

CWP-1528-2021 (O&M) &
CWP-2106-2021 (O&M) -1-

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

1. CWP-1528-2021 (O&M)
Reserved on: 23.01.2025
Date of decision: 13.02.2025

DLF CITY RESIDENTS WELFARE ASSOCIATION AND ANOTHER
...Petitioners

Versus

STATE OF HARYNA AND OTHERS
...Respondents

2. CWP-2106-2021 (O&M)

DLF-3 VOICE
...Petitioner

Versus

STATE OF HARYNA AND OTHERS
...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Amit Jhanji, Sr. Advocate with
Ms. Eliza Gupta, Advocate
for the petitioners (in CWP-1528-2021).

Mr. Anand Chhibbar, Sr. Advocate with
Ms. Atteevraj Sandhu, Advocate and
Mr. Karan Pathak, Advocate
for the petitioner (in CWP-2106-2021).

Mr. Ankur Mittal, Addl. AG, Haryana with
Ms. Svaneel Jaswal, Addl. AG, Haryana,
Mr. P.P. Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana.

Mr. Pravindra Singh Chauhan, Advocate with
Mr. Deepak Sabherwal, Advocate
for respondent No.11-HSVP (in CWP-1528-2021) and

for respondent No.8-HSVP (in CWP-2106-2021).
Mr. Arvind Seth, Advocate and
Mr. Anirudh Malhan, Advocate
for respondent No.8 (in CWP-1528-2021).

Mr. Randeep S. Rai, Sr. Advocate with
Mr. Kunal Dawar, Mr. Vipul Sharma and
Ms. Radhika Mehta, Advocates
for respondent No.13 (in CWP-1528-2021) and
for respondent No.9 (in CWP-2106-2021).

Mr. Pankaj Jain, Sr. Advocate with
Dr. Misha Kumar, Mr. Sachin Bhardwaj and
Ms. Divya Suri, Advocates
for respondent Nos.14 to 17 and for applicant-respondent
No.18 (in CM-991-CWP-2025 in CWP-1528-2021).

SURESHWAR THAKUR, J.

1. Since a common question of law is involved in both the writ petitions, thereby both the writ petitions are amenable to become decided through a common verdict made thereons.

For the sake of brevity the facts are taken from CWP-1528-2021

2. Through the instant writ petition, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the Official Respondents to take appropriate action in furtherance of the Action Taken Reports dated 19.11.2018 (Annexure P-2), dated 22.02.2019 (Annexure P-3) and the Memo dated 25.08.2018 (Annexure P-4) passed by Respondent No.4-District Town Planner (Enforcement), whereby, after taking note of the unauthorized construction in areas of D.L.F. City, Gurugram, it inter alia, thus recommended, that the Occupation Certificates issued persons/ owners who had raised unauthorized construction but be cancelled and further, Criminal Cases be registered

against the above said persons and further the electricity, water and sewerage connections of such persons be disconnected.

3. A further writ in the nature of mandamus was prayed for directing the Official Respondents to take appropriate action, including the removal/ demolition of the illegal and unauthorized construction in the form of five to seven storey buildings/structures in DLF City, Gurugram.

4. The present petition is being filed by Petitioner-Association, raising the issue of illegal construction(s) in and around Gurugram and especially in DLF Phase I to V. The photographs appended with the petition clearly demonstrate(s) that there is a flagrant violation of the population/ density norms prescribed by the State of Haryana and also the terms & conditions of the Layout Plans/ building plans approvals/ bye laws and other statutory provisions rather do also become blatantly transgressed.

5. The unauthorised constructions are primarily coming up in various licenced colonies, especially in the area comprising EWS (Economic Weaker Section) Flats/ Plots. The allotment of Flats/ Plots to Economically Weaker Sections is made under the policies framed for the persons belonging to the EWS Category. The unauthorised constructions within these EWS Flats/ Plots are completely destroying the very object and intent of such allotments, the original planning and ethos of any urban planning. It is averred that the official respondents are permitting such activity which is not only in violation of the laws and bye laws but is also an extra burden on the infrastructure and is permitting backdoor

entries of many unauthorised persons and ruining the basic object and intent of planned development as envisaged under the various development laws operating within the State namely, Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred as 'the Act of 1975') & 1976 Rules framed thereunder; the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 & 1965 Rules framed thereunder and also the Haryana Apartment Ownership Act, 1983 and the Rules framed thereunder.

6. The aforesaid facts were duly brought to the notice of the official respondents vide complaint dated 20.02.2018 (Annexure P-1). In response to the above said complaint, an enquiry was conducted by the official respondents, which culminated into the Action Taken Report dated 19.11.2018 (Annexure P-2). A perusal of the aforesaid report would show that after conducting a primary survey of DLF Phase III, it was decided to consider cancelling the Occupation Certificate in regard to the properties, upon which unauthorized construction was being raised.

7. Further, it was also recommended that criminal cases be registered against the violators responsible for the aforesaid constructions. A further perusal of the said report would show that a demolition drive was carried out in respect of only two properties and one illegal Mobile Tower in DLF Phase III, Gurugram, in ignorance of the fact that in reality there were more than thousand buildings upon which unauthorized structures had been raised and therefore the same also deserves to be demolished. In view of the above, the official

respondents ought to have identified the violations throughout the area and should accordingly have carried out an extensive demolition drive to proceed against the aforesaid unauthorized construction.

8. After an elapse of three months, another Action Taken Report dated 22.02.2019 (Annexure P-3) was issued by the official respondents. A perusal of the same would show that even after the elapse of substantial time, thus no concrete actions were taken by the official respondents and instead the contents of the earlier ATR dated 19.11.2018 (Annexure P-2) were reiterated, which reflects the casual approach adopted by the official respondents qua the grievances raised in the above said Complaint. In fact, despite having undertaken to take several actions including registration of F.I.Rs, issuance of show cause notices under the Act of 1975, cancellation of Occupation Certificate, disconnection of Electricity, Water and Sewerage Connections etc., the official respondents have till date failed to take any substantial steps to carry out the aforesaid actions. Ever since the passing of the above said ATRs dated 19.11.2018 & 22.02.2019, the Petitioner No.1-Association and its members have been running from pillar to post to the offices of the official respondents in order to enquire as to whether any action has been taken by the official respondents in furtherance of the above mentioned ATRs.

9. However, the official Respondents have for the past more than 2 years, been dilly dallying the matter on one pretext or the other and have been giving false assurances to the petitioners. Finally some of the members of the Petitioner No.1-Association had on 04.01.2021 visited the office of official respondents to enquire about the actions proposed to be taken in furtherance of the aforesaid ATRs. However, the

members of the Petitioner No.1-Association were this time categorically indicated by the official respondents that nothing can be done in this matter. The aforesaid has prompted the petitioners to approach this High Court with the grievances as detailed in the present writ petition.

10. In response to the complaint dated 20.02.2018, a Memo dated 25.08.2018 (Annexure P-4) was issued by the office of DTP (Enforcement) to DTP (Planning) observing therein that various Property Owners in DLF Phase III Gurugram had, been raising unauthorized constructions beyond the permissible zoning limits, in their respective properties and further that some of these residential properties were also being illegally used for commercial purposes. In view of the above, it was inter alia recommended that the Occupation Certificates of the aforesaid properties may immediately be revoked and that appropriate actions be taken under Act of 1975. Pursuant to the above said Memo dated 25.08.2018, more than two years have lapsed, however no substantial steps have been taken by the official respondents especially DTP (Planning) to carry out the recommendations of DTP (Enforcement).

11. Under the above circumstances, it is amply clear that a powerful lobby of certain groups/land mafia, are ruining the very basic character of the developed colony in active connivance with the local administration/ official respondents that too only because the authorities have turned a blind eye and are permitting such illegal & unauthorised constructions / illegal developments; which are coming up at an alarming rate right under their nose. Still further, the illegal & unauthorised constructions /developments are also in clear violation of the Zoning

Plan, Building Bye Laws, 2016/ Building Bye Laws, 2017/ Haryana Building Code and in case such haphazard and unplanned development is not stopped it will lead to total collapse of over infrastructure of Gurugram including but not limited to potable drinking water, sewerage, air quality, transport, electricity, other common infrastructure and other facilities & amenities.

12. As per the synopsis submitted by the learned State counsel, detailed inputs have been provided to this Court. A perusal of the synopsis, reveals that there are several types of violations, which are detailed hereinafter in a tabular form.

- (i)
- a) Commercial use in residential areas/plots

b) Construction beyond permissible FAR/Additional floors

c) Construction beyond permissible FAR + Commercial use in residential areas/ plots.

The above violations are non-compoundable in nature.

- (ii)
- The violations I General Category plots and EWS category plots are as under:-

A) General Category Plots

General Category Plots (Non-EWS)						
Phase	Total plots	Vacant plots	Under construction	Construction beyond permissible FAR/ additional floors	Commercial use	Construction beyond permissible FAR/ additional floors + Commercial use
1	3615	708	120	170	106	5
2	3228	652	76	352	78	21
3	2374	515	88	438	99	65
4	1310	362	26	77	54	3
5	481	107	21	18	3	1
Total	11008	2344	331	1055	340	95

B) EWS Category Plots

EWS Plots			
Phase	Total plots	Vacant Plots	Violations (Construction beyond permissible FAR/additional floors + Commercial use)
1	43		20
2	0		0
3	3124	360	2289
4	330	29	256
5	252	112	128
Total	3749	501	2693

(ii) Nature of violations are non-compoundable in nature as in EWS category plots no setbacks have been let out. Upto 8 storey buildings have been raised.

13. The said synopsis also reveals the actions taken by the authorities concerned against the violators, inasmuch as, notices under Section 10(2) of the Act of 1975 having been issued, besides in certain cases restoration order under Section 10(2) of the Act of 1975 having also been passed. The actions taken details are mentioned hereinafter in a tabular form.

Phase	Category	Total Plots	Total violations	Show Cause notice issued	Restorati on order	Action taken	Stay granted by Ld. Civil Court
DLF - I	EWS	43	20	20	To be passed	NA	29
	General	3615	281	238	To be passed	NA	
DLF - II	EWS	0	0	0	To be passed	NA	70
	General	3228	451	100	To be passed	NA	
DLF - III	EWS	3124	2289	2245	To be passed	NA	50
	General	2374	602	343	To be passed	NA	

DLF - IV	EWS	330	128	125	To be passed	NA	12
	General	1310	134	66	To be passed	NA	
DLF – V	EWS	252	128	100	94	60 sealed + 81 OC revoked	11

14. The constraints with the authorities, thus to take prompt actions against the violators, are, inter alia (i) despite a specific jurisdictional bar becoming created under Section 15 of the Act of 1975, provisions whereof becomes extracted hereinafter, yet the learned Civil Court entertaining the civil suits concerned, and, also mechanically and perfunctorily staying the operation of the orders passed by the competent statutory authorities. The said filed civil suits are ordered to be forthwith closed but after an opportunity of hearing to all concerned.

“15. Bar of jurisdiction of civil court - No civil court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the rules made thereunder.”

15. Reiteratedly, the said civil suits be forthwith closed after an opportunity of hearing being granted to all concerned, but within two months from today.

16. The Civil Courts concerned, who are entertaining the civil suits qua those subject matters, in respect whereof, there is a statutory jurisdictional bar (supra), thus are directed to, after considering all the objections against the maintainability of such filed civil suits, to raise an apposite preliminary issue, and to decide the said struck preliminary issue within two months from today.

17. As per the reply submitted on behalf of respondent No.13-DLF, the illegal constructions, if any, have been done by the individual allottees concerned, to whom the DLF, thus a real estate developer but after developing the aforesaid site DLF Phase I to V, rather has made the apposite allotments. Therefore, at this stage, vis-a-vis the DLF no attribution can be made that after its raising purportedly unauthorized constructions, qua the said purportedly unauthorized raised constructions becoming handed over to the individual allottees concerned.

18. In view of the above, this Court passes a mandamus upon the respondents concerned, to in respect of the tabulated categories (supra), thus draw prompt action and to conclude the action takings but within two months from today. The said be conveyed on an affidavit to be filed before this Court, on 19.04.2025.

19. Disposed of accordingly with the aforesaid observations.

20. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

13.02.2025

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(VIKAS SURI)
JUDGE