2025:PHHC:024731-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Reserved on : 22.01.2025
Pronounced on : 20.02.2025

Sr. No.	*Case Number*	*Title of the case*
1.	*CWP-23563-2023*	*Pooja Bharat Kapoor Vs. U.T., Chandigarh Administration and Others*
2.	*CWP-27307-2023*	*Sushil Ghai Vs. U.T., Chandigarh and Others*
3.	*CWP-5102-2024*	*Pradeep Sharma Vs. U.T., Chandigarh and Others*
4.	*CWP-13377-2024*	*Poonam Pratibha Sharma Vs. U.T., Chandigarh and Others*

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

Argued by: Mr. Abhimanyu Tewari, Advocate
Mr. Salil Dev Singh Bali, Advocate
Ms. Simmy, Advocate
Mr. Abhijeet Chaudhary, Advocate
Mr. Shubham Aggarwal, Advocate
for the petitioner (in CWP-23563-2023).

Mr. P.K.Chugh, Advocate
for the petitioner(s) (in CWP-13377-2024).

Mr. Amit Jhanji, Sr. Advocate with
Mr. Sanjiv Ghai, Advocate
Mr. Parminder Singh Kaul, Advocate
Mr. Himanshu Arora, Panel Counsel,
Ms. Eliza Gupta, Advocate
for respondent(s) – U.T., Chandigarh
(in CWP-27307-2023).

Mr. Maheshinder Singh Sidhu, Addl. Standing Counsel
with Ms. Amrita Garg, Junior Panel Counsel
for respondent – U.T., Chandigarh
(in CWP-23563-2023 & CWP-13377-2024).

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SURESHWAR THAKUR, J.

1. Since all the writ petition(s) involve common questions of facts and law, besides since the order impugned in all the writ petition(s)

is similar, therefore, they all are amenable to be decided through a common order.

2. However, the facts of each of the writ petition(s) are required to be separately delineated.

CWP-23563-2023

3. Through the instant writ petition, the petitioner herein, who is a co-owner of 30 % share in a co-owned property/residential house No.1010, Sector 15-B, Chandigarh, prays for the quashing of public notice dated 09.02.2023, issued by respondent No. 4 and restoration of the status prior to the issuance of the impugned public notice.

CWP-27307-2023

4. The petitioner herein, who is a co-owner of 30 % share in a co-owned property/residential house No.2187, Sector 35-C, Chandigarh, prays for the quashing of public notice dated 09.02.2023, issued by respondent No. 4 and restoration of the status prior to the issuance of the impugned public notice.

CWP-5102-2024

5. The petitioner herein, prays for the quashing of the public notice dated 09.02.2023, issued by respondent No. 4 and restoration of the status prior to the issuance of the impugned public notice.

CWP-13377-2024

6. The petitioner herein, who is a co-owner of 20 % share in a co-owned property/residential house No.1024, Sector 21-B, Chandigarh, prays for the quashing of public notice dated 09.02.2023, issued by

respondent No. 4 and restoration of the status prior to the issuance of the impugned public notice.

7. The impugned public notice, as issued by the Chandigarh Administration, is extracted hereinafter.

Public Notice

OFFICE OF VINAY PRATAP SINGH, IAS, DEPUTY COMMISSIONER-CUM-ESTATE OFFICER, U.T., CHANDIGARH.

In view of the judgment dated 10.01.2023, passed by the Hon'ble Supreme Court of India in the case SLP (C) No. 4950 & 5489 of 2022 titled as "Residents Welfare Association Anr. Vs. U.T. Of Chandigarh and Ors.", regarding apartmentalization in Chandigarh. The Chandigarh Administration has taken following decisions regarding residential buildings only in Chandigarh :-

1. Building Plans/Revised Building Plans of only those residential buildings, where all the co-owners belong to the same family (i.e. no co-owner should be stranger/outside Family), will be considered as per Rules.

2. All kind of transfer of property within family through Sale Deed/Transfer Deed/gift Deed/WILL/Intestate Death etc. will be allowed irrespective of the share held.

3. WILLS bequeathing shares only within family members will be considered.

4. Transfer in which 100 % property is being purchased by either a single person or multiple persons belonging to the same family, will be allowed irrespective of the fact whether present owners are members of the same family or strangers/outside family.

5. Mutation will be carried out for all deeds (i.e. Sale Deed/Transfer Deed/Gift Deed etc.) that have been registered upto the date of judgment (i.e. 10th January, 2023) as per Rules.

These decisions shall be effective from 10.02.2023.

The above decisions will only be applicable on the Residential properties in U.T., Chandigarh. Residential apartments under Chandigarh Housing Board and apartments approved under The Chandigarh Apartment Rules, 2001 by Estate Office will not be affected by above mentioned order of Hon'ble Supreme Court.

In all the residential properties, which are not covered by the above decision, transfers and mutations would not be done till the final decision is taken by the Heritage Committee."

Factual Background

8. To regulate the development in the city of Chandigarh, The Capital of Punjab (Development and Regulations) Act, 1952 (hereinafter for short called as the Act of 1952) was enacted. The relevant provision as occur in the said Act of 1952, are extracted hereinafter.

2. Definitions *- In this Act, unless the context otherwise requires, -*

(k)"transferee" *means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns ;*

"3. Power of Central Government in respect of transfer of land and building in Chandigarh. *–*

(1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

(2) The consideration money for any transfer under sub-section (1) shall be paid to the Central Government in such manner and in such installments and at such rate of interest as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government.

22. Power to make rules. – *(1) The Central Govermnent may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.*

xxxxx"

9. In the year 1960, the Governor of Punjab, in exercise of the powers conferred by Sections 3 and 22 of the Act of 1952, Chandigarh (Sale of sites and buildings) Rules, 1960 (hereinafter for short called as the 1960 Rules) were formulated. The relevant Rule 14 of the 1960 Rules is extracted hereinafter.

*"**14. Fragmentation** [Section 3 and 22 (2)(a)] No fragmentation or amalgamation of any site or building shall be permitted:*

Provided that amalgamation of two or more adjoining sites shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto.

Provided further that fragmentation of sites shall be permitted only in case of the persons applying for conversion under the "Chandigarh Conversion of Land Use of Industrial Sites into Commercial Activity/ Services in Industrial Area, Phase-I and II, Chandigarh Scheme, 2005, notified vide No.28/8/51 UTFI(3) 2005/6658 6662, dated 19.09.2005."

10. Subsequently, the U.T., Chandigarh Administration had notified "The Chandigarh Apartment Rules, 2001 (hereinafter refer to as the 2001 Rules) on 20.12.2001. The relevant provisions of the 2001 Rules become extracted hereinafter.

*"**2. Definitions**:*

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

(b) "Building" means any construction or part of construction or proposed construction in Chandigarh as defined in Clause

(x) of Rule 2 of the Punjab Capital (Development and Regulation) Building Rules, 1952.

***3. Sub division of Building**:*

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

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

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

(3) Each sub division, after it has been recognized as an apartment by the Estate Officer, consequent upon the filing of prescribed declaration, shall be the sole and exclusive property of the declared owners/lessees. Such owners/lessees's shall be fully and exclusively responsible and liable for complying with all provisions of the Capital of Punjab (Development and Regulation) Act, 1952, rules and orders framed thereunder, and covenants of the allotment letter and conveyance deed pertaining to the site or the building. All these provisions of rules, orders and covenants shall apply, pari passu, to the apartment and to the owners/lessees thereof, as they did and would have, to the site or building and the owners/lessees thereof.

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

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

***4. Sub- Division of Residential Buildings**:*

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

(2) The basement, if any, allowed in a residential building shall not constitute a separate sub division. The basement shall form a part of the sub divisions on the ground floor. In case more than one subdivision is allowed on the ground, each such sub division may have a separate basement if building regulations so permit. Except in the case where the basement provides for facilities such as parking area at the end or other plant and

equipment required for apartments in the building, the basement or portions therein may constitute a part of the sub division on floors, other, ground floor.

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

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

11. Further, the 2001 Rules became repealed by the Chandigarh Administration vide notification No.36/61116/UTFI(4)/6213 dated 01.10.2007 and the Chandigarh Estate Rules, 2007, became notified on 07.11.2007. The relevant Rule 16 of the said Rule becomes extracted hereinafter.

"16. Fragmentation/Amalgamation.

No fragmentation or amalgamation of any site or building shall be permitted.

Provided that amalgamation or two or more adjoining sites with the same ownership shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto.

Provided further that fragmentation of any site shall be allowed if such fragmentation is permitted under any scheme notified by the Administration."

12. Moreover, the Chandigarh Building Rules (Urban) 2017 (hereinafter for short called as the 'Building Rules, 2017') were notified on 25.07.2017, in exercise of the powers conferred under Section 5 (2) and Section 22 (1) of the 1952 Act.

13. The relevant portions of the Building Rules, 2017 are extracted hereinafter.

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

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

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

xxxx

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

xxxx

***82) "Storey"** shall mean any horizontal division of a building so constructed as to be capable of use as a living apartment, although such horizontal division may not extend over the whole depth or width of the building but shall not include mezzanine floor.*

JUDICIAL PRECEDENTS COVERING THE SUBJECT MATTER.

Civil Revision No. 3266 of 1989 titled as Chander Prakash Malhotra Vs. V.P.Malhotra

> *17. In the background of the aforesaid constitutional provision, provisions of Rule 14 which bans partition of the property by metes and bounds are arbitrary, unreasonable, capricious and contrary to the objects given in the preamble of the Constitution and Directive Principles of State Policy. The provisions of rule 14 deny to the citizens right to reasonable residence because the property cannot be divided by metes and*

> *bounds. So, rule 14 is clearly violative of Articles 14 and 21of the Constitution. There is another aspect of the matter which also deserves consideration. The aims and objects of the Act, as have been referred to above, are intended only to authorise the State Government to make rule on the pattern of Building Bye-Laws framed by the various Municipal Committees. In other words, the Act is intended to make provision for planned development of the town. The Act nowhere deals with the right of inheritance or partition. The Act is completely silent on this point. When the Act does not provide for inheritance, succession and partition, it is difficult to understand how a rule can be framed under the Act, which may bar division of property by the owner by metes and bounds. A rule which runs contrary to the provisions of Act is liable to be struck down. The rule is clearly outside the scope of rule making power so far it prohibits division of property by metes and bounds. The rule as interpreted by the trial Court means that neither 6 Kanal, nor 5 Kanal, 4 Kanal, 3 Kanal, 1 Kanal or 10 Marla buildings can be partitioned by metes and bounds. In every case after the death of the landowner, the property must be sold by the heirs to enjoy it separately. In my opinion, the rule transgresses the limits of reasonableness and travels beyond the rule making power. So, I hereby declare the provisions of Rule 14 to be illegal, ultra vires, null and void, being beyond the rule making power and I further hold that the rule is hit by Articles 14 and 21 of the Constitution."*

14. The said verdict became challenged before the Apex Court, and the same was disposed of by the Apex Court on 24.11.1992. The relevant part of the order passed by the Apex Court becomes extracted hereinafter.

> *"Leave granted.*
>
> *In the present case, the respondents did not want the partitioning of the plot by metes and bounds. All that they*

wanted was the partitioning of the building and additions and alterations therein to make separate living units in the same building. Even this partition as well as addition was to be done by them with the approval of the Chandigarh Administration according to its building bye laws. Since no fragmentation of any site including the building was involved, there was no question of the violation of rule 14 of the Chandigarh Administration (Sale of Sites and Buildings) Rules, 1960.

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

It is made clear that the respondents before partitioning the building or making additions and renovations in the same will take permission of the Chandigarh Administration according to law. The appeal is disposed of accordingly. There shall be no order as to costs."

15. Thereafter, a second appeal became filed by Chander Parkash, before the High Court, titled as **Chander Parkash Malhotra Vs. R.B.S.Chahal**, in which the hereinafter extracted order was made.

"5. As already noticed above, property cannot be partitioned according to bye laws. The only alternative left is that the parties be permitted to bid among themselves and whosoever gives the highest bid, be allowed to purchase the property. In case this mode is not acceptable, the trial court should determine the market value and given option to the appellant to purchase the share of the added respondents. In case he fails to do so within the time that the trial court may allow for the purpose, the added respondents be allowed to pay the price of the share of Chander Prakash appellant."

16. Further, a verdict made by the Apex Court, in case titled as ***Tilak Raj Bakshi Vs. Avinash Chand Sharma (Dead) through LRs,*** reported in ***(2020) 15 SCC 605*** is required to be alluded hereto. The relevant paragraphs as occur in the said verdict are extracted hereinafter.

61. It is on the strength of the provisions contained in Rule 14 of the 1960 Rules and Rule 16 of the 2007 Rules that the appellant would argue that the assignment of the share of the first defendant occasioned a breach of the law. The second defendant, on the other hand would point out that there was no issue of fragmentation ever raised before the courts and the same was not decided in the courts.

62. It is contended by the second defendant that the sale deed in favour of the respondent no.1 specifically says that the sale is in respect of one-third share in the residential house no.13 of Sector 19A, Chandigarh. After the sale deed, it is contended, one-third share of the party was duly transferred and mutated in the name of respondent no.1/second defendant by the Chandigarh Administration. The High Court, in fact, tides over this objection by the appellant by pointing out that once the second defendant steps into the shoes of the first defendant, he became a co-owner and his remedy is to sue for partition and while fragmentation of property, is not 'admissible', the market value of the property can be determined, and buying each other's share, as per the provisions of sections2, 3 and 4 of the Partition Act, 1893.

63. While it may not be true that the issue of fragmentation was not raised in the courts, we would think that the appellant is not able to persuade us to hold that the assignment in favour of the second defendant is vulnerable on the basis that it involves fragmentation. We have noticed the deposition of the plaintiff about partition of the house into three portions. We have noted the fact that one-third share has been duly transferred and mutated in the name of the first respondent/second defendant by the Chandigarh Administration.

64. The second defendant has produced the communication dated 19.12.1997 which indicates the transfer of rights of site in Sector 19A held by Vishnu Dutt Mehta (first defendant) is noted in favour of the second defendant subject to certain conditions. ***This is obviously before the 2007 Rules came into force.***

65. In the light of the aforesaid facts,we cannot permit the appellant to impugn the transaction on the said ground.

66. The upshot of the above discussion is that the contentions of the appellant are liable to be rejected. We do so. The appeals will stand dismissed. The parties will bear their own costs."

Sequence of events.

17. A Civil Writ Petition bearing No. 18559 of 2016 became filed before this Court, whereins, the hereinafter extracted prayers were made.

> *Instant petition has been filed in public interest seeking issuance of directions to restrain the official respondents/Chandigarh Administration from permitting residential plots in the Union Territory of Chandigarh to be constructed or utilised as apartments. It has been asserted that such activity is not permitted and rather expressly barred under the existing rules, regulations and by-laws of the UT Administration. In the year 2001, Chandigarh Administration notified rules called the Chandigarh Apartment Rules, 2001 (hereinafter 'the Apartment Rules) whereby even 'single residential units' could be sub divided into apartments. There was a huge outcry against the provision for having apartments on the grounds that such activity would completely alter and finish the character of the city and the existing infrastructure in terms of sewerage, water, electricity, parking, traffic etc. was wholly insufficient to take on the extra load. Under such situation the Apartment Rules were repealed vide Notification dated 01.10.2007. Inspite thereof a large number of 'single residential units' are being surreptitiously converted into apartments. The residential plots being self contained units cannot be further sub divided into separate units and neither sale of independent units even floor-wise is permissible. A modus is stated to be rampant in the City whereby a builder/developer purchases the entire*

'residential unit' and thereafter seeks three individual people/families, inducing them to buy apartments in such composite residential unit viz. Apartment No.1 which normally comprises of the ground floor along with basement, apartment No.2 which is the first floor and apartment No.3 which is the second floor along with roof rights/barsati. To put such modus in operation, 50% share of the residential unit is got registered in the name of the person choosing to pick up apartment No.1, 30% share in lieu of apartment No.2 and 20% share in lieu of apartment No.3. Thereafter these three separate investors/buyers are made to enter into an internal Memorandum Of Understanding regulating the manner in which the separate floors constructed on one single residential unit are to be utilised.

18. The said writ petition became dismissed on 23.11.2021. The operative part of the order (supra) is extracted hereinafter.

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

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

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

(ii) Chandigarh Administration does not recognise ownership rights over any floor/part of any site/building by virtue of purchase of a share thereof or on account of a Memorandum of Understanding having been entered into between the co sharers. The purchaser only becomes a co-owner/co-sharer in the entire site/building which remains in joint ownership;

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

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

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

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

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

19. Feeling aggrieved, the writ petitioners filed **SLP (Civil) No.4950 of 2022** and **SLP (Civil) No. 5489 of 2022** titled as **'Resident's Welfare Association and Another** *Versus* **The Union Territory of Chandigarh and Others**, before the Apex Court, seeking setting aside of the judgment of the High Court and for a mandamus upon the respondents restraining them from permitting construction of apartments on single dwelling units. The said SLP (civil) became disposed of by the Apex Court vide order dated 10.01.2023, with certain directions upon the Chandigarh Administration, wherebys, the Hon'ble Supreme Court prohibited the conversion of independent residential units as apartments in Chandigarh Phase 1, to preserve the heritage status of 'Corbusier' City. The relevant paragraphs as occur in the said judgment are extracted hereinafter.

109. From the material placed on record, it appears that the modus operandi that is devised by the developers is that the allottee of the house would convey 50% of the share to the first purchaser, 30% to the second purchaser and 20% to the third purchaser. Thereafter, all the three purchasers would enter into either a settlement deed or a Memorandum of Understanding (MoU) under which the party having 50% share of the house is entitled to the entire ground floor with basement including the back *courtyard but excluding the front courtyard and the staircase. The second purchaser having 30% share in the house would be entitled to the entire first floor excluding the staircase. The third purchaser having 20% share of the house would be entitled to the entire second floor including the roof of the second floor but excluding the staircase.*

110. It will be relevant to refer to the recitals in one of such settlement deeds executed on 2 nd May 2013, which read thus: "

> *Whereas as per the present rules of the Estate Office it could not been mentioned in the Sale Deed that the possession of which floor/portion/area has been given to the purchaser so this MOU has been executed between the parties to avoid any future misunderstanding/litigation among all the coowners of the said house in respect of their respective possession in the said house in lieu of their respective shares in the said house so this MOU has been executed between the parties and all the parties have agreed with each other on the following terms and conditions."*

111. It is thus clear that, the parties who entered into such an MoU, were conscious of the fact that as per the Rules of the Estate Office, it could not be mentioned in the sale deed that the possession of particular floor is given to the purchaser. It asserts that the MoU has been executed between the parties to avoid any future misunderstanding/litigation amongst all the co-owners of the said house in respect of their respective possession in the said house in lieu of their respective shares in the said house.

112. It will also be relevant to refer to Clause 12 of the said Settlement Deed dated 2 nd May 2013, which reads thus:

> *"12. That from now on all the parties shall hereafter peacefully hold, use and enjoy their respective portions as their own property without any hindrance, interruption, claim or demand whatsoever from each other. But as the parties are owners of different portions in one common house, they will be dependent upon each other in many ways in their day to day lives. So they should try to co-exist amicably with each other as brothers and sisters and family members, always keeping in mind the necessities, comforts, rights and feelings of each other and try to sort out any differences, discomforts and dissatisfactions in a peaceful and dignified manner."*

113. It is thus clear that the MoU clearly states that all the parties, after entering into such a document, would peacefully hold, use and enjoy their respective portions as their own property without any hindrance, interruption, claim or demand whatsoever from each other. No doubt, it states that since the parties are owners of different portions and would be *dependent upon each other in many ways, they should try to co-exist amicably with each other as brothers and sisters and family members.*

114. According to the High Court, the said does not amount to fragmentation, which is prohibited by Rule 16 of the 2007 Rules. The High Court has held that fragmentation will take place only where there is a division of the plot or division of the building with an element of exclusive ownership that is by partition by metes and bounds.

115. It will be relevant to refer to the meaning of "fragment" and "fragmentation", as per Webster's Encyclopedic Unabridged Dictionary of the English Language, which reads thus:

> *"**Frag.ment (frag'ment), n**. – 1. a part broken off or detached: scattered fragments of rock. 2. a portion that is unfinished or incomplete: Fragments of his latest novel were penciled in odd places. 3. an odd piece, bit, or scrap. – v.i. 4. to disintegrate; collapse or break into fragments: The chair fragmented under his weight. – v.t. 5. to break (something) into pieces or fragments; cause to disintegrate: The vase was fragmented in shipment. Outside influences soon fragmented the culture. 6. to divide into fragments; disunify. [ME < L fragment (um) a broken piece, remnant, equiv. to frag – (s. of frangere to break) + - mentum – MENT]*
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> ***Frag.men.ta.tion (frag'men'ta'shen), n.** – 1. act or process of fragmenting; state of being fragmented. 2. the disintegration, collapse, or breakdown of norms of thought, behavior, or social relationship. 3. the pieces of an exploded fragmentation bomb or grenade. [FRAGMENT + - ATION]"*

116. A perusal of the aforesaid clauses from the settlement deeds, which have been reproduced hereinabove, it is clear that the understanding between the parties is that they are independent owners of different floors. It would also reveal that as per their understanding also, the present Rules of the Estate Office, would not permit to mention in the sale deed that the possession of which floor/portion/area has been given the purchaser. In any case, what is to be found is the real intention behind the transaction. When the transaction clearly shows that it is being entered into for the purpose of constructing three different apartments on each floor and also mentions that the same is not permissible under the existing rules, the intention of the parties is to construct three different units which are disintegrated. This is nothing else but fragmentation. In our view, it is an attempt to by-pass the statutory prohibition.

117. It will also be relevant to refer to an undertaking which the owner is required to furnish in an application for obtaining the occupation certificate:

> *"UNDERTAKING OF OWNER ……….*
>
> *6. I/We do hereby certify that buildings will be used for residential purposes as per allotment letter and its use will not be changed or converted into Apartments without obtaining written permission from the competent authority."*

118. The application which is to be made in the said format is still in vogue. In the teeth of such an undertaking and the specific stand of Chandigarh Administration that it does not permit construction of apartments, it is difficult to appreciate as to how building plans have been sanctioned which ex-facie show that they are nothing else but apartments.

119. It is thus clear that the modus operandi of the developers is, in effect, resulting into apartmentalization of the buildings. What is not permissible in law after the repeal of 2001 Rules on 1 st October 2007, and enactment of Rule 16 of the 2007 Rules, is indirectly being permitted under the guise of sale of shares and subsequent MoUs. It is also to be noted that though an attempt was made in the draft CMP2031 to reintroduce the provision for apartments, after considering the objections, it was decided to delete the same from the final CMP-2031. As already stated hereinabove, on account of such transactions, number of sites have been purchased through the aforesaid modus operandi; buildings were demolished and three apartments were constructed thereon.

120. The High Court in the impugned judgment though holds that it is not permissible to construct apartments in view of repeal of the 2001 Rules, goes on to hold that the said would not amount to apartmentalization, inasmuch as there is no sub-division of a building duly recognized by the Estate Officer along with the proportionate share in common areas and common facilities. It holds that by virtue of sale of share(s) by a co-owner and thereafter, the purchaser/vendee occupying a specific portion of the building on the basis of an internal arrangement/understanding, "subdivision of building" as contemplated under the 2001 Rules does not take place. In our considered view, the said reasoning is not sustainable in the teeth of Rule 16 of the 2007 Rules.

121. If the reasoning which is adopted by the High Court is to be accepted, then it will lead to a situation wherein, as aforementioned, what *is not directly permissible in law, is being indirectly permitted. Therefore, in our view, the reasoning of the High Court would not be tenable in law.*

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126. A strong reliance has been placed on behalf of the respondents on the provisions of the 2017 Rules. It has been submitted that the 2017 Rules clearly permit construction of three storeys. It is submitted that 'storey' has been defined to mean any horizontal division of a building so constructed as to be capable of use as a living apartment, although such horizontal division may not extend over the whole depth or width of the building but shall not include mezzanine floor. It is therefore submitted that when the 2017 Rules itself permit construction of three storeys having independent kitchens etc. and the 2017 Rules having not been challenged, it is not permissible for the appellants to argue that three persons cannot be permitted to occupy three different dwelling units on each storey.

127. We are unable to accept the said argument. It is a different matter that three co-sharers decide to construct a building for residential house and construct three storeys for occupation by each of the co-sharers. However, allowing such modus operandi to continue, which, in effect, nullifies the effect of repeal of the 2001 Rules, enactment of the 2007 Rules, and recalling an attempt to reintroduce apartmentalization in the draft CMP-2031, would be permitting to do something indirectly which is not permissible in law.

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134. Insofar as the contention raised on behalf of the respondents that the restriction on transfer of property would not be permissible in view of the provisions of the TP Act is concerned, it is to be noted that in the case of Chander Parkash Malhotra (supra), the High Court had held Rule 14 of the 1960 Rules to be ultra vires to the Constitution of India. However, in an appeal filed by the Chandigarh Administration, this Court set aside the said order of the High Court. Apart from that, it is to be noted that Rule 14 of the 1960 Rules and Rule 16 of the 2007 Rules have been enacted under the 1952 Act. It is a settled law that in case of a conflict between a special provision and a general provision, the special provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision. Reliance in this respect is to be made to the judgment of this Court in the case of J.K. Cotton

Spinning & Weaving Mills Co., Ltd. v. The State of Uttar Pradesh and Others18 , which has been consistently followed by this Court.

135. We may also gainfully refer to the observations of a Full Bench of the Punjab & Haryana High Court in the case of Dheera Singh v. U.T. Chandigarh Admn. and Others19 , wherein the Full Bench has held that "The Parliament, in no uncertain terms, has expressed through a non obstante clause contained in Section 424-A of the Punjab Municipal Corporation (Extension to Chandigarh) Act, 1994 that the provisions of the 1952 Act shall operate and have an overriding effect." We respectfully agree with the view taken by the Full Bench.

20. After an in-depth analysis of the statutory rules and facts, the Apex Court had made the hereinafter conclusions.

153. Taking overall view of the matter, we are of the considered view that permitting redensification in Phase-I, which has heritage value, on account of being "Corbusian Chandigarh", without the same being approved by the Heritage Committee, is contrary to the CMP-2031 itself. The CMP-2031 on one hand does not permit apartmentalization, however, on the other hand, it estimates the number of dwelling units to be triple of the plots available. Though on account of repeal of the 2001 Rules in the year 2007 and on account of Rule 16 of the 2007 Rules, the High Court itself holds that apartmentalization is not permissible; it goes on to hold that though the developers/builders are in effect indulging into construction of three apartments in a building, the same does not amount to apartmentalization. In our view, this would amount to permitting something indirectly which is not permitted directly. The authorities of the Chandigarh Administration are blindly sanctioning building plans, when from the building plans itself it is apparent that the same are in effect converting one dwelling unit into three apartments. Such a haphazard growth may adversely affect the heritage status of Phase-I of Chandigarh which is sought to be inscribed as a UNESCO's heritage city. It is further to be noted that though the Chandigarh Administration is permitting one dwelling unit to be converted into three apartments, its adverse effect on traffic has not been addressed. With the increase in number of dwelling units, a corresponding increase in the vehicles is bound to be there. However, without considering the said aspect, one dwelling unit is permitted to be converted into three apartments.

154. We find that the High Court has failed to take into consideration all these aspects. No doubt that the High Court has issued certain directions so as to protect the interest of home buyers. It has also observed that "Chandigarh Administration chooses to stay smug, taking a stand on paper that floor-wise sale of residential building is not permissible while residential floors are being advertised for sale right under its nose". It therefore directed the Chandigarh Administration to issue a notice to be published at periodic intervals in the newspapers for the purposes of sounding a word of caution and educating such home buyers who have already purchased a share in a residential building/site as also the prospective home buyers. The High Court also directed the Chandigarh Administration to mention in the said notice that fragmentation of site/building is specifically prohibited under the 2007 Rules. It further directed to mention in the said notice that the Chandigarh Administration does not recognize ownership rights over any floor/part of any site/building by virtue of such transactions. A word of caution was also directed to be put, that in case a dispute arises between the co-sharers/co-owners, the only remedy would be to put the property to auction and the sale proceeds thereafter be distributed inasmuch the fragmentation/division of the building/site by metes and bounds is specifically prohibited.

155. In our view, the High Court ought not to have stopped at that. Having noted the stand of the Chandigarh Administration that the construction and floor-wise sale of residential building was not permissible in view of Rule 16 of the 2007 Rules, the High Court ought to have held that the statutory rules framed under 1952 Act expressly prohibits fragmentation/division/bifurcation/apartmentalization of a residential unit in Phase-I of Chandigarh. The legislative intent as found in Rule 14 of the 1960 Rules has been clearly reiterated in Rule 16 of the 2007 Rules, which has been enacted under Section 5 read with Section 22 of the 1952 Act. We are of the considered view that the High Court has erred in not considering the same.

156. Shri Patwalia fairly conceded that the said exercise has acted as a deterrent and number of such transactions amounting to apartmentalization have substantially reduced.

157. No doubt that the High Court has rightly issued the directions to safeguard the interest of the home buyers. However, we find that *the High Court itself having found that after the repeal of the 2001 Rules and enactment of the 2007 Rules, apartmentalization was not permissible, it ought not to have permitted a modus operandi which indirectly permits to do what was not permissible in law. In any case, taking into consideration the heritage status of Phase-I, the High Court ought to have considered the matter in correct perspective.*

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160. At the cost of repetition, it must be noted that the CMP-2031 itself, at more than one place, states that Chandigarh has been planned as a green city with abundance of open space and to ensure that every dwelling has its adequate share of the three elements of Sun, Space and Verdure. The fragmentation/apartmentalization of single dwelling units in Phase-I of Chandigarh, in our view, will injure the 'Lungs' of the city as conceptualized by Le Corbusier. In this regard, the observations of this Court in the case of Municipal Corporation of Greater Mumbai and Others v. Kohinoor CTNL Infrastructure Company Private Limited and Another, are highly instructive. In the said case, this Court held as follows, regarding the implications of overcrowding of cities:

> *"13. ……When the cities are overcrowded, the roads are narrow and the traffic is increasing, the situation will be extremely hazardous for the children and senior citizens. There will be no greens in the buildings and the people will always crave for fresh and pure air. The buildings without greens will add to the ever increasing temperature of the overcrowded cities and urban areas. To put it differently, all constructions without adequate green and recreational areas will have serious impact on the environment and human life……."*

161. The High Court ought to have been alive to the unique status of Chandigarh and considered the matter from that perspective.

162. One other aspect that needs to be taken into consideration is that on account of certain acts and omissions of the Chandigarh Administration, in certain areas, there has been a chaotic situation. As already pointed out herein, on one hand, the 2001 Rules have been repealed in the year 2007 and the 2007 Rules have been enacted. In view of Rule 16 of the 2007 Rules, there is a specific bar on fragmentation of sites or buildings. It is the specific stand of the Chandigarh Administration that construction of apartments is not permissible. On the other hand, the 2017 Rules are enacted in such a way that there is scope for the construction of apartments. Not only *that, but the Chandigarh Administration is sanctioning plans which, in effect, permit apartmentalization.*

21. Further, in paragraph No. 166 of the verdict (supra), the Apex Court made there hereinafter extracted directions.

166. We further issue the following directions:

(i) The Heritage Committee is directed to consider the issue of redensification in Phase-I of the city of Chandigarh;

(ii) Needless to state that the Heritage Committee would take into consideration its own recommendations that the northern sectors of Chandigarh "(Corbusian Chandigarh)" should be preserved in their present form;

(iii) The Heritage Committee shall also take into consideration the impact of such redensification on the parking/traffic issues;

(iv) After the Heritage Committee considers the issues, the Chandigarh Administration would consider amending the CMP-2031 and the 2017 Rules insofar as they are applicable to Phase-I in accordance with the recommendations of the Heritage Committee;

(v) Such amendments shall be placed before the Central Government, which shall take a decision with regard to approval of such amendments keeping in view the requirement of maintaining the heritage status of Le Corbusier zone;

(vi) Till a final decision as aforesaid is taken by the Central Government:

a. the Chandigarh Administration shall not sanction any plan of a building which exfacie appears to be a modus operandi to convert a single dwelling unit into three different apartments occupied by three strangers; and

b. no Memorandum of Understanding (MoU) or agreement or settlement amongst co-owners of a residential unit shall be registered nor shall it be enforceable in law for the purpose of bifurcation or division of a single residential unit into floor-wise apartments.

(vii) We further direct that hereinafter, the Central Government and Chandigarh Administration will freeze FAR and shall not increase it any further;

(viii) That the number of floors in Phase-I shall be restricted to three with a uniform maximum height as deemed appropriate by the Heritage

Committee keeping in view the requirement to maintain the heritage status of Phase-I; and

(ix) That the Chandigarh Administration shall not resort to formulate rules or bye-laws without prior consultation of the Heritage Committee and prior approval of the Central Government.

22. After the passing of the afore verdict by the Apex Court, a meeting under the Chairmanship of the Adviser to the Administrator, U.T., Chandigarh was held on 23.01.2023. The relevant decision on the afore issues, as held in the said meeting are extracted hereinafter.

> *"The Deptt. Of Urban Planning was requested to clarify whether there is any provision in Chandigarh Building Rules (Urban), 2017 to identify whether Building Plans/Revised Building Plans have been submitted for converting single dwelling unit into apartments. The Deptt. of Urban Planning intimated that there is no such provision/interpretation in the said Rules.*
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> *On this, the DC-cum-EO submitted that at present also, Building Plans/Revised Building Plans are approved for the complete Building on a plot and not floor wise for the said building. DC-cum-EO also raised the issue that it will be difficult for the office to decipher the intention of the owner to use it as independent floor wise and identify whether the Building Plans/Revised Building Plans are floor-wise, as there are already provisions in the Rules for separate kitchen, outer staircase etc. on every floor and thus it will be very difficult for the office to reject such Building plans/Revised Building Plans. Therefore, it was decided that till the decision on this aspect is taken by the Heritage Committee, Building Plans/Revised Building Plans of only those residential buildings, where all the co-owners belong to the same family (i.e. no co-owner should be stranger/outside Family) should be considered as per Rules.*

23. Further, the meeting of the Chandigarh Heritage Conservation Committee took place on 10.05.2023, whereins, the hereinafter extracted decision was taken.

" After detailed discussions and deliberations, it was decided that ***no re-densification of Phase I of the city of Chandigarh*** *should be done. In light of above, no change shall be required in the notified Chandigarh Master Plan 2031. As regard to other issues of Agenda about issues of restrictions on share transfer outside family, sanctioning of building plans etc. raised by the Estate Office, UT, it was decided in the meeting that since these issues involve legal aspects, hence, the Estate Office, UT, will take decision in the matter after seeking legal opinion."*

24. Thereafter, the meeting of the Chandigarh Heritage Conservation Committee took place on 14.09.2023, whereins, the hereinafter extracted decision was taken.

i. Judgment of the Hon'ble Supreme Court of India (Civil Appeal No. 274 of 2023 arising out of SLP (C) No. 4950 of 2022- RWA Vs. Chandigarh Administration & Ors.

After detailed discussions and deliberations, it was decided that the Judgment of Hon'ble SC shall be implemented by the concerned department in true letter & spirit and any implementation issues may be decided by concerned Administrative department.

Inferences of this Court.

25. The decision which was taken in the meeting held on 23.01.2023 under the Chairmanship of the Advisor to the Administrator, ex facie, is in alignment with the verdict pronounced by the Apex Court in case titled as ***Residents Welfare Association and Another Vs. The Union Territory of Chandigarh and Others (supra).*** Therefore, the said decision cannot be tinkered with at all.

26. Moreover, the said decision is in terms of a statutory prohibition against the fragmentation of a building through apartments

becoming created thereins. Moreso, when the apartmentalization/fragmentation of the building thereof, results in the builders/developers proceeding to sell such apartments to different persons. Consequently also therebys, the impugned notice is in complete tandem with the verdict (supra) pronounced by the Apex Court, whereins, there is a pronounced prohibition against both fragmentation and apartmentalization of a specific dwelling unit or of a building. As such, therebys, the impugned notice rather than being required to become invalidated, thus requires becoming assigned legal sanctity.

27. Though, certain apprehensions became reared before this Court by the appearing counsels, that since separate dwelling units, are permissible to be created on different apartments, created within a jointly owned building, by members of the same family, whereins, separate members of the same family, do reside, qua whether theretos the prohibition supra becomes attracted. However, since therebys, there is no rendered order, thus partitioning through metes and bounds, such separate apartments/dwelling units existing within the jointly owned building, as the members of the same family, do only therebys, choose to separately reside in separate apartments/dwelling units created in the same building. Resultantly, when through an oral understanding, thus assumption of exclusive possession becomes made over separate dwelling units or when the makings of apposite separate enjoyments of separate apartments in a common building, which is jointly owned by members of the same family, thus occurs, either through sale deeds

becoming executed in their respective favour or through gift deeds or through theirs succeeding theretos either by testamentary succession or by intestate succession, however thereto naturally remains unattracted the prohibition against apartmentalization or fragmentation of buildings nor does it militate against the verdict pronounced by the Hon'ble Apex Court.

28. It appears that the said protection is endowed, so as to enable the members of the single family to exclusively possess such separate apartments, but without an order rather becoming rendered wherebys becomes dismembered the joint building into separate dwelling units, besides the purpose thereof, is to ensure the jointness and intactness of the joint family, but with the limited preservation of liberty to each member, to under an oral settlement rather separately enjoy the separate apartments or dwelling units, which are created for the respective apposite separate users, in the jointly owned building by them. However, strangers to each other, who are inducted into different apartments, thus in a building raised by a developer, rather attract the prohibition against apartmentalization and fragmentation of the building.

29. Though the provisions borne in the Transfer of Property Act, wherebys, there is permissibility, to any co-owner to alienate his joint share in the joint property, but the said reserved statutory liberty to a joint owner, has been in extenso dealt rather against the present petitioner(s) by the Hon'ble Supreme Court, in the above extracted paragraphs No.134 and 135 of the verdict (supra). Resultantly, any

argument founded on the said premise, thus is also liable to be rejected and is so rejected.

30. In aftermath, after upholding the decision made in the meeting held on 23.01.2023 under the Chairmanship of the Adviser to the Administrator, and also after affirming the impugned notice, the only right which can be endowed to the present petitioner(s), is to alienate their respective shares to the other co-sharers in the joint property, who though may be strangers, but subject to the further condition that the alienee concerned, acquires 100 % right, title and interest over the entire property.

31. **However, the Chandigarh Administration, if found feasible, but taking into consideration the directions passed by the Apex Court in the verdict (supra), may consider to permit sale of the respective share(s) of a particular co-owner in a jointly owned property, thus to the other co-sharers in the said jointly co-owned property, as the said permission of sale would reduce the already existing apartmentalization/fragmentation in Chandigarh, where co-owners/strangers reside on separate floors in a single dwelling unit/building besides would further also reduce the densification in Phase – 1 Chandigarh. Moreover, the said allowings would also not stagnate the legal rights of the co-owners concerned, in terms of the Transfer of Property Act.**

32. Further, since in the verdict (supra) made by the Apex Court, directions have been passed to maintain the heritage status of Le Corbusier Zone i.e. Phase – I Chandigarh, therefore, the

Chandigarh Administration may consider the applicability of the impugned notice, but in consultation with the Heritage Committee onto the areas other than Phase – I, Chandigarh, besides strictly in terms of the prevalent Rules and the Chandigarh Master Plan-2031.

Final Order of this Court.

33. In aftermath, the writ petition(s) are dismissed but with the observation(s) aforesaid.

34. Since the main cases itself have been decided, thus, all pending applications, if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

20.02.2025
kavneet singh

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