passed by the DTCP, Haryana. Aggrieved by the rejection of the applications, respondents No.3 preferred CWP No.13603 of 2018 titled as M/s Heritage Cottages Private Limited versus State of Haryana and others and respondent No.4 filed CWP No.13583 of 2018 titled as M/s ORS Infrastructure Private Limited Versus State of Haryana and others. However, both the writ petitions were withdrawn vide orders dated 28.05.2018 **(Annexures P-19 & P-20)** after having been granted liberty to avail alternate remedies. It is the case of the petitioner that no alternate remedy was even thereafter availed by respondents No.3 and 4 which has duly been noticed by a Coordinate Bench of this Court in CWP No.4383 of 2022 titled as M/s Maximal Infrastructure Private Limited Versus State of Haryana and others.

8. Interlocutory applications bearing No.17250/2016 and 17249 of 2016 **(Annexures P-21 and P-22)** were also moved by respondents No.3 and

4 before the Supreme Court of India seeking clarification of the order dated 05.05.2015 taking a stand that the said order was not applicable to them. The Supreme Court of India ordered on 17.11.20107 **(Annexure P-23)** that it would hear only the parties to the settlement and the learned counsel for the Government and hence did not entertain the aforesaid applications.

9. On account of non-implementation of the terms and conditions of the memorandum of settlement and order dated 05.05.2015, the Mittal Group and the Seth Group filed contempt petitions before the Supreme Court of India wherein certain directions were issued by the Apex Court on 24.04.2020 **(Annexure P-24).** Further, vide order dated 09.10.2020 **(Annexure P-25)**, the Supreme Court of India directed the Mittal Group (including the petitioner) and Seth Group to pay half-half share each of respondents No.3 and 4 and EDC liability.

10. In the meanwhile, respondents No.3 and 4 filed a complaint against the petitioner before the Haryana Real Estate Regulatory Authority, Panchkula (for short 'HRERA'). Vide order dated 01.10.2009 **(Annexure P-26)**, certain directions were issued by HRERA to the respondent-Department to divide the licence of the petitioner in five parts and determine the liabilities of each party towards them individually and separately. Despite being parties, respondents No.3 and 4 did not challenge the order dated 01.10.2019 meaning thereby that they admitted their liability qua payment of EDC to the petitioner. The official respondents, however, challenged the said order before the Appellate Tribunal vide Appeal No.1461 of 2019 which was adjourned on account of the pendency of the cases before the Supreme Court of India. Vide order dated 24.04.2024, the said appeal was rendered infructuous. The petitioner had also challenged the said order before the Tribunal but the same was withdrawn. After the decision of the Supreme Court of India, respondents No.3 and 4 again submitted letters dated 27.07.2021 **(Annexures P-27 and P-28)** requesting for change of 'beneficial interest' in their favour in terms of the 2015 Policy. It is the case of the petitioner that false averments were made while moving the said applications, the details of which have been specified in the writ petition.

11. Respondent No.2 granted in-principle approval of change of 'beneficial interest' to respondents No.3 and 4 vide order dated 09.12.2021/10.12.2021 **(Annexure P-29)**. It has been averred that aggrieved by the same, an appeal (Annexure P-30) was preferred by the petitioner in terms of the provisions of Section 19 of the 1975 Act which was, however, hurriedly dismissed vide order dated 21.02.2022 **(Annexure P-31)**. This led to the filing of CWP No.4383 of 2022. While issuing notice of motion in the said case, the Coordinate Bench of this Court restrained respondents No.3 and 4 (herein) from creating third party interest vide order dated 07.03.2022 **(Annexure P-32)**.

12. Despite being represented before the Coordinate Bench in the aforesaid writ petition, respondent No.2 allowed the applications/request of respondents No.3 and 4 vide orders dated 07.03.2022 **(Annexures P-33 and P-34)** itself for change in 'beneficial interest'/assignment of joint development & marketing rights though certain terms and conditions were imposed upon the petitioner-Company which, according to the petitioner-Company, are illegal and arbitrary. The conditions were imposed vide memos **(Annexures P-35 and P-36).**

13. It is further the case of the petitioner that respondents No.3 and 4 issued public notices dated 24.12.2021 **(Annexure P-37)** in the newspaper inviting objections to the transfer of 'beneficial interest' to which the petitioner filed objections **(Annexures P-38 and P-39)** on 12.01.2022. The petitioner also preferred CWP No.5386 of 2022 titled as M/s Maximal Infrastructure Private Limited Versus Director, Town & Country Planning Haryana which, vide order dated 17.03.2022 **(Annexure P-40)** was ordered to be heard alongwith CWP No.4383 of 2022. Both these writ petitions were taken up on various dates. However, on 28.04.2022, a statement was given by counsel representing respondents No.3 and 4 which was recorded in the order **(Annexure P-41)**. Eventually, these writ petitions were taken up for hearing on 12.12.2022 when counsel representing the HERERA submitted a communication dated 09.12.2022 stating that respondent No.2 would reconsider the entire issue afresh after affording an opportunity of hearing to the petitioner as a result of which, the petitioner, without doubting the intentions of the official respondents withdrew both writ petitions vide **Annexures P-43 and P-44.**

14. However, after hearing all concerned, the matter was reserved but since no orders had been passed, miscellaneous applications were made on 16.03.2023 seeking recalling of the order dated 12.12.2022. During the proceedings, order dated 25.05.2023 **(Annexure P-48)** having been passed by the respondent-DTCP, Haryana, was produced vide which the orders dated 09.12.2021/10.12.2021 and 07.03.2022 were upheld. Liberty was, therefore, granted by the Division Bench to the petitioner vide order dated 26.05.2023 **(Annexure P-48-A)** to challenge the order dated 25.05.2023 in accordance with law leading to the filing of the instant writ petition.

15. Certain orders passed by the Supreme Court of India on 25.01.2022 and 11.02.2022 **(Annexures P-49 and P-50)** have also been referred to and reference has also been made as regards two civil suits having been filed by the petitioner for permanent and mandatory injunction bearing CS No.1338 of 2018 titled as Maximal Infrastructure Private Limited Versus M/s Heritage Cottages Private Limited and CS No.1339 of 2018 titled as M/s Maximal Infrastructure Private Limited versus M/s ORS Infrastructure Private Limited and others **(Annexures P-51 and P-52 respectively)** in the Court of the District Judge (South East), Saket, New Delhi for recovery of licence renewal charges and proportionate miscellaneous charges.

REPLY

16. The writ petition has been opposed by the respondents. Respondents No.1 and 2 have filed their written statement so have respondents No.3 and 4. Respondent No.5 Akhil Mahajan has also filed a separate reply by way of his affidavit. Respondents No.1 and 2 have given facts of the case which according to them are the true facts. It has been averred that licence Nos.34, 35 and 36 of 2007 were granted to M/s Triveni Ferrous Infrastructure Private Limited (now named as Maximal Infrastructure Private Limited i.e. the petitioner), Ferrous Alloys Forging Pvt. Ltd. (for short 'FAFPL') and one Sh. Sumit Mittal for development of a group housing colony over an area measuring 48.038 acres falling in Sector 89, Faridabad. Building plans were approved vide letter dated 29.02.2008. The compliance of the terms and conditions of the licence and agreement executed on LC-IV (form) and the bilateral agreement between the licencee and the Director, Town and Country Planning including the development of Colony till completion of the project was to be made by the licencee i.e. the petitioner. However, vide different agreements executed in 2008, the petitioner, without seeking prior permission of the department transferred the development and marketing rights of the project to five different companies namely Triveni Infrastructure Development Company Pvt. Ltd.(TIDCO), Ferrous Infrastructure Pvt. Ltd. (FIPL), Pal Infrastructure & Developers Pvt. Ltd., Heritage Cottages Pvt. Ltd. (respondent No.3) and ORS Infrastructure Pvt. Ltd. (respondent No.4). It is the case of respondents No.1 and 2 that in view of the conditions of the licence issued to the petitioner as also the conditions of LC-IV/bilateral agreement, the petitioner could not have transferred the development rights to any other entity without the permission of the department. It has been averred that as per the zoning plan **(Annexure R-1)** of the licenced Colony, the site could not have been sub-divided or fragmented in any manner whatsoever.

17. The 2015 Policy was introduced for allowing change in 'beneficial interest' prior to which the creation of third party 'beneficial interest' viz. change in developer etc. was not allowed. The purpose of introducing the 2015 Policy was the changing marketing dynamics as many requests were being received by the department for either 'change in developer' or 'Assignment of Joint Development rights' and/or marketing rights, wherein the transfer of licence/change in land-schedule was not involved. It was observed that since change in land schedule of the licence was not involved meaning thereby it would not amount to a transfer of licence under Rule 17 of the 1976 Rules, the Policy was introduced. Section 3 (D) was also introduced in the 1975 Act vide notification dated 03.04.2017 which laid down a provision for change in 'beneficial interest'. It is the case of respondents No.1 and 2 that the petitioner had created third party 'beneficial interest' in 2008 itself without seeking any prior permission from the competent authority and much prior to the introduction of the 2015 Policy and had, thus, violated the terms and conditions of the licence as well as the LC-IV Bilateral agreement.

18. It has also been averred that out of the five companies to whom the beneficial interest had been transferred, TIDCO is under litigation whereas Pal Infrastructure & Developers Pvt. Ltd. is under Corporate Insolvency Resolution Process (CIRP). These companies and the petitioner have filed various litigations. In the written statement, all subsequent proceedings as have been mentioned in the writ petition viz. the proceedings before the Supreme Court of India, HRERA and the official respondents have been referred to, which need not be repeated. The orders passed by the respondents have been averred as having been rightly passed. In the written statement filed by respondents No.3 and 4, also a similar stand has been taken. It has, however, been submitted that the agreements-GPAs had never been cancelled/revoked.

19. Respondent No.5, who is also an allottee has raised his own concerns as regards the alleged illegalities committed by the petitioner.

<u>REPLICATION</u>

20. Replications to the written statements were filed denying the averments made in the written statements and reiterating the averments those made in the writ petition.

21. Learned counsel for the parties were heard.

ARGUMENTS (PETITIONERS)

22. Learned Senior Counsel representing the petitioners submitted that the impugned orders dated 25.05.2023, 09.12.2021/10.12.2021 and 07.03.2022 are not sustainable and deserve to be set aside.

23. The primary argument which was raised was that the bifurcation of the licences was not permissible under the provisions of the 1975 Act. It was submitted that the authorities had inter-mingled the concept of change of 'beneficial interest' and bifurcation of licence.

24. Reference was made to the 2015 Policy wherein the concept of change in 'beneficial interest' was introduced and the procedure for effecting the said change in 'beneficial interest' was laid down.

25. Referring to the order dated 01.10.20219 passed by the HRERA in complaints filed by M/s Ferrous Infrastructure Private Limited, the petitioner i.e. Maximal infrastructure Private Limited, respondents No.3 and 4 namely M/s Heritage Cottages Private Limited and M/s ORS Infrastructure Private Limited and other parties, it was submitted that the respondents had complied with only selective directions as per its suitability and, therefore, there was violation of the directions issued by the said Authority. It was submitted that the Authority, while issuing directions, clearly held that the DTCP, Haryana must divide the licence in five parts and determine the liabilities of each party towards them individually and separately. Learned Senior Counsel submitted that this part of the directions was not complied with.

26. Reference was then made to the order dated 24.04.2020 passed by the Apex Court in which while referring to the order dated 01.10.2019 passed by HRERA, it was held that the contempt petitions had been rendered infructuous. The EDC liability was divided into two parts i.e. the EDC payable against 33.238 acres which included the projects of four developers and EDC payable against 14.80 acres which was payable by TIDCO (Company under liquidation). The Supreme Court of India then passed certain directions as regards payment of EDC inter-se the Seth Group and the Mittal Group. The contempt petitions were accordingly dismissed by the Supreme Court of India.

27. Learned Senior Counsel took us through the various orders passed from time to time in various proceedings which were carried out, the details of which, to some extent have been given while detailing the facts and shall also be referred when the matter is analyzed and, therefore, we do not feel the necessity to refer to all those orders in detail again.

28. As regards the impugned order dated 09.12.2021/10.12.2021, it was submitted that both the Seth Group and the Mittal Group had been recognized by the Supreme Court of India but as regards respondents No.3 and 4, no recognition was given by the Supreme Court of India. Reference was made to the order dated 17.11.2017 passed by the Supreme Court of India wherein it had been observed that only the concerned parties i.e. the Seth Group, the Mittal Group and the State would be heard. Reference was also made to the order dated 24.01.2024 passed by the Supreme Court of India vide which the applications for impleadment and clarification moved by respondents No.3 and 4 were dismissed.

29. As regards the impugned order dated 21.02.2022, it was submitted that as per the 2015 Policy, NOC from the original licencee/owner was mandatory and a fresh LC-IV Form had to be executed between the DTCP and the existing owner. Still further in terms of Clause 4.1 (iv) of the 2015 Policy, a registered collaboration agreement was to be executed between the owner and the developer. Learned counsel submitted that none of these conditions was satisfied and, therefore, the order is not sustainable. It was submitted that reliance was wrongly placed upon the order dated 01.10.2019, passed by HRERA and that as has been submitted earlier also, the said order passed by HRERA had to be complied with in totality and not selectively. Learned Senior Counsel also submitted that the observations that the consent of the present petitioner was not required in view of the order of HRERA and that GPA could not have been terminated unilaterally in view of the provisions of Section 202 of the Indian Contract Act, 1872 are not sustainable as the Appellate Authority did not have the jurisdiction to decide these issues especially the issue of cancellation of agreement as the same was required to be decided by the Civil Court of competent jurisdiction.

30. Assailing the order dated 07.03.2022, the arguments as regards the NOC, fresh LC-IV Form and registered collaboration agreement were reiterated, it was submitted that the order is not well reasoned and had been passed in collusion and in connivance with respondents No.3 and 4.

31. Adverting to the order dated 25.05.2023, passed by the respondent-DTCP, Haryana, it was submitted that no fresh findings were recorded by the Authority and the petitioner had withdrawn the writ petitions without doubting the intentions of the official respondents and a bare perusal of the order would show that it was merely a reiteration of the previous order.

32. It was submitted that in view of the aforesaid, the impugned orders were not sustainable. In support of their contentions, reliance was placed upon the judgments of Hon'ble Supreme Court of India in ***DLF Universal Limited and another versus Director, Town and Country Planning Department, Haryana and others 2010 (14) Supreme Court Cases 1, Abdul Kuddus versus Union of India and others (2019) 6 Supreme Court Cases 604, The State of Haryana and another versus M/s Landmark Apartments Pvt. Ltd. & Anr. In SLP No.21573 of 2019, dated 13.09.2019, State of Madhya Pradesh versus Syed Qamarali 1967 SLR 228; M.C.Mehta versus Union of India and others (2021) 20 Supreme Court Cases 465; T.Vijayalakshmi and others versus Town Planning Member and another (2006) 8 Supreme Court Cases 502; Chairman, Indore Vikas Pradhikaran versus Pure Industrial Coke & Chemicals Ltd. And others (2007) 8 Supreme Court Cases 705; Commissioner of Income Tax Vs. Balbir Singh Maini (2018) 12 Supreme Court Cases 354; Ghanshyam versus Yogendra Rathi (2023) 7 Supreme Court Cases 361; Suraj Lamp and Industrial Private Limited versus State of Haryana and another (2012) 1 Supreme Court Cases 656; Dilshad Alvi versus Sri Ikrar Ahmed 2015 SCC Online UTT 1293; Shakeel Ahmed versus Syed Akhlaq Hussain 2023 SCC Online SC 1526, Barses J.A.D'Douza versus Municipal Corporation of Gr. Brihan Mumbai 2003 (4) Mh.L.J., the judgment of Calcutta High Court in Ashok Kumar Jaiswal and others versus Ashim Kumar Kar and others 2014 (2) MWN (Civil) 673, Krishnadevi Malchand Kamathia and others versus Bombay Environmental Action Group and others (2011) 3 Supreme Court Cases 363 and the judgments of Delhi High Court in Mic Electronics Ltd. & Anr. Versus Municipal Corporation of Delhi & Anr. (2011) 1 Arb LR 418***

(DB), Rajasthan Breweries Limited versus The Stroh Brewery Company 2000 (55) DRJ (DB).

33. Learned counsel has also placed reliance upon the ***order dated 10.05.2019***, passed by a Division Bench of this Court in ***CWP No.24568 of 2018*** titled as ***M/s Landmark Apartments Pvt. Ltd. Vs. State of Haryana & Ors.*** and the ***order dated 04.02.2019***, passed by the ***Haryana Real Estate Appellate Tribunal, Chandigarh*** in ***Appeal No.69 of 2018*** titled as ***Director, Town & Country Planning, Haryana versus Haryana Real Estate Regulatory Authority and another***.

ARGUMENTS (RESPONDENTS)

34. Sh. Ankur Mittal, learned Addl. Advocate General, Haryana, at the outset, submitted that on account of the pecuniary interests and clash between the parties, the interest of the allottees has suffered and it was the interest of the allottees that led the DTCP, Haryana to pass the impugned order which has been upheld by the Appellate Authority.

35. Referring first to the statutory provisions i.e. the provisions of the 1975 Act which is the governing statute as regards the current dispute, it was submitted that the same does not provide or recognize any event in the name of bifurcation of licence and that the only legally permissible act/action is the change in the 'beneficial interest' as provided for by the 2015 Policy. It was submitted that the change in the 'beneficial interest' was also on certain terms and conditions laid down in the 2015 Policy which, as per Sh. Ankur Mittal, learned Addl. Advocate General, Haryana provided for three things namely change of developer (for the entire lienced area), assignment of joint development rights/marketing rights and change in shareholding pattern beyond 25% of share holding existing at the time of grant of licence.

36. Reference was made to various Clauses of the 2015 Policy and it was submitted that approval of service plans for sewerage, electricity, water would always remain with the licencee. The responsibility of obtaining the occupation certificate would also be of the original licencee so would be the responsibility to obtain completion certificate. Reference was made to Clauses 4.1 (ix) & (xi) of the 2015 Policy wherein it has been recorded that an undertaking would be furnished that all the liabilities of the existing developer shall be owned by the new entity and that notwithstanding the assignment of joint development rights/marketing rights to a third party, the developer would continue to be solely responsible for compliance of the provisions of the Act/Rules as also the terms and conditions of the licence.

37. It was submitted that the transfer of development rights to five companies/entities by the original licencees was without permission of the competent authority which, infact, was the root cause of all disputes and problems. It was submitted that had the development rights not been transferred at that stage without the permission of the authorities, such complications would not have arisen.

38. Reference was then made to the litigation before the Supreme Court of India between the Mittal Group and the Seth Group. It was submitted that though the word 'bifurcation' had been used by the Supreme Court of India, it was essentially a change of developer and that factually it was never bifurcation and was only a change in the 'beneficial interest'. It was submitted that the impugned orders are required to be tested in this background.

39. It was submitted that the agreements executed in favour of five companies/entities without the permission of the official respondents was clearly in violation of the terms and conditions of the licence. It was submitted that under the circumstances it cannot be submitted that a bilateral agreement between the parties cannot be interfered with. It was submitted that the illegality had been committed not only by the original licencee/developer but equally by the other five entities including respondents No.3 and 4 and it is on account of this that the interests of the home buyers have suffered.

40. Learned counsel submitted that keeping in view the violations of the terms and conditions of the licence and other statutory conditions, the question which would arise before this Court would be whether the DTCP, Haryana was to remain only a mute spectator or did he have some powers under the Act to do away with the conditions of NOC to ensure the vindication of the rights of the home buyers.

41. Reference was made to the provisions of Section 3, Section 8 and other provisions of the 1975 Act. Emphasis was laid on the role of the Director and it was submitted that the competent authority was the Director. It was submitted that the powers under Section 3 D of the 1975 Act were much wider than the powers under the 2015 Policy. Reference was also made to Section 10 of the 1975 Act which lays down the penalties. It was submitted that under the scheme of the Act, the Director cannot be expected to be a mute spectator. It was further submitted that under the scheme of the Act, the colonizer also has certain obligations and that the liabilities of the petitioner would remain in so far as essential services are **c**oncerned.

42. Learned counsel then referred to the impugned orders and read them in extenso and supported the said orders. It was submitted that though the HRERA had wrongly stated about sub-division of the licence, there was actually no sub-division of the licence. It was submitted that it was subsequent to the order passed by HRERA that requests were received by the DTCP, Haryana and under the circumstances the impugned order was passed.

43. It was submitted that the argument that since it was a bilateral issue between the licencee and five other builders, the Director would have no jurisdiction to interfere is devoid of merit and it was submitted that the Director duly had the power to deal with the issue. It was submitted that the term bilateral would mean the issue between the director and the allottees and not between the five other entities.

44. Reference was also made to the order passed by the Delhi High Court and the same was supported. However, it was stated that apart from what had been held by the Delhi High Court, it should also have been held that essential services would be the responsibility of the licencee.

45. It was submitted that the impugned orders are being assailed only on account of the clash of interest and pecuniary interests of the companies which, in any case, would be subservient to the interests of the home buyers.

46. Reliance was placed upon the judgments of Hon'ble Supreme Court in ***DLF Universal Limited and another versus Director, Town and Country Planning Department, Haryana and others 2010 (14) SCC 1; Khargram Panchayat Samiti and another versus State of West Bengal and others (1987) 3 Supreme Court Cases 82 and the order dated 20.12.2023,***

passed by Delhi High Court in Dinesh Mittal & Others versus M/s Triveni Infrastructure Development Co. Ltd. in CO.PET.39 of 2009.

47. Sh. Ashish Chopra, learned Senior Counsel representing respondents No.3 and 4 supported the impugned orders and submitted that the entire problem had been created by the petitioner and that it did not lie in the mouth of the petitioner to contend that the bifurcation of licence is not permissible for it is the petitioner which, in the first instance, transferred the development and marketing rights to five different companies without the permission of the official respondents which infact amounted to bifurcation of the licence. Arguing on the termination of the agreement, reference was made to Clause 8 of the Agreement **(Annexure P-2)** entered into between the parties and contended that there was no clause for termination and Clause 8 of the Agreement only talks about a notice in case of default or breach of any of the terms and conditions of the agreement to cure such default/breach. It was submitted that under the circumstances, the agreements entered into between the parties and the GPAs still exist and operate and there is practically no document to even prima facie show that the GPA/agreement had ever been rescinded. Reference was made to **Annexures P-10 and P-11** which were notices issued by the petitioner to respondents No.3 and 4 and it was submitted that these notices were infact notices to cure the default and it were not notices for cancellation of the agreements/power of attorneys.

48. It was submitted that respondents No.2 and 3 had invested Rs.70 crores and almost 80% of the construction had been done and it is under these circumstances that the authorities passed the orders keeping in mind not only the provisions of law and the agreements etc. entered into between the parties but also the interest of the allottees.

49. Reference was made to the Civil Suits filed by the petitioner and it was submitted that even in the civil suits, respondents No.3 and 4 as also the agreements/GPAs were recognized.

50. Referring to the impugned orders, it was submitted that the licences had not been bifurcated and infact only the land had been bifurcated. It was submitted that only the in-principle approval had been granted for the change of 'beneficial interest' and all responsibilities of the licencee are there because the licence cannot be bifurcated.

51. Reference was made to the order dated 20.12.2023 passed by the High Court of Delhi in the case of Dinesh Mittal & others versus M/s Triveni Infrastructure Development Co. Ltd. in CO.PET.39/2009 dated 20.12.2023 wherein the petitioner i.e. Maximal Infrastructure Private Limited was directed to give no objection to the transfer of 'beneficial interest' to the BSF Family Welfare Society (Regd.). It was submitted that if a similar permission is granted to respondents No.3 and 4, the project would be completed in one year and possession of the dwelling units would be handed over to the allottees.

52. Reference was also made to the orders passed by the Supreme Court of India in the litigation between the Seth Group and the Mittal Group wherein the Supreme Court of India had taken note of all five developers.

53. It was further submitted that the appeal filed by the petitioner against the order dated 01.10.2019 was simply withdrawn and, therefore, the said order had become final.

54. It was further submitted that before the HRERA also, the issue of the State taking over the project had arisen. It was submitted that the petitioner has abused the process of law and has left not only respondents No.3 and 4 but also the allottees of dwelling units out in the cold.

55. Sh. Akhil Mahajan petitioner in person in CWP No.19954 of 2022 and respondent No.5 in CWP No.12971 of 2023 submitted that the allottees have suffered an irreparable loss on account of the infighting between the petitioner (M/s Maximal Infrastructure Private Limited) and respondents No.3 and 4 (M/s Heritage Cottages Pvt. Ltd. and M/s ORS Infrastructure Pvt. Ltd.) in CWP No.12971 of 2023. It was submitted that the allottees had invested their hard earned money in the project but they have still not been given possession of the flats allotted to them and that they have been duped by these companies. It was submitted that the orders under challenge are perfectly legal and valid and no interference is called for in the said orders.

REBUTTAL

56. Rebutting the arguments addressed by learned counsel for the respondents, learned Senior Counsel for the petitioner referred to the amended definition clause of the 1975 Act with specific reference to Section 2 (bb), 2 (d) and 2(d)(i) of the 1975 Act. It was submitted that the 1975 Act is a regulatory law and amendments are mostly clarificatory in nature. It was submitted that regulatory laws are to be followed strictly and, therefore, the authorities would not be in a position to relax any provision. It was submitted that it was a common practice of Companies to enter into collaboration agreements and it was only with a view to regulate such agreements that the 2015 Policy was introduced.

57. It was submitted that the directions passed by the Delhi High Court were not within the framework of the Act and that Courts would not be empowered to pass direction dehors the provisions of 1975 Act. It was submitted that to resolve the situation, the construction can be undertaken by some third party or by the allottees' association but not by respondents No.3 and 4 who are defaulters and had not paid the EDC/IDC etc. It was contended that the petitioner had paid Rs.38 crores under the said head but when recovery was to be made from respondents No.3 and 4, they initiated proceedings before the HRERA.

ANALYSIS AND FINDINGS

58. We have considered the submissions made by learned counsel for the parties.

59. Before adverting to the merits of the case, we consider it expedient to refer to the statutory provisions. The 1975 Act is an Act to regulate the use of land in order to prevent ill planned and haphazard urbanization in or around towns and for development of infrastructure sector and infrastructure projects for the benefit of the State of Haryana. Section 2 (bb) of the 1975 Act was inserted w.e.f. 18.02.2015 by the Haryana Act No.11 of 2017 dated 03.04.2017 and defines change in 'beneficial interest';

> ***"Section 2(bb)***
> ***change in beneficial interest" means change in existing developer, assignment of joint development rights, marketing rights or cumulative change in shareholding pattern beyond twenty-five percent of shareholding existing at the time of grant of licence."***

Section 2 (d), (d1), d(2) and 2(f), defines colonizer, developer and director;

"2(d)

colonizer" means an individual, company or association or body of individuals, whether incorporated or not, owning land for converting it into a colony and to whom a licence has been granted under this Act and shall include a developer;

2 (d1)

'developer' means an individual, company, association, firm or a limited liability partnership, designated through a collaboration/ development agreement with the owner for making an application for grant of licence and for completion of formalities required on behalf of such owner to develop a colony;

2(d2)

'development rights' means the rights given for development of land within the urbanisable limit of development plan either to an owner who surrenders such land to vest with the Government without claiming any compensation for the purpose of obtaining TDR Certificate or to a colonizer whom a PDR Certificate has been issued, after fulfilling such terms and conditions and on payment of such fee, as may be prescribed;

2(f)

"Director" means the Director, Town and Country Planning, Haryana, and includes a person for the time being appointed by the Government, by notification in the Official Gazette, to exercise and perform all or any of the powers and functions of the Director under this Act and the rules made thereunder;"

60. Section 3 of the 1975 Act deals with licence and lays down that any owner desiring to convert his land into a colony, unless exempted under

Section 9 of the 1975 Act, would make an application to the Director, for the grant of licence to develop a colony. It then goes on to lay down the procedure for such grant of licence.

61. Section 8 of the 1975 Act deals with cancellation of licence and lays down that a licence granted under the Act would be liable to be cancelled by the Director if the colonizer contravenes any of the conditions of the licence or the provisions of the Act or the Rules made thereunder. Section 10 lays down the penalties for contravention of the provisions of the Act or the rules made thereunder.

62. Before the amendment of 2017, the concept of change in 'beneficial interest' was not there in the 1975 Act and the same was introduced by the 2015 policy. The 2015 Policy **(Annexure P-6)** laid down the parameters for allowing change in the 'beneficial interest' viz. change in developer; assignment of joint development rights and/or marketing rights in a licence granted under the 1975 Act. The policy needs to be reproduced for understanding the issue;

> ***"On account of the changing market dynamics, many requests have been received in the Department during the recent times, for either 'Change in Developer' or for Assignment of Joint Development Rights and/or Marketing rights', wherein "Transfer of Licences is not involved, since no change in land-schedule of the licenced colony is involved. It has been observed that these cases, though not involving change in land schedule of the licence and thus not qualifying as transfer of licence, inherently involve 'change in beneficial interest of the existing Developer and thus policy parameters to enable decision on such requests and recovery of administrative charges against the***

same need to be prescribed. Accordingly, in exercise of the powers conferred under section 9A of the Haryana Development & Regulation of Urban Areas Act 1975, the Governor of Haryana is pleased to prescribe the following policy parameters in this regard.

2.0 SCOPE OF THE POLICY: Any case involving change in the 'beneficial interest' of the existing Developer, designated as such at the time of grant of licence, shall be covered under the scope of this policy and shall accordingly require an application to the Director General, Town and Country Planning, Haryana (DGTCP) seeking approval for the same. Without prejudice to their inherent general meaning, the terms:

> ***(i) 'change in beneficial interest', shall include cases pertaining to change in existing Developer, assignment of joint development rights and/or marketing rights; cumulative change in shareholding pattern beyond 25% of shareholding existing at the time of grant of licence; etc., for which the licencee/Developer shall be required to seek the prior approval of DGTCP, under the present policy; and,***
>
> ***(ii) 'new entity' shall include any individual/entity, either proposed to be inducted as the Developer and/or shareholder(s); or for assignment of Joint Development and/or Marketing rights.***

3.0 RECOVERY OF ADMINISTRATIVE CHARGES: Any applicant seeking such change in beneficial

interest shall be required to deposit administrative charges, at the rate of 25% of the applicable licence fee prevailing on the date of such application and in the manner as prescribed under para 4.0 below.

Provided that in case of 'Assignment of Joint Development Rights and/or Marketing rights' over part of any licenced area, the administrative charges shall be levied proportionately against such part of licenced area for which the Joint Development Rights and/or Marketing Rights is proposed to be assigned.

4.0 APPLICATION PROCEDURE: All such requests for change in beneficial interest shall be accompanied by the following documents:

(i)A No-Objection-Certificate from existing 'Developer, filed through its authorized signatory, specifically designated for the purpose, as well as from the 'land-owner licencees', in person (not through GPA/SPA assignees), to the proposed change/assignment.
(ii) A consent letter from the 'new entity' for the proposed change.

(iii) Justification for such request.

(iv) The status regarding creation of third-party rights in the colony. In case no third-party rights are claimed to have been created in the colony, an affidavit to the said effect be also submitted by the existing Developer.

(v) Documents pertaining to Technical and Financial Capacity of the 'new entity proposed to be inducted as a

'Developer' or 'shareholder(s)' as per prescribed policy parameters for the purpose of grant of licence.

(vi) A demand draft for 40% of the applicable administrative charges calculated at the rates prescribed under para 3.0 above.

(vii) An undertaking to pay the balance administrative charges before final approval.

(viii) An undertaking to the effect that in case the administrative charges for such cases is fixed in the Act/Rules at a rate higher than that being recovered, the applicant shall be liable to pay the difference as and when demanded by DGTCP.

4.1. EXAMINATION OF SUCH REQUEST UNDER THE POLICY: All such requests received by the DGTCP under this policy shall be examined on merits and depending upon the nature of request, the DGTCP may direct the applicant/the new entity to furnish/comply with some or all of the following requirements, as applicable, in a period not exceeding ninety days:

i) Fresh Agreement LC-IV, Bilateral Agreement to be executed on behalf of the new entity and bank guarantees to be furnished by the bank on behalf of the new entity against internal development works and external development charges.

ii) An undertaking to abide by the provisions of Act/Rules and all the directions that may be given by

the DGTCP in connection with the above said licenses.

iii) A demand draft for the balance 60% of the applicable administrative charges calculated at the rates prescribed under para 3.0 above.

iv) Registered Collaboration agreement between the proposed Developer and land owning individuals/entities.

v) Clear the outstanding EDC/IDC dues, as specifically directed by the DGTCP.

vi) In projects where third party rights stand created, objections regarding change in Developer shall be invited from the allottees through public notice as well as notice under registered cover, as per the detailed procedures and proforma prescribed by the DGTCP.

vii) An undertaking to settle all the pending/outstanding issues, if any, in respect of all the existing as well as prospective allottees.

viii) An undertaking to be liable to pay all outstanding dues on account of EDC and nterest thereon, if any, in future, as directed by the DGTCP.

ix) An undertaking that all the liabilities of the existing Developer shall be owned by new entity.

(x) Original licences and schedule of land

(xi) An undertaking that notwithstanding the-

assignment of joint development rights and/or marketing rights to a third-party agency, for either entire or part of the colony, the Developer shall continue to be solely responsible for compliance of provisions of the Act/Rules as well as terms and conditions of the licence (applicable in case of assignment of joint development rights and/or marketing rights).

4.2. ISSUANCE OF APPROVAL/ REJECTION ORDERS: Subject to the compliance of the terms and conditions as laid down in the in-principle approval to the satisfaction of the DGTCP, the necessary approval may be allowed. In case of failure of compliance of the prescribed conditions within the prescribed period, the in-principle approval shall automatically lapse and the administrative charges shall be forfeited. The applicants may, however, resubmit their request along with fresh administrative charges, which shall be examined afresh, on merits.

5.0 SPECIAL DISPENSATION: (i) The administrative charges recovered under this policy shall be credited to the IDC Fund created under Section 3-A of the Haryana Development and Regulation of Urban Areas Act, 1975.

(ii) Depending upon the specific requirements on case-to-case basis the DGTCP shall be free to add any further condition at the time of grant of in-principle approval or with the final permission, as deemed fit.

(iii) In such cases where either, the cumulative change

> ***in shareholding remains below 25% of shareholding existing at the time of grant of licence, or, there are changes in the Director(s) of the Developer/coloniser company, the licencee shall be bound to inform the DGTCP at any/all such occasion.***
>
> ***(iv) The policy parameters as above shall be implemented with immediate effect."***

63. It is, therefore, clear that the 2015 Policy was introduced for allowing change in **'beneficial interest'** without transfer of licence. A perusal of the 2015 Policy shows that the detailed procedure was specifically laid down in Clause 4.1 and it was laid down in Clause 4.1 (xi) that the developer would continue to be solely responsible for compliance of the provisions of the Act/Rules as well as the terms and conditions of the licence.

64. Reverting to the facts, licences No.34, 35 and 36 **(Annexure P-1)** were granted to M/s Triveni Ferrous Infrastructure Private Limited, M/s Sumit Mittal and M/s Ferrous Alloys Forgings Pvt. Ltd. on 23.01.2007. The licence No.34 pertained to 36.75 acres, licence No.35 pertained to 03 acres and licence No.36 pertained to 7.22 acres of land situated in Village Tikkawal, District Faridabad.

65. Admittedly, the development and marketing rights were transferred to five different companies namely M/s Triveni Infrastructure Development Company Limited (TIDCO which is in liquidation). Ferrous Infrastructure Private Limited, Pal Infrastructure and Developers Private Limited, M/s Heritage Cottages Private Limited (respondent No.3) and M/s ORS Infrastructure Private Limited (respondent No.4).

66. Admittedly, this transfer of development and marketing rights was in violation of the terms and conditions of the licence and the provisions of the 1975 Act for at that time there was no such provision and in any case, the same was done without any permission from or intimation to the official respondents. Relevantly, this arrangement was made in February, 2008 itself i.e. merely one year after the grant of licences No.34, 35 and 36. Specific agreements were executed and power of attorneys were given all behind the back of the official respondents. We would blame not only the petitioner but also the companies (including respondents No.3 & 4) which entered into such agreements with the petitioner/licencees behind the back of the official respondents. It is with this transfer that seeds to various disputes were sown. The agreements dated 18.02.2008 and 01.09.2008 entered into with respondents No.3 and 4 (M/s Heritage Cottages Pvt. Ltd. and M/s ORS Infrastructure Pvt. Ltd.) are on record as **Annexures P-2 and P-3** respectively. The power of attorneys dated 28.04.2008 and 01.09.2008 executed in favour of respondents No.3 and 4 are on record as **Annexures P-4 and P-5** respectively. Vide agreement dated 18.02.2008 **(Annexure P-2)**, all rights, title and interest in the construction and sale of a part of the group housing over Land measuring 2.0643 acres comprising of 2,27,165 square feet of sanctioned FSI (floor space index which is an equivalent of floor area ratio) with compounding rights on 227,165 square feet (FSI) were transferred to respondent No.3. Clause 3.4 of the agreement provided that an irrevocable power of attorney would also be executed in favour of respondent No.3. The licencee also washed its hands off from any responsibility or liability in the event of non-completion of any area of the said land. It was clarified that respondent No.3 alone would be responsible for all liabilities including criminal and civil and the owners shall in no manner be responsible for any act of commission or omission or mishap that may take place at the said property. The said transfer of development rights etc. was for a total consideration of Rs.9,20,31,356/- (Rupees Nine crore twenty lac thirty one thousand three hundred fifty six only). Clause 15.13 of the Agreement laid down that respondent No.3 alone would be alone responsible in respect of development, construction and sale of the said area in all respects. Clause 15.16 of the Agreement also provided that respondent No.3 would execute buyers' agreement in its name and not on behalf of the owners. Clause 15.20 of the Agreement laid down that the owners had undertaken to carry out the internal development works as per the terms and conditions of HUDA. There were various other clauses which do not need reference at this stage.

67. On similar lines was the agreement dated 01.09.2008 **(Annexure P-3)** executed in favour of respondent No.4. Another thing which would be relevant to be noticed is that there was no clause regarding termination of the agreement and the only clause was Clause 8 of th**e Agreement/s (Annexures P-2/P-3)** as regards cure notice to be issued to the defaulting party. It was provided that in case of any default or breach of any of the terms and conditions of the agreement, the affecting party would give a 30 days cure notice to the defaulting party to cure such default/breach, failing which the non-defaulting party would be free to seek specific performance of this agreement through a Court of law. The power of attorneys **(Annexures P-4 and P-5)** also contained identical clauses. They made reference to the agreement entered into between the parties. Notably, there was no clause as

regards revocation of the said power of attorneys.

68. The petitioner was initially known as M/s Triveni Ferrous Infrastructure Private Limited. It was a joint venture between the Mittal Group and the Seth Group. As certain disputes arose between the parties, they approached the Supreme Court of India by way of WP (Criminal) No.5 of 2015 and WP (Criminal) No.11 of 2015. A settlement was arrived at between the parties on 05.05.2015. Respondents No.3 and 4 were not in the picture and were not a part of the proceedings before the Supreme Court of India. After the settlement arrived at between the Seth Group and the Mittal Group on 05.05.2015, the petitioner issued notices to respondents No.3 and 4 on 21.04.2016 threatening cancellation of the development agreements and the GPA and on 08.06.2016, the GPAs executed in favour of respondents No.3 and 4 were suspended. Intimation in this regard was also issued on 20.06.2016. Faced with this, respondents No.3 and 4 approached the Supreme Court of India in August, 2016 seeking clarification of the order dated 05.05.2015 to the effect that the same was not applicable to respondents No.3 and 4.

69. Before the Supreme Court of India, only the Seth and Mittal Groups were there by way of criminal writ petition filed by the Seth Group. On 14.01.2015, the matter was referred for mediation. Thereafter, on 09.02.2015, the Supreme Court requested Mr. R.V.Raveendran, a former Judge of the Supreme Court of India to mediate between the parties. The learned Mediator submitted his interim report and thereafter, on 10.04.2015, noticing that the parties were open for mediation, the matters were adjourned giving the parties time to arrive at a settlement. Ultimately, the cases came up for hearing before the Supreme Court of India on 05.05.2015. On the said date, it was stated before the Supreme Court that the parties had settled their disputes and a memorandum of settlement was also recorded on 04.05.2015. The same was put up before the Supreme Court and eventually, the Supreme Court disposed of the matter vide order dated 05.05.2015 **(Annexure P-16)** noticing the terms and conditions of the settlement arrived at before the learned Mediator. A perusal of the order shows that it was essentially a dispute as regards various payments in terms of the agreements entered into between the parties earlier which had led the parties to institute various proceedings against each other including criminal proceedings. Notably, this settlement was arrived at only between the Mittal Group and the Seth Group. The Seth Group was represented by Surinder Seth and Ashish Seth and were promoters of M/s Ferrous Forging Limited, M/s Ferrous Alloy Forging Pvt. Ltd., M/s Ferrous Township Private Limited and M/s Ferrous Infrastructure Pvt. Ltd. The Mittal Group was represented by Sumit Mittal and Madhur Mittal and were promoters of M/s Triveni Ferrous Infrastructure Pvt. Ltd. In Triveni Ferrous Infrastructure Pvt. Ltd, initially, the Seth Group held 50% share and the Mittal Group also held 50% share. It would be essential to notice here that it was this Triveni Ferrous Infrastructe Pvt. Ltd. which had been awarded licences No.34, 35 and 36 alongwith Sumit Mittal who in his individual capacity had been granted a licence No.35. Another thing which needs to be noticed here is that the matter which had reached the Supreme Court was only a dispute between the Mittal Group and the Seth Group and respondents No.3 and 4 were nowhere in the picture. The Mittal Group and the Seth Group, in the considered opinion of this Court did not make an attempt to solve the whole issue but only settled the issues amongst themselves.

70. In the meantime, the 2015 Policy had come into force. For processing the obligations under this policy, a no objection certificate from the existing developer was essential. On the other side, on 21.04.2016, the petitioner had issued notices to respondents No.3 and 4 for cancellation of the agreements and GPAs which, in the considered opinion of this Court was illegal. Respondents No.3 and 4 submitted applications for change of developer on 30.10.2015 but since there was no NOC from the existing developer as also on certain other grounds, the said applications were rejected on 13.10.2016. Respondents No.3 and 4 preferred CWP Nos.13603 of 2018 and CWP No.13583-2018 against the order dated 13.10.2016 but withdrew the same on 28.05.2018 with liberty to avail other remedies.

71. Complaints were then filed before the HRERA by almost all parties including the petitioner and respondents No.3 and 4 and vide order dated 01.10.2019 **(Annexure P-26)**, the HRERA passed certain directions. It was noticed by HRERA that in violation of law, the parties at their own level had sub divided the licence and assigned its development rights to five different companies which could only have been done with the approval of the State Government. It was observed that had previous approval been sought, the State Government would also have separated their other rights and liabilities. It was observed that since the clock could not be put back in time, an appropriate and practical solution had to be found keeping in view the interests of the allottees. It was also observed that the department would have to facilitate bifurcation of the licences. It would be relevant to notice here that the word bifurcation has been laid much stress upon by the petitioner stating that bifurcation or division of licence is not permissible. The argument as regards non-permissibility of bifurcation of licence merits acceptance. However, it appears that HRERA did not exactly mean bifurcation and that it was essentially referring to change in the beneficial interest i.e. development rights etc. It had rightly been observed that the four remaining companies should be treated as a separate group for resolving their complex problems and that relaxation in rules may have to be granted by the Town & Country Planning Department. It was observed that the State had either to renew the licence or take over the project itself for completion. It was held that a way forward was possible if the Town & Country Planning Department developed a compassionate understanding of the situation and, by using the existing provisions of law or by creating a new law, divide the licence amongst the developer companies; re-dermine their liabilities; re-sanction their development plans and let the project move forward. Sadly, it was noticed that no response had been received from the Town & Country Planning, Department, Haryana. The most important direction was the final direction in para No.xi of the order dated 01.10.2019 as per which it was directed that all parties should immediately file independent applications with the Town & Country Planning Department for division of licence. It was observed that the original licencee company may not cooperate with the developers for this purpose and the Town & Country Planning Department should consider their consent as having been granted;

> ***"In above terms the captioned complaints are disposed of. All the parties should immediately file***

> ***independent applications with the Town & Country Planning Department for division of license as per orders of the Authority. The original licencee company may not cooperate with the developers for this purpose. The Town & Country Planning Department should consider their consent as having been granted. They should take a decision for division of the license, regardless of approval of the licensee company, within a period of 60 days."***

72. A perusal of the aforesaid shows that the HRERA was essentially talking of transfer of development rights/change in beneficial interest and that is why the issue of consent was also mentioned. Notably, this order was not challenged by the petitioner before any forum, though, the Department of Town & Country Planning had filed an appeal before the Appellate Tribunal against the said order on the ground that there was no provision for bifurcation of the licence. However, in the meantime, contempt petitions were filed before the Supreme Court of India on account of non-compliance of the terms of the memorandum of settlement entered into between the Seth Group and the Mittal Group on account of which the appeal was adjourned.

73. The matter was finally decided by the Supreme Court on 24.04.2020 **(Annexure P-24)** wherein it was held that the Mittal Group had willfully divided the obligations and thus passed certain directions to the Mittal Group to pay the entire EDC liability. Certain directions were also issued to the Seth Group. It was also ordered that the DTCP would bifurcate the Seth Group's portion of the land in accordance with law and that the entire exercise would be completed within two months from the date of lifting of the lock-down. In view of this judgment, the appeal filed by the Department against the order dated 01.10.2019 was dismissed vide order dated 19.06.2020 as having been rendered infructuous. Thereafter, HRERA again passed a resolution directing the Department to bifurcate the licence in terms of the order dated 01.10.2019. Even this order was not challenged by the petitioner before any Forum.

74. The directions dated 24.04.2020 were also apparently not complied with which led both the Mittal Group and the Seth Group to file interlocutory applications before the Supreme Court of India and on 09.10.2020, the Supreme Court of India again issued certain directions to the Mittal Group to comply for renewal of licences within two weeks; to the Seth Group to pay the renewal licence fee proportionate to its share and to pay half of the liability of Pal, ORS and Heritage towards licence renewal fee; directions to the Mittal Group to pay the balance licence fee including half of the Pal, ORS and Heritage. It was also directed that as and when Pal, ORS and Heritage contributed their share of the licence fee, Seth Group and Mittal Group would be entitled to refund failing which appropriate legal proceedings could be initiated against the said groups for recovery.

75. After this, respondents No.3 and 4 filed fresh applications dated 27.07.2021 with the respondents for change of beneficiary under licences Nos.34, 35 and 36. At the time of hearing, the petitioner informed the authorities that they had issued NOC in favour of the Seth Group and would, therefore, have no objection regarding change in beneficial interest in favour of the Seth Group but for respondents No.3 and 4, it was stated before the authorities that the agreements with them had been terminated and, therefore, no permission for change in beneficial interest should be granted to them. Accordingly, in-principle approval was granted on 09.12.2021/10.12.2021 not only to the Seth Group but also in favour of respondents No.3 and 4;

> ***"25. There is no impediment to grant permission for joint development rights in favour of Ferrous Infrastructure Pvt. Ltd. (FIPL) (Seth Group). Accordingly, in-principle approval for change in beneficial rights is hereby granted.***
>
> ***26. The 40% amount against administrative charges with the request for change in beneficial interest is to be forfeited only where the applicant fails to fulfil the terms and conditions of in principle approval within stipulated time.***
>
> ***With regard to Heritage Cottages Pvt. Ltd. and ORS Infrastructure Pvt. Ltd., the request received from ORS and Heritage on 27.07.2021 for change in beneficial interest as per policy dated 18.02.2015 alongwith fresh undertaking/affidavits with a request to adjust earlier 40% amount deposited against Administrative Charges is accepted as the application was rejected.***
>
> ***27. TIFPL (Mittal Group) informed at the time of hearing that they have already issued NOC in favour of FIPL (Seth Group) and terminated the agreements with Pal, Heritage and ORS (in the year 2016). However, the representative present at the time of hearing pointed out that the licensee company has not returned the agreement amount. Lot of development has already been done till such period.***
>
> ***Heritage Cottage has mentioned that there is no provision in the Indian Contract Act and Indian Relief Act for suspending and. terminating irrevocable***

GPA on consideration unilaterally. The suspension and termination can be done bilaterally with mutual consent after giving the consideration amount or in the court bilaterally. On the basis of development agreement the developer company i.e. heritage has raised construction and also sold flats in the open market w.r.t their portion.

The above companies have been recognized by the Supreme Court also and their liabilities also vest with the developer company.

Even HRERA has observed in order dated 01.10.2019 that the origin licencee company may not cooperate with the developers and the Town & Country Planning Department should consider their consent as having been granted. HRERA has passed said orders to safeguard the Interests of the allotees.

In view of above, the request for joint development rights of Heritage and ORS is considered without the consent of licensees and in principle approval for change-in-beneficial-interest is granted.

28. Zion Promoters Pvt. Ltd. has entered into agreement with FIPL for purchase of FSI rights in Tower-P, Q & R and NOC has not been granted by the licencee. This company was never discussed in the order of Hon'ble Supreme Court of India. From the perusal of the agreement it is observed that the FIPL has sold FSI to the company and has neither associated it as a developer nor the area of the site has been earmarked in the agreement. This area has already been considered for in-principle approval in favour of FIPL (Seth Group). Hence, the request of Zion Promoters Pvt Ltd for joint development rights is hereby rejected.

> ***29.*** ***The in-principle approval for joint development rights in favour of Ferrous Infrastructure Pvt. Ltd., ORS Infrastructure Ltd and Heritage Cottage Pvt Ltd may be conveyed to the companies. Final approval shall be granted after compliance of terms and conditions of in-principle approval.***
>
> ***Ordered accordingly. These orders not to be considered as precedent for other cases as these orders have been passed in compliance of order of Hon'ble Supreme Court of India in Contempt Petition No. 836 of 2021 in Contempt Petition (C) No. 34 of*** **2016 in WP (Crl) No. 5 of 2015."**

76. A perusal of the aforesaid operative portion of the order shows that the reference was made to the order dated 01.10.2019, passed by HRERA as also to the orders passed by the Supreme Court of India. In the considered opinion of this Court, this order was passed mainly keeping in view the interest of the allottees and the Director, Town & Country Planning, Haryana (respondent No.2) took a very balanced and pragmatic decision. At this stage, this Court has no hesitation in observing that the Mittal Group and the Seth Group have not acted fairly in so far as, respondents No.3 and 4 were not included in any proceedings before the Supreme Court. Even if we do not delve into this issue for there may be liabilities on both sides and which side owes money to the others is not known nor is this Court the proper forum for the adjudication of the said disputes, one thing which does emerge is that the main sufferers have been the allottees who might have invested the entire savings of their lifetime to get a roof over their heads little knowing that they would in for a rude shock at the hands of the big players in the field.

77. This Court also expresses its anguish on the illegality initially committed while transferring development rights to five companies without any intimation to or permission from the Department of Town & Country Planning, Haryana. Had this illegality not been committed, things, presumably would not have reached this stage where even the Government was compelled to think as to how the situation was to be resolved.

78. Further, we are impelled to observe another thing which needs to be observed here is that the Director, Town & Country Planning, Haryana cannot be expected to be a mute spectator and merely because, no consent was being given by the original licencee/owner/developer, it could not have rejected the applications of respondents No.3 and 4. The licencees who had themselves committed an illegality by transferring the development rights to five companies dehors the rules and regulations cannot be permitted to now contend that without their no objection, the development rights cannot be transferred.

79. This order was upheld in appeal vide order dated 21.02.2022 **(Annexure P-31)**;

> ***"I have heard the rival contentions of the parties and have perused the record Carefully. From the records and contention of the parties the appeal deserves to be dismissed and the impugned order deserves to be upheld for the following reasons:-***
>
> > ***i] The in-principle approval (dated 09.12.2021/10.12.2021 for assignment of Joint Development Rights to Heritage Cottages Pvt. Ltd. and ORS Infrastructure Pvt. Ltd has been granted as per due***

procedure of law and as per provisions of the change in beneficial interest policy dated 18.02.2015 consequent upon renewal of licence and payment of EDC/SIDC dues and also in view of order of the Authority dated 01.10.2019 for the benefits of the allottees. It is pertinent to mention if Heritage Cottages Pvt. Ltd. and ORS Infrastructure Pvt. Ltd. are not acknowledged as legal entities in the licence then home buyers and other 3rd party in whose favour rights have been created then the allottees will suffer. It is true that the authority can send recommendation only to the State Government under section-32, but, it cannot issue directions to the Government under section-37 of the Act, 2016. Section-37 reads as "Powers of Authority to issue directions The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned." However in the present case, the spirit of the order has to be seen in context of the order passed by. Hon'ble Supreme Court to resolve dispute between original licensee and developer. The licensee had changed the developer even without permission of the Department, however, the Director has recognised developers namely Pal, ORS, Heritage etc

without taking express consent of the original licensee assuming its deemed consent to put end to the dispute and to comply order of Hon'ble Supreme Court.

ii] As per the MOS dated 04.05.2015, the payment of fee, charges and submission of bank guarantee to DTCP Hr. w.r.t. licence no. 34-36 of 2007 was to be made by Seth Group & Mittal Group.

iii] The department cannot take the reign of the bilateral civil disputes. The appellant is at liberty to pursue their legal remedies available under the relevant law to recover the dues from the respondent no. 3 & 4, if any. The appellant could have taken legal route by seeking permission of the Department for change of developer under policy dated 18.02.2015 in which case he could have represented to the Director for redressal of its grievance, however, in this case without knowledge of Department and behind the back of Department, the licensee went ahead and signed agreements with the developers unilaterally and subsequently as mentioned above also terminated agreements unilaterally. Therefore, at the stage it would only be appropriate that licensee seeks legal remedy at appropriate legal forum i.c. civil court. For the department, it would be important and relevant at this stage to ensure that interest/rights of allottees are protected

and safeguarded because these third party rights are created with the will and consent of licensee in the first place.

iv] That appellant without the permission of Director have assigned the development right in favour of respondent no. 3 &4 in gross violation of terms and conditions of the licence. The appellant himself is thus a wrong doer and now cannot be permitted to take a volte-face.

v) Consent of appellant is not required in view of the order of the Authority referred above and particularly in view of the fact that policy itself gave powers to the Director to relax any of the conditions keeping in view of the facts of the case.

vi) The interest of allottees has to be protected and they cannet and fancies of the licencee/developer.

vii) That GPA executed in favour of respondent no. 3 & 4 cannot be terminated unilaterally and view of the Director on this aspect is correct in view of provisions of Section 202 of the Indian Contract Act.1872 which provides that " Termination of agency where agent has an interest in subject-matter. Where the agent has himself an Interest in the property which forms the subject-matter of the agency, the agency cannot, in the

absence of an express contract, be terminated to the prejudice of such interest." Further, Hon'ble Supreme Court in Seth Loon Karan Sethlya v. Ivan E. John, (1969) 1 SCR 122 has held as (relevant reproduced):-

"5. There is hardly any doubt that the power given by the appellant in favour of the Bank is a power coupled with interest That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an Interest in the property which forms the subject-matter of the agency, the agency cannot, In the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the Bank is Irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question, was irrevocable."

In view of the reasons mentioned above, the appeal deserves to be dismissed being of any merit. Hence, dismissed."

80. A perusal of the aforesaid order shows that again a very pragmatic and balanced view was taken, noticing the dispute between the parties, the decision of the Supreme Court of India, the terms and conditions of the licence, the terms and conditions of the 2015 Policy, the memorandum of settlement dated 04.05.2015 entered into between the Seth Group and the Mittal Group. It was rightly held that the department cannot take the reign of bilateral civil disputes and that the appellant i.e. the petitioner herein would be at liberty to pursue its legal remedies available under the relevant law to recover the dues from respondents No.3 and 4, if any. It was also noticed that behind the back of the department, the licencees had unilaterally signed agreements and had, thereafter, unilaterally terminated the same. It was held that the appellant himself being a wrongdoer cannot be permitted to take a volte-face. It was rightly held that the consent of the appellant was not required particularly in view of the fact that the Policy itself gives power to the director to relax any of the conditions keeping in view the facts of the case. It was also rightly held that the interest of the allottees had to be protected and they could not be left on the whims and fancies of the licencees/developers. Subsequent writ petitions filed against the said order and withdrawal of the said writ petitions is a matter of record and does not require reference.

81. Eventually, vide order dated 07.03.2022, the permission for assignment of joint development and marketing rights was granted to respondents No.3 and 4. Subsequent filing of writ petitions and withdrawal of the same do not deserve a specific mention but eventually, vide order dated 25.05.2023, passed by DGTCP, Haryana, the orders dated 09.12.2021 and 07.03.2022 were upheld.

82. A cumulative reading of the orders passed by different authorities from time to time leads this Court to the conclusion that there is no illegality in the impugned orders and they have been passed in the peculiar facts and circumstances of the issue. It is said that 'procedure is the handmaid of justice' and it has to be construed for the benefit of the parties concerned and not to their detriment. Procedure should promote justice and should prevent miscarriage of justice. The ultimate sufferers in the whole issue have been the allottees apart of course from the concerned parties who must have suffered financial losses. At the end of the day, the interests of the allottees cannot and should not be compromised and this is precisely what the authorities rightly kept in mind while passing the impugned orders. We, therefore, do not intend to interfere in the said orders and infact uphold the same.

83. The argument that the Director, Town & Country Planning did not have any power under the 1975 Act and the 2015 Policy to order the transfer of beneficial interest without an NOC from the petitioner is devoid of merit. No doubt, under the 1975 Act, there was no provision earlier for change in beneficial interest but the same was subsequently incorporated in 2017. Under the 2015 Policy, an NOC is required from the licence holder. However, this cannot, under any circumstance, be construed to mean that the director would have no powers to rectify an illegality and that he was supposed to be simply a mute spectator to the misdeeds of the licence holders. At the cost of repetition, it needs to be reiterated that the petitioner cannot be permitted to raise this argument once it had itself violated the provisions of 1975 Act by transferring the development rights just one year after the grant of the licences. As has been observed in the preceding paragraphs, procedure should promote justice and should prevent miscarriage of justice. Had the director not exercised his discretion and had not ordered the transfer of beneficial interest, it would have amounted to gross miscarriage of justice.

84. The argument that vide order dated 17.11.2017, the Supreme Court of India had observed that only the Seth Group, the Mittal Group and the State would be heard and, therefore, respondents No.3 and 4 cannot derive any benefit from the said order is devoid of merit. The argument that vide order dated 24.01.2024, the application for impleadment and clarification moved by respondents No.3 and 4 had been dismissed is also devoid of merit because the parties before the Supreme Court were the Mittal Group and the Seth Group and, therefore, no recognition could have been given to respondents No.3 and 4. The Supreme Court, however, did talk about the bifurcation of the licence which was taken notice of by the authorities also in their subsequent orders which have been impugned in the present writ petitions.

85. The argument that in terms of the 2015 Policy, without an NOC from the original licencee/owner and without a fresh LC-IV Form having been executed between the DTCP and the existing owner, the beneficial rights could not have been transferred is also devoid of merit because it was under special circumstances that the consent was deemed to have been given. The authorities, rightly did not let the petitioner get away with the lame excuse of an NOC not having been given. Similarly, there would be no requirement of registered collaboration agreement between the owner and developer once the powers were being exercised in special circumstances and where the owner had backed out completely.

86. The argument that the authorities had wrongly observed that the agreements and GPAs could not have been terminated unilaterally in view of the provisions of Section 202 of the Indian Contract Act, 1872 and that these issues were required to be decided by the Civil Court of competent jurisdiction would also not come to the aid of the petitioner because eventually, the parties will have to get their rights and liabilities adjudicated before the Civil Court but the orders were passed keeping in view the interest of the allottees and, therefore, do not call for any interference.

87. The argument that a bilateral agreement between the parties could not have been interfered with by the director is also devoid of merit. The bilateral agreement, if at all, was between the licensor/promoter and the allottees and any agreement illegally executed with a third party at the back of the official respondents cannot be termed to be a bilateral agreement and, therefore, it cannot be argued that such agreements are not liable to be interfered with.

88. We have carefully examined the judgments relied upon by learned counsel for the petitioner. Reliance has been placed upon certain judgments on particular propositions**.** Judgments in the cases of ***M.C.Mehta versus Union of India and others, T.Vijayalakshmi and others versus Town Planning Member and another and Chairman, Indore Vikas Pradhikaran versus Pure Industrial Coke & Chemicals Ltd. and others (supra)*** have been relied upon to contend that the orders under challenge are in complete violation of the 2015 Policy which is based upon the provisions of the 1975 Act and that under the regulatory laws, the authorities cannot go beyond the scope of the provisions of the Act, Rules or Policy. Though, there is no quarrel with the proposition laid down in the said judgments, they would not come to the aid of the petitioner for the said judgments were rendered in the particular facts of the cases in question. Still further, as has been already observed, the authorities could not have remained a mute spectator in view of the gross illegalities committed by the petitioner which led to the allottees suffering for no fault of theirs.

The judgments in the cases of ***Commissioner of Income Tax Vs. Balbir Singh Maini, Suraj Lamp and Industrial Private Limited versus State of Haryana and another, Dilshad Alvi versus Sri Ikrar Ahmed and Shakeel Ahmed versus Syed Akhlaq Hussain (supra)*** have been cited to contend that an unregistered agreement can neither be looked into nor it can create any right, title, interest or charge in the property. Again, there is no quarrel with the law laid down in the said judgments. However, these judgments would also not come to the aid of the petitioner because the petitioner cannot be permitted to take the benefit of its own wrongs. The petitioner nowhere denies the execution of the agreement in question and has also raised a plea that action could have been taken in terms of the provisions of the 1975 Act and the 2015 Policy only. Under the circumstances, it would not be open for the petitioner to contend that since the agreements were not registered, they would not create any right, title or interest.

The judgments in the cases of ***DLF Universal Limited and another versus Director, Town and Country Planning Department, Haryana, Ashok Kumar Jaiswal and others versus Ashim Kumar Kar and Barses J.A.D'Douza versus Municipal Corporation of Gr. Brihan Mumbai***

(supra) have been relied upon to contend that Section 202 of the Indian Contract Act cannot be invoked as the authorities under the 1975 Act do not have any such power. These judgments would again not come to the aid of the petitioner as the bilateral agreement can be stated to be between the licencee and the allottees and not agreements between third parties in violation of the provisions of the Act.

The judgment in ***Abdul Kuddus versus Union of India and others's case (supra)*** has been relied upon to contend that the principle of res-judicata would apply to quasi judicial orders because a similar application for change in beneficiary had been rejected by the authorities and any fresh application could not have been entertained. This judgment would also not help the petitioner because the subsequent applications had been entertained in view of the change in circumstances.

As regards the argument and reliance placed upon the judgment in ***M/s Landmark Apartments Pvt. Ltd. Vs. State of Haryana & Ors.*** *(supra)*, as has already been observed, there is no bifurcation of licence in the present case and there is only a change in the beneficial interest though at few places, it has been referred to as bifurcation/transfer of licence. The judgment would, therefore, not help the petitioner.

The judgment in ***Venkataraman Krishnamurthy and another versus Lodha Crown Buildmart Pvt. Ltd.'s*** case (supra) that a Court/Authority can neither re-write the terms of contract nor can it interfere in a bilateral agreement entered into between private parties is not applicable to the facts of the present case because no terms of contract have been re-written nor has been there any interference in any bilateral agreement. This issue has been discussed repeatedly in the preceding paragraphs and is not required to be discussed again.

As regards the judgments relied upon by learned counsel for the respondents in the case of ***Khargram Panchayat Samiti and another versus State of West Bengal and others (supra),*** *the Ap*ex Court held that under a statute, the conferment of general statutory powers carries with it incidental or consequential powers. It was held that a power of general administration necessarily carries with it the power to supervise, control and manage the actions/acts under the Act and under its jurisdiction. Even in DLF's case (supra), the issue was of the Director, Town & Country Planning having given directions as regards the agreements between the licensor/colonizer and the allottees which is not so in the present case and in that judgment, the scheme of the Act was noticed and, therefore, it was held that the Director was not justified in issuing directions asking the licencee/owner to virtually amend the clauses/covenants in the agreement. It was held that the statute did not confer any authority or jurisdiction upon the director to meddle with the terms of the agreement entered into by and between the owners and purchasers of the plots/flats. As has already been observed, the Director would not be expected to be a mute spectator and the impugned order in no manner, re-wrote the terms and conditions of the agreement between the licensor/owner/colonizer and the allottees.

Incidentally, the Delhi High Court in ***Dinesh Mittal & Ors. versus M/s Triveni Infrastructure Development Co. Ltd.'s case*** (supra) was also seized of a similar issue pertaining to the same colonizer wherein, after examining the matter, the beneficial interest was transferred to the society of the allottees itself and it was ordered as under:-

> ***"a) M/s Maximal shall give no objection to carry out the above a) directions to the OL within two working days.***
> ***b) The Applicant-Society and the OL's Office shall activate the bank account in PNB, Khan Market and ascertain the amount lying therein. Upon ascertaining the same, if any shortfall exists, the same shall be borne by the Applicant- Society and OL's Office in the proportion as directed in the paragraph 20 above.***
> ***c) In any case, by 10th January, 2024, an application shall be made before the DTCP, Haryana for transfer of beneficial interest in the manner directed above. Thereafter, the DTCP shall process such application as per the prescribed procedure, and in any case, it is directed that the final order of transfer of beneficial interest shall be passed within a period of three months from the date of submission of all the documents.***
> ***d) Let the OL Office and the Applicant-Society place on record a detailed status report providing details of the exercise carried out in the terms of the above directions before the next date of hearing.***
> ***e) The DTCP is also directed to process the application for beneficial interest filed by the Applicant-Society on an urgent basis. Let the DTCP file a status report in this regard."***

89. In the present case, the authorities have already passed necessary orders which are under challenge. For the reasons aforementioned, we are not inclined to interfere in the said orders. We are also in agreement with the order passed by the Delhi High Court in ***Dinesh Mittal & Ors. versus M/s***

Triveni Infrastructure Development Co. Ltd. (supra). However, in the present case, while upholding the impugned orders, we also issue a direction to the petitioner i.e. M/s Maximal Infrastructure Private Limited that it would be duty bound to perform its obligations as per the LC-IV agreement executed by it with the department and shall be bound by the terms and conditions of the licences in question.

As a cumulative effect of the aforesaid discussion, we arrive at the conclusion that there is no illegality in the impugned orders. Therefore, finding no merit in CWP No.12971 of 2023, the same is dismissed and CWP No.19954 of 2022 is disposed of in terms of the observations made in the preceding paragraphs.

Pending application(s), if any, stand(s) disposed of accordingly.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 31.07.2024
Pronounced on : 29.10.2024
mamta

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