
**Okhla Enclave Plot Holders™ Welfare Association Vs Union Of India
And Others**

Writ Petition (C) No. 876 Of 1996

Court: Supreme Court Of India

Date of Decision: Oct. 3, 2019

Acts Referred:

Constitution Of India, 1950 â€” Article 32#Haryana Development and Regulation of Urban Areas Rules, 1976 â€” Section Rule 24, 26(2), 27, 28#Haryana Development and Regulation Urban Areas Act, 1975 â€” Section 3, 5, 8, 8(4)

Citation: (2019) 13 Scale 450 : (2019) 9 SCC 572 : (2020) 1 RCR(Civil) 187

Hon'ble Judges: R. Banumathi, J; A.S. Bopanna, J

Bench: Division Bench

Advocate: Sumita Hazarika, P. Parmeswaran

Judgement

I. General,"Ã¢â‚¬Å¡ Ã¢â‚¬Å¡ 470 [(Pg.5 of Scrutiny Committee Repor

qua EWS and General allottees)]",,,

II. Economically Weaker Sections (EWS),"Ã¢â‚¬Å¡ Ã¢â‚¬Å¡ 350 (out of which 106 applied for allotment)

[(Pg.6 of Scrutiny Committee Report qua EWS an

General allottees)]",,,

III. No profit, No loss (NPNL),"Ã¢â‚¬Å¡ Ã¢â‚¬Å¡ 1932 [(Pg.23 of Scrutiny Committee Repor

dated 28.10.2017)]",,,

Sl. No., "N a m e of the

Licencee", Land Owner, Licence No., Area (in acres)

1., "M/s Durga Builders

(Main Developer)", M/s Durga Builders, 1/91 and 65/9, 114.075 6.19

2., "Ravindra Promoters

Pvt. Ltd.,"Ravinder Promoters

Pvt. Ltd.",2/91 and 66/92,0.918 1.82

3., "Sh. Ravinder Kumar

Nanda", "Sh. Ravinder Kumar

Nanda",3/91,11.731

4., "Rajdhani Housing

Syndicate Pvt. Ltd.", "Rajdhani Housing

Syndicate Pvt. Ltd.",67/92,84.54

5., "Panchsheel

Cooperative House

Building Societ", "Panchsheel

Cooperative House

Building Society",68/92,15.40

,,,Total,234.674

23. 475 acres area was reserved for community-infrastructure sites.,,,,

Balance, 120.67 acres was planned for EWS and NPWL category plots. [(Point No.5 at Pg.12 of Reply filed by DTCP, Haryana on 19.08.2019)] In",,,,

this regard, reference be made to layout plan of OKHLA Enclave, Phase-I, Delhi-Haryana Border, Faridabad and Layout plan, Phase-II, Sector-91,",,,

Faridabad, Haryana filed by the DTCP. In the layout plans, alleged encroached areas are also shown in red ink.",,,

Question No.1: In light of the fact that Durga Builders Private Limited is claiming succession only with respect to two licences (out of total seven,,,,

licences) making it necessary to also determine which portions of the land compositely held by seven licences falls to its share?,,,

12. Before we consider the claim of M/s Durga Builder Pvt. Ltd., it is necessary to point out that M/s Durga Builder Pvt. Ltd. had not renewed the" ,,,,

licence by paying necessary fee. The above seven licences i.e. licence Nos.1-3 of 1991, 65 of 1992 to 68 of 1992 were not renewed after 1999. In its" ,,,,

reply, the State of Haryana stated that an amount of Rs.21,86,97,901/- is outstanding against the licence renewal fee. [(Under Point No.1 at Pg. 2 of" ,,,,

reply filed by DTCP, Haryana on 19.08.2019)] This amount is payable by the sixth respondent-Colonizer to DTCP, Haryana. There are also other" ,,,,

charges payable by the sixth respondent-Colonizer to the DTCP, Haryana. DTCP, Haryana has spent about Rs.1.25 crores in keeping watch and" ,,,,

ward over the property and this amount is also payable by the sixth respondent. The claim of the sixth respondent-colonizer could be considered only if,,,

respondent No.6-Colonizer pays the licence renewal fee of Rs.21.89 crores and other amount spent by DTCP, Haryana towards keeping watch and" ,,,,

ward of the licensed area and other charges.,,,,

13. Status of the Companies:- So far as the status of the above companies, in its reply filed on 19.08.2019, the State of Haryana stated as under:-" ,,,,

That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda were the Directors of M/s Durga Builder Pvt. Ltd. (as per the information available on the,,,,

website of Ministry of Corporate Affairs, the status of the company is strike off), as per the Memorandum of Article dated 29.01.1985. However, Sh.",,,,,

Divij Mehra and Sh. Saurabh Kapoor are the present Directors since 24.03.2014 and 15.04.2015 respectively.,,,,,

That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda are the Directors of M/s Ravindra Promoters Pvt. Ltd. since, 10.07.1989 (as per the",,,,,

information available on the website of Ministry of Corporate Affairs, the status of the company is strike off).",,,,,

That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda are the Directors of M/s Rajdhani Housing Syndicate Pvt. Ltd. since, 13.09.1989 and",,,,,

22.12.1989 (as per the information available on the website of Ministry of Corporate Affairs, the status of the company is strike off).",,,,,

That the information regarding the Directors of M/s Panchsheel Co-operative House Building Society, is not available on the website of MCA.",,,,,

[(Under Point No.1 at Pg. No.3 of Reply filed by DTCP, Haryana on 19.08.2019)]",,,,,

The DTCP, Haryana stated that there is no record available in the office regarding change in the ownership of land of Sh. Ravinder Kumar Nanda",,,,,

bearing licence No.3 of 1991 to some other entity. Further, it is stated that no representation regarding change of Directors of M/s Durga Builder Pvt.",,,,,

Ltd. was received by the Director, Town and Country Planning, Haryana up to 17.07.2014. (Under Point No.1 at Pg. 3-4 of reply filed by DTCP,",,,,

Haryana on 19.08.2019),,,,,

14. Issue of Ownership:- As per the report of Sh. H.P. Sharma, Court Commissioner, appointed by the Supreme Court, Sh. Arun Mehra father of Sh.",,,,,

Divij Mehra, on behalf of M/s Hindustan Commercial Investment Trust Ltd. and M/s Class Sales Pvt. Ltd. had filed claim for 87 plots (65 plots + 22",,,,,

plots), which he claimed to have purchased from M/s Durga Builder Pvt. Ltd. This claim of plots was rejected by Court Commissioner. [Pg.No.4 of",,,,,

the reply dated 19.08.2019 filed by DTCP, Haryana] Sh. Arun Mehra filed an application of impleadment in WP(C) No.113 of 1996 in the Supreme",,,,,

Court on behalf of M/s Rajdhani Housing Syndicate Pvt. Ltd. in January, 2014. In its reply, the State of Haryana has stated that it has received an e-",,,,,

mail dated 18.07.2014 from Advocate Deepak Khosla mentioning that as per the decision of the Company Law Board dated 11.03.2014, Sh. Arun",,,,,

Mehra and Sh. Divij Mehra are the present Directors of M/s Durga Builder Pvt. Ltd. It is stated that one Sh. R.K. Nanda claims to have become the",,,,,

Director of M/s Durga Builder Pvt. Ltd. who attended the proceedings before the Director General, Town and Country Planning, Haryana at",,,,,

Chandigarh as Director of M/s Durga Builder Pvt. Ltd. It was submitted that by the Gazette Notification dated 24.09.2018, the name of M/s Durga",,,,,

Builder Pvt. Ltd. has been struck off from the Registrar of Companies and dissolved by the Government of India, Ministry of Company Affairs, New",,,,,

Delhi. On behalf of the Colonizer, an order dated 24.01.2019 passed by the National Company Law Tribunal has been produced to show that in the",,,,,

Gazette Notification dated 24.08.2018 qua M/s Durga Builder Pvt. Ltd. has been kept in abeyance. (Under Point No.1 at Pg. No.4-5 of Reply filed by,,,,,

DTCP, Haryana on 19.08.2019).",,,,,,

15. Stand of the Sixth Respondent-M/s Durga Builder Pvt. Ltd. "The Colonizer:- Though the present sixth respondent-M/s Durga Builder Pvt. Ltd.-,,,,,

Colonizer claims that all assets of the Company M/s Durga Builder Pvt. Ltd. were purchased by Mr. Arun Mehra from Sh. R.K. Nanda, the same",,,,,,

could not be verified. Members of the petitioner association/allottees purchased the plots from the Colonizer who held the above seven licences and,,,,,

therefore, they are entitled to the entire extent of land as per the layout without going into the question of which is the portion of the land M/s Durga",,,,,,

Builder Pvt. Ltd. is claiming succession. As per the report of Sh. H.P. Sharma, Court Commissioner, appointed by the Supreme Court, Sh. Arun",,,,,,

Mehra father of Sh. Divij Mehra, on behalf of M/s Hindustan Commercial Investment Trust Ltd. and M/s Class Sales Pvt. Ltd. had filed claim for 87",,,,,,

plots (65 plots + 22 plots), which he claimed to have purchased from M/s Durga Builder Pvt. Ltd. This claim of plots was rejected by Court",,,,,,

Commissioner.,,,,,,

16. The learned amicus curiae submitted that as per the affidavit dated 19.08.2019 filed by DTCP, Haryana and e-mail dated 18.07.2014 received by",,,,,,

the Department from the advocate Deepak Khosla mentioning that as per the decision of the Company Law Board dated 11.03.2014, Mr. Arun",,,,,,

Mehra and Divij Mehra are the present Directors of M/s Durga Builders Pvt. Ltd. The learned amicus submitted that when Mr. Arun Mehra is,,,,,

claiming to be the Director of M/s Durga Builders Pvt. Ltd. of which he is a Director, the claim of Mr. Arun Mehra need not be considered as it has",,,,,,

been rejected by the Court Commissioner. So far as the claim of Mr. Arun Mehra in respect of 87 plots, liberty is granted to Mr. Arun Mehra to work",,,,,,

out his remedy in accordance with law by agitating the matter before the competent court. However, it is made clear that the claim of Mr. Arun",,,,,,

Mehra in respect of 87 plots shall not come in the way of the claim of the beneficiaries identified by the Scrutiny Committee.,,,,,,

17. Though the Commissioner rejected the claim of the sixth respondent-Colonizer, the correctness of the same shall be examined with reference to",,,,,,

documents. The area claimed by the Colonizer can be considered by the arbitrator by considering the layout plan now produced by DTCP, Haryana.",,,,,,

18. The claim of the sixth respondent can be considered by the arbitrator only subject to the condition that he is paying the licence renewal fee of,,,,,

Rs.21,86,97,901/- (as on 28.02.2019) payable with interest @ 6% from 28.02.2019 plus Rs.1.25 crores borne by DTCP, Haryana in maintaining the",,,,,,

security as per the order of the Court dated 18.07.2013. The area claimed by the sixth respondent-Colonizer shall be considered by the learned,,,,,

arbitrator only after examining by the rightful claim of the beneficiaries identified by Scrutiny Committee (to be finalised and approved by the learned,,,,,

arbitrator).,,,,,

Question No.2: Given that the State of Haryana has categorically stated that it cannot take over the Project and make allotments, even in view of the",,,,

fact that the Colonizer has intentionally not paid the License Fee, who will undertake the development of the Project and subsequently make",,,,

allotments?,,,,,

19. In terms of Section 5 of the Haryana Development and Regulation of Urban Areas Act, 1975, the Colonizer shall deposit 30% of the amount",,,,

realised from time to time from the plot holders within a period of ten days of its realisation in a separate account to be maintained in a scheduled,,,,,

bank. That amount shall only be utilised by him towards meeting the cost of internal development works in the colony. The remaining amount shall be,,,,,

deemed to have been retained by the Colonizer inter alia to meet the cost of land and external development works. In the present case, the Colonizer",,,,

has not complied with the requirement under Section 5 of the said Act. In the reply filed by the Director, Town and Country Planning, Haryana (on",,,,

19.08.2019), it is stated that the licensee M/s Durga Builder Pvt. Ltd. has not complied with Rules 24, 26(2), 27 and 28 of Haryana Development and",,,,

Regulation of Urban Areas Rules, 1976, as per which the licensee shall have to maintain separate ledger account of each plot holder, intimate the",,,,

account number and full particulars of the scheduled bank wherein he deposits 50% of the amount realised by him from the plot holders for meeting,,,,,

the cost of internal development works. (Point No.2 at Pg. 6-7 of Reply filed by DTCP, Haryana on 19.08.2019).",,,,

20. Vide order dated 07.04.1997 on the question of the cost of land, the court noted that as far as the cost of the land is concerned, the Colonizer has",,,,

agreed to abide by the rate which it contracted for, namely Rs. 100/- to Rs. 200/- per square yard depending upon the size of the plots. As far as the",,,,

development charges are concerned, the court noted that the parties are governed by the orders of the Department. As regards the internal",,,,

development charges, the court in its order dated 07.04.1997 noted that the Government has fixed Rs. 878/- for the plots of the size 135 sq. yards to",,,,

170 sq. yards and Rs. 975/- for plots of 171 to 220 sq. yards. As to the external development, it was worked out at Rs. 4,70,000/- per acre which was",,,,

to be borne by the allottees. [(Para No.8 of Proceedings of the Supreme Court dated 07.04.1997)] However, it is stated only some of the allottees",,,,

(according to the Colonizer, only 143 of the allottees) have complied with the order of the Supreme Court. But according to the petitioners that in",,,,

compliance of the order of the Supreme Court, they have paid the amount. This has to be verified; those of them who have not complied with the",,,,

order of the Supreme Court shall be directed to pay the amount with 6% interest on the amount payable from 01.01.1998.,,,,

21. Vide order dated 02.12.1999, the court observed that it is not possible to fix the exact figure payable by each allottee to the Government and to the",,,,

Colonizer. All the same, the court directed each allottee to pay a sum of Rs. 50/- per square yard within four weeks from the date of this order to the",,,,

Government of Haryana in the account of the Colonizer. The court directed that the balance amount if any, payable by each allottee will be worked",,,,,

out and fixed up later. To avoid further complications, the court directed the allottees to send the amount by draft by registered post to the Director,",,,,

Town and Country Planning, if personal delivery is not feasible. The remittance of the amount was directed to be immediately sent to respondent No.6" ,,,,

by the remitter. [(Para No.1 of Proceedings of the Supreme Court dated 02.12.1999)] However, it is stated that only some of the allottees (according" ,,,,

to Colonizer, only 143 of the allottees) have complied with the order of the Supreme Court." ,,,,

22. Submissions on behalf of Respondent No.6-Colonizer:- It has been submitted by respondent No. 6 that the rate for development stood at Rs. 550/- ,,,,

per sq. yard plus the cost of land in the year 1995. The Supreme Court revised these charges upwards vide its orders dated 07.04.1997 and ,,,,

02.12.1999. A complete scrutiny of all the claims has revealed that out of the eligible 1708 NPPL claimants in the scrutiny committee report, only 143" ,,,,

have paid development charges @ Rs. 600/-, in compliance of order dated 02.12.1999 passed by this court; the rest 1565 have failed to comply with" ,,,,

the said order and have shied away from paying the requisite development charges, thereby being no longer entitled for allotment of a plot. Further," ,,,,

according to respondent No.6, many plot claimants have also defaulted in making payment of cost of land as stipulated by order dated 07.04.1997." ,,,,

According to respondent No.6-Colonizer, the petitioners falling short on the land and development charges have jeopardised the development of plots" ,,,,

allotted to them. (Point No.6 at Pg. 4 of submission on behalf of R-6 filed on 22.07.2019),,,,

23. Submissions on behalf of the Petitioners:- On the other hand, the petitioners contend that it has been falsely alleged by the builder-respondent No.6" ,,,,

that the petitioners have not paid the amount as directed by this Court vide orders dated 07.04.1997 and 2. 12.1999. It has been submitted by the ,,,,

petitioners that they have deposited the amount with the DTCP, Haryana. The petitioners averred that they are ready to deposit the amount whatever" ,,,,

is the amount now payable for internal and external development as estimated by the Government of Haryana. (Para No.4 at Pg. 1 of submission on ,,,,

behalf of petitioners filed on 13.03.2019 in terms of order dated 14.02.2019). ,,,,

24. The petitioners further submitted that the cost of internal development of the land is inclusive of the land cost. As such, the petitioners have" ,,,,

already made the agreed payment of internal and external development charges. It has been claimed by respondent No. 6 that it has deposited a total ,,,,

amount of Rs. 18.90 crores with the Government for external development charges out of which only a sum of Rs. 2.30 crores has been spent by the ,,,,

DTCP, Haryana. This fact has also been admitted by the Government of Haryana/Town and Country Planning in their affidavit dated 9.09.2008." ,,,,

According to the petitioners, there is still a sum of Rs. 16. 70 crores lying with the Government. However, it has been stated by the petitioners that" ,,,,

whatever amount is due and payable to DTCP, Haryana towards internal and external development charges, they are ready and willing to deposit the",,,,

said amount as is estimated by the Govt. of Haryana. (Point No. (V) at Pg. 15-16 of submission on behalf of petitioners filed on 13.03.2019 in terms of",,,,

order dated 14.02.2019),,,,,

25. In the light of our direction dated 14.02.2019, the Director, Town and Country Planning, Haryana has filed status affidavit containing the details as",,,,

to (i) amount so far deposited towards the external development charges; (ii) estimate of the internal and external development works and other",,,,

details.,,,,,

26. Stand of Director, Town and Country Planning:- The State of Haryana has filed detailed status report stating that an amount of Rs.19,76,69,127/-",,,,

has been deposited with the Department towards the external development charges:-Rs.17,17,72,000/- by the Colonizer + Rs.1,75,00,000/- by the",,,,

petitioners). The DTCP has stated that respondent No.6, in the written submission dated 22.07.2019 stated that they have collected Rs.15,79,90,433/-",,,,

from "No Profit, No Loss" and "General Category" plot claimants and further submitted that the DTCP, Haryana has spent Rs.8,60,00,000/-",,,,

on the internal development works and deposited Rs.17,17,00,000/- with the State of Haryana for external development works. The State of Haryana",,,,

has also taken the stand that in response to the show cause notice dated 23.04.2013 issued by the Department to M/s Durga Builder Pvt. Ltd. and its",,,,

associate companies, reply dated 25.06.2013 signed by Sh. Ravinder Kumar Nanda was filed stating that M/s Durga Builder Pvt. Ltd. has collected",,,,

Rs.28,13,91,183/- i.e. Rs.17,00,99,128/- in Phase-I and Rs.11,12,92,055/- in Phase-II and spent Rs.21.39 crores on the internal development works.",,,,

According to the State of Haryana, the stand of DBPL is totally contradictory to its stand taken in the written submission filed in the court. (Under",,,,

Point No.2 at Pg.7-8 of Reply filed by DTCP, Haryana on 19.08.2019).",,,,

27. Amount so far deposited towards external development charges:- So far as the amount deposited towards External Development Charges, in the",,,,

Status Report, the State of Haryana has stated as under:-",,,,

"That, as per the terms and conditions of the licence, the internal development works are to be executed by the colonizer, so no amount on account",,,,

of Internal Development Charges has been deposited by the colonizer to the Department. It is further submitted that the colonizer has deposited",,,,

Rs.17.17 crores. That as per order of this Hon'ble Court dated 07.04.1997 and 02.12.1999, the petitioners have deposited a total sum of Rs.1.75",,,,

Sl. No.,Detail of External Development Charges,Total amount deposited (in Rs.),,

1.,Deposited by the licensee,"17,17,72,000/-",,

2.,Deposited by the petitioners directly in the Department,"1,75,00,000/-",,

,Total,"19,76,69,127/-",,

Those who have paid full land cost/development charges before cutoff date", ₹ 1155,,,

Those who have paid full land cost and part development charges before cut-off date", ₹ 457,,,

Those who have paid full land cost only and no development charges", ₹ 86,,,

Those who have paid part land cost only and no development charges", ₹ 17,,,

Those who got sale deed executed directly from developer or through resale", ₹ 220,,,

Claimants who paid land cost @ 425 with development charge at the rate of 550 per sq. yard", ₹ 52,,,

Claimants who paid part land cost/development charge", ₹ 16,,,

Claimants who could not produce any evidence/documents with regard to booking/payment of development charge before cut-off date and got sale deed/conveyance deed executed from developer", ₹ 402,,,

Sl. No.,Size of the Plot,Number of Plots,Category,"Total (category wise)

1.,200 sq. Mtrs,163 plots,NPNL,356 plots

2.,148.75 sq. Mtrs,176 plots,NPNL,

3.,128 sq. Mtrs,17 plots,NPNL,

4.,101.25 sq. Mtrs,425 plots,EWS,857 plots

5.,50 sq. Mtrs,268 plots,EWS,

6.,112 sq. Mtrs,164 plots,EWS,

7.,420 sq. Mtrs,96 plots,General,211 plots

8.,350 sq. Mtrs,24 plots,General,

,242 sq. Mtrs,91 plots,General,

copies of the approved layout plans of Okhla Enclave Phase-I and Phase-II are revised on 24.09.1997. In terms of the provisions of the Act and as,,,

per the conditions of the licence, the Colonizer has to pay the licence fee and the licence renewal fee. In the status affidavit filed by the Director,",,,

Town and Country Planning, Haryana in March, 2019, it is stated that an amount of Rs.21,86,97,901/- (as on 28.02.2019) is outstanding from the" ,,,,

Colonizer. As per the terms and the conditions of the licence, the Colonizer/Developer is bound to bear the expenses to carry out the internal" ,,,,

development works in the colony and to clear the government dues of fee for renewal of licence and other expenses borne by the State of Haryana.,,,,

However, with a view to move forward with the development, the allottees of the plots have undertaken to pay the cost of the internal and the" ,,,,

external developments. But the Colonizer cannot be allowed to go scot free. The sixth respondent-Colonizer is bound to pay the licence fee of Rs.,,,,

21,86,97,901/- (as on 28.02.2019) towards the fee for renewal of licence which is payable with interest @ 6% per annum from 28.02.2019. If the" ,,,,

amount is not paid by the sixth respondent, it is for the State of Haryana to proceed against the sixth respondent to recover the amount as if it is a land" ,,,,

revenue. For the said amount of 21,86,97,901/- (as on 28.02.2019), there would be a charge on the properties of the sixth respondent-Colonizer." ,,,,

48. Issue of encroachment and the expenses met by the Director, Town and Country Planning, Haryana in engaging the watch and ward of the" ,,,,

licensed area:- In the counter affidavit filed by the Director, Town and Country Planning, Haryana, it is stated that an extent of 46.85 acres land was" ,,,,

under encroachment/unauthorised construction. By the order dated 18.07.2013, the Supreme Court has directed the Department for watch and ward" ,,,,

of the licenced area till the matter is resolved. In this regard, in the affidavit filed by the Director on 19. 08.2019, it is stated that:-" ,,,,

*The Department has hired a private security agency at the expense of Rs.2.5 lakh per month, which has deputed twelve number of security guards" ,,,,

for twenty-four hours to keep a watch and ward of this licensed area. The Department has already paid approximately Rs.1.25 crores to the security ,,,,

agency. Due vigilance on the licensed area is being kept and demolition of encroachment/unauthorised construction is being done by the Enforcement ,,,,

Wing of Town and Country Planning, Department. A whatsapp group of the officials of police department, enforcement wing of this department and" ,,,,

hired security guards has been created to update the time to time status of unauthorised constructions, if any. For the awareness of general public, the" ,,,,

flex boards have been displayed on prominent places of this colony clearly mentioning that matter of this colony is subjudice and no person can do sale," ,,,,

purchase of plots and raise unauthorised construction in this colony till the matter is resolved. Whenever any new illegal construction activity comes to ,,,,

the notice, the same are immediately removed. Point No.4 at Page No.11 of reply filed by DTCP, Haryana on 19.08.2019" ,,,,

49. In the affidavit, it is further stated that there was a big demolition drive in the colony on 11.04.2017 during which, newly erected thirty-five" ,,,,

residential structures and fifteen numbers of DPC/boundary wall were removed. It is further stated that even if any small construction activity like ,,,,

wire fencing, DPC, boundary wall, etc. occurs in the colony, the same is removed by the security guards at the initial stage and the Department has" ,,,,

taken sincere efforts to ensure that no new encroachment or unauthorised construction has taken place on the licensed area. It is stated that however," ,,,,

the already existing encroachment over an area of 46.85 acres could not be removed due to Law and Order problem.,,,,

50. In this regard, DCTP, Haryana has pointed out that an amount of Rs.1.25 crores already spent by the Department towards the watch and ward",,,,

and the same is also payable by the sixth respondent-Colonizer. Thus, the total amount payable by the Colonizer to the Department is",,,,

Rs.21,86,97,901/- (as on 28. 02.2019) which is payable with interest @ 6% per annum from 28. 02.2019 Plus Rs.1.25 crores borne by the Department",,,,

to the security agency till August, 2019-the date of filing of the affidavit before the Supreme Court and further expenses borne by the Department for",,,,

watch and ward of the licensed area and other incidental expenses. If the above amount is not paid by the sixth respondent-Colonizer, it is for the",,,,

State of Haryana to proceed against the sixth respondent to recover the amount as fee which is a land revenue.,,,,,

51. Surplus plots, if any, left " Entitlement of respondent No.6-Colonizer:- It has been submitted by Respondent No.6-Colonizer that a joint",,,,

technological survey was conducted by the State and the Colonizer as per order dated 07.05.2016 of the Arbitrator. In this survey, electoral and",,,,

electricity records of the encroached area were taken and tallied with the names in the scrutiny report to determine the genuineness of plot holders. It,,,

was found that a considerably large number of petitioners before this Court are already living on the licensed land [Under Point No.4 at Pg.3 of,,,

submissions on behalf of R6 to clarifications sought by the Supreme Court vide order dated 14.02.2019.]. Respondent No.6 is required to submit a final,,,

list of such claimants before the Arbitrator. It is clarified that if it is found that any allottee is already living on the encroached land, they would not be",,,,

entitled from claiming any further allotment in their favour.,,,,,

52. Surplus plot if any " Entitlement of Respondent No.6-Colonizer:- One last issue as to the entitlement over the surplus land, if any, left after",,,,

allotment of land to eligible allottees has to be settled. In this context, it is observed that though there are various claims as to who is the present",,,,

Director of M/s Durga Builders Private Limited, there is no serious dispute that the land in question was owned by said M/s Durga Builders Private",,,,

Limited and its associate companies. Licenses were also granted to them by the State of Haryana. These licenses have long since expired and have,,,

not been renewed after 1999. However, till date no action has been taken against these companies on account of non-renewal of license. According",,,,

to the State of Haryana, an amount of Rs. 21,86,97,901/- (as on 28.02.2019) is outstanding against licence renewal fee. On payment of this",,,,

outstanding amount against the license renewal fee with interest from 28.02.2019 and also on payment of expenses borne by DCTP in engaging the,,,

security agencies for watch and ward of the licensed area, M/s Durga Builders Private Limited and its associate companies would be entitled to claim",,,,

the surplus plots.,,,,,

53. Additionally, in case, if any of the allottees are not in a position to pay the apportioned internal and external development charges and expresses",,,,

willingness to quit and consequently the plot falls vacant, the same shall be considered being allotted to the sixth respondent-Colonizer, of course",,,,,

striking a balance between the allottee of the plot and the Colonizer. The Arbitrator shall determine the compensation payable by the sixth respondent-,,,,,

Colonizer and direct the sixth respondent-Colonizer to compensate the allottee of the plot by directing the sixth respondent-Colonizer to pay adequate,,,,,

compensation in lieu of the claim for the plot falling vacant. In order to make a claim for such plots falling vacant, the sixth respondent-Colonizer is to",,,,,

pay:- (i) the compensation to allottee as directed by the learned arbitrator; and (ii) to pay the apportioned amount of internal and external development,,,,,

charges.,,,,,

Question No.4:- The last direction as sought by the Arbitrator is to pass appropriate directions for converting these proceedings to that of a Special,,,,,

Committee:-,,,,,

54. In this context, we may usefully refer to the order of appointment of the Arbitrator dated 27.01.2016 wherein, this Court provided that all the",,,,,

parties shall submit their respective proposed terms of reference before the Arbitrator who shall first settle the terms of reference and thereafter",,,,,

resolve the disputes involved between the parties. On completion of the arbitral proceedings, the Arbitrator was directed to submit a report to the",,,,,

Supreme Court.,,,,,

55. Arbitration is a mechanism to settle the disputes of the parties on the basis of the terms of arbitration agreement between the parties. In the,,,,,

present case, there is no agreement between the parties. The matter was referred to Justice Vikramjit Sen only as a remedial measure to solve the",,,,,

grievance of the petitioners who were aggrieved by the non-allotment of the plots by Colonizer and to resolve the lengthy issue involved in such,,,,,

allotment. Thus, the instant arbitration proceedings cannot be strictly called so and the term "arbitration" in this context is a misnomer and the",,,,,

proceedings actually are one of a Special Committee.,,,,,

56. In his letter dated 23.01.2018, the Arbitrator has also observed that "these proceedings are not in the nature of arbitration and essentially, in the",,,,,

nature of a Special Committee of the Hon'ble Supreme Court of India. We fully agree with the views expressed by Justice Vikramjit Sen. It is,,,,,

made clear that the present proceedings are not in the nature of arbitration within the meaning of the Arbitration and Conciliation Act, 1996; but",,,,,

essentially, in the nature of a Special Committee constituted by the Hon'ble Supreme Court of India.",,,,,

Other observations relevant for determination of the issue:-,,,,,

57. Remuneration payable to the Arbitrator:- As to the question of remuneration payable to the Arbitrator, reference can be made to the order dated",,,,,

27.01.2016 wherein, it was provided that the fee shall be decided by the Arbitrator and be borne equally by all the parties. Accordingly, the Arbitrator",,,,,

shall decide his fee to be payable by the parties as directed by the learned arbitrator.,,,,,

58. Summary of Conclusion:-,,,,

Number of claimants settled by the Scrutiny Committee:-,,,,

The number of eligible allottees are to be decided by the Arbitrator applying the parameters as set out in the order of the Arbitrator dated 07.05.2016,,,,

and the learned Arbitrator to determine the final list of eligible plot owners in all the categories "NPNL, Economic Weaker Sections (EWS) and",,,,

General and also commercial.,,,,

Once the allottees are identified and the allottees pay the apportioned development charges, the learned Arbitrator shall direct the Director to execute" ,,,,

necessary documents in favour of the allottees in terms of Section 8(4) of the HDRA Act.,,,,

Question No.1:,,,,

Members of the petitioner association/allottees purchased the plots from the Colonizer who held the above seven licences and therefore, they are" ,,,,

entitled to the entire extent of land as per the layout without going into the question of which is the portion of the land M/s Durga Builder Pvt. Ltd. is,,,,

claiming succession.,,,,

The claim of the sixth respondent can be considered by the arbitrator only subject to the payment of licence renewal fee of Rs.21,86,97,901/- (as on" ,,,,

28.02.2019) with interest @ 6% from 28.02.2019 plus Rs.1.25 crores borne by DTCP, Haryana in maintaining the security as per the order of the" ,,,,

Court dated 18.07.2013.,,,,

The claim of the sixth respondent-colonizer could be considered only if respondent No.6-Colonizer pays the licence renewal fee of Rs.21.89 crores,,,,

and other amount spent by DTCP, Haryana towards keeping watch and ward of the licensed area and other charges." ,,,,

On payment of this outstanding amount against the license renewal fee with interest from 28.02.2019 and also on payment of expenses borne by,,,,

DTCP in engaging the security agencies for watch and ward of the licensed area, M/s Durga Builders Private Limited and its associate companies" ,,,,

would be entitled to claim the surplus plots.,,,,

Claim of Mr. Arun Mehra qua 87 plots:- So far as the claim of Mr. Arun Mehra in respect of 87 plots, liberty is granted to Mr. Arun Mehra to work" ,,,,

out his remedy in accordance with law by agitating the matter before the competent court. However, it is made clear that the claim of Mr. Arun" ,,,,

Mehra in respect of 87 plots shall not come in the way of the claim of the beneficiaries.,,,,

Question No.2:,,,,

The Town and Country Planning Department has stated that only after payment of at least 90% of the total amount, they will undertake the work." ,,,,

A total amount of Rs.128,70,00,000/- (Rs.117,00,00,000/- on account of internal and external development work + Rs.11,70,00,000/- as 10% additional" ,,,,

cost) is payable to the DTCP, Haryana. The total amount of Rs.128,70,00,000/- is payable by the members of the petitioners' association and" ,,,,

eligible plot owners to the Director General, Town and Country Planning (DGTCP), Haryana for undertaking and completing the internal and external" ,,,,

development works.,,,,

Out of the above amount of Rs.128,70,00,000/-, Rs.70 lakhs to be kept apart to enable the Director, Town and Country Planning, Haryana to adjust" ,,,,

the expenditure so far borne by DTCP in issuing various advertisements and other such incidental expenses.,,,,

As regards the internal development charges, the court in its order dated 07.04.1997 noted that the Government has fixed Rs. 878/-for the plots of the" ,,,,

size 135 sq. yards to 170 sq. yards and Rs. 975/- for plots of 171 to 220 sq. yards. As to the external development, it was worked out at Rs. 4,70,000/-" ,,,,

per acre which was to be borne by the allottees. [(Para No.8 of Proceedings of the Supreme Court dated 07.04.1997)] However, it is stated only" ,,,,

some of the allottees (according to the Colonizer, only 143 of the allottees) have complied with the order of the Supreme Court. But according to the" ,,,,

petitioners that in compliance of the order of the Supreme Court, they have paid the amount. This has to be verified; those of them who have not" ,,,,

complied with the order of the Supreme Court shall be directed to pay the amount with 6% interest on the amount payable from 01.01.1998.,,,,

Apportionment of the amount and consequence of failure to pay:- ,,,,

The Arbitrator shall determine the cost for the square meter and proportionately apportion the total cost amongst the eligible plot owners depending on ,,,,

their respective plot size.,,,,

The General Secretary of petitioners' association has undertaken that its members shall pay the development charges within the stipulated time ,,,,

frame fixed by the Arbitrator/State of Haryana.,,,,

The payment of apportioned amount should be a time bound one. In case if any of the plot owner (who has already obtained the sale deed) does not ,,,,

pay the apportioned external and internal development charges within the time frame, the developments/amenities like sewerage, water connection," ,,,,

electricity and other developments shall not be extended to him.,,,,

In case the claimants who have not so far got the sale deed executed express unwillingness to pay the proportionate/apportioned development charges ,,,,

or fail to give an undertaking within the given time frame, the land allotted to them will revert to the Colonizer on certain conditions viz. 'A' (i)" ,,,,

colonizer will pay the claimant the amount paid towards the cost of land with interest from the date on which such payment was made at a rate which ,,,,

may be considered appropriate by the arbitrator; and(ii) in addition to the above, the Colonizer shall also pay the proportionate amount towards" ,,,,

development works payable for the said plot to the government of Haryana.,,,,

Insofar as the other categories of allottees who have been identified and who are yet to get the sale deed, in case if they do not pay the development" ,,,,

charges within the time frame, as discussed earlier, they shall forfeit the right over the plot. The Colonizer has undertaken to compensate such" ,,,,

allottees and pay the amount to such allottees as refund the amount to the allottees in case of failure to pay the apportioned amount by the individual,,,

plot owners.,,,,

Question No.3:-,,,

Insofar as the question raised by the learned Arbitrator that whether the present density norms can be relaxed for the project, Mr. Maninder Singh,",,,

learned Senior counsel appearing for the State of Haryana has submitted that the density norms like the area reserved for roads, common purposes,",,,

etc. cannot be reduced.,,,,

Insofar as the density of the plots, the learned Arbitrator if need be, shall make appropriate adjustments of the plots in conformity with the existing" ,,,,

rules. The adjustments of the plot area will have to be done from amongst the plot owners. The State of Haryana shall render its co-operation in,,,

adjustment of the plot sizes in the approved layout of course, subject to the conformity with the existing rules and governing sanction of the scheme." ,,,,

Question No.4:-,,,

It is made clear that the present proceedings are not in the nature of arbitration within the meaning of the Arbitration and Conciliation Act, 1996; but" ,,,,

essentially, in the nature of a Special Committee constituted by the Hon'ble Supreme Court of India." ,,,,

Other observations relevant for determination of the issue:-,,,

The sixth respondent-Colonizer is bound to pay the licence fee of Rs. 21,86,97,901/- (as on 28.02.2019) towards renewal of licence with interest @" ,,,,

6% per annum from 28.02.2019. If the amount is not paid, it is for the State to proceed against the sixth respondent to recover the amount as if it is a" ,,,,

land revenue. For the said amount of 21,86,97,901/- (as on 28.02.2019), there would be a charge on the properties of the sixth respondent-Colonizer." ,,,,

Upon the payment of Rs.21,86,97,901/- as licence fee, respondent No.6-Colonizer is at liberty to work out his remedy qua the encroached area of" ,,,,

46.85 acres in accordance with law and also the surplus plots as determined by the learned arbitrator.,,,,

Pursuant to the order passed by the Supreme Court, DTCP, Haryana has stated that it has spent an amount of Rs.1.25 crores towards watch and" ,,,,

ward and the same is payable by the Colonizer. Thus, the colonizer shall pay Rs.1.25 crores to DTCP, Haryana till August, 2019-the date of filing of" ,,,,

the affidavit before the Supreme Court and further expenses borne by the Department for watch and ward of the licensed area and other incidental,,,

expenses. If the above amount is not paid by the sixth respondent-Colonizer, it is for the State of Haryana to proceed against the sixth respondent to" ,,,,

recover the amount as land revenue.,,,,

On payment of licence fee and other dues, the Colonizer would be entitled to make a claim for the surplus plots, if any, left over." ,,,,

59. We place on record the valuable assistance rendered by learned Senior counsel, Mr. Raju Ramachandran, learned amicus curiae who is assisted" ,,,,

by Ms. Rashmi Nandakumar, Advocate. We also place on record the co-operation rendered by Mr. R. Basant and Ms. V. Mohana, learned senior" ,,,,

counsel appearing for the petitioner-Association; Mr. Maninder Singh, learned Senior counsel and Dr. Monika Gusain, learned counsel appearing on" ,,,,

behalf of State of Haryana and DTCP; and Mr. Satvik Varma and Mr. Mohit Mudgal, learned counsels appearing on behalf of the sixth respondent-" ,,,,

Colonizer. ,,,,

60. Accordingly, the clarifications sought by the Learned Arbitrator are answered." ,,,,

61. All pending applications shall stand closed. ,,,,