D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 7, 2001

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 92
Constitution of India, 1950 â€" Article 14, 19
Haryana Development and Regulation of Urban Areas Act, 1975 â€" Section 19, 24, 3, 9
Haryana Development and Regulation of Urban Areas Rules, 1976 â€" Rule 4, 5

Citation: AIR 2001 P&H 233 : (2001) 2 RCR(Civil) 776

Hon'ble Judges: K.S. Garewal, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: Mr. P. Chidambaram and Ms. Vijayalakshmi Menon and Mr. Rajiv Bhalla, for the Appellant; Mr. Surya Kant, Advocate General, Haryana, Ms. Palika Monga, AAG, Haryana, Mr. S.C. Kapoor Mr. Pardeep Kapoor, Mr. Girdhar Govind and Mr. Hemant Kumar, for the Respondent

Judgement

This Judgment has been overruled by : D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and

Others, AIR 2003 SC 1648 : (2003) 2 SCALE 145 : (2003) 5 SCC 622 : (2003) 2 SCR 1 : (2003) AIRSCW 1046 : (2003) 2 Supreme

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Jawahar Lal Gupta, J.
Pure charity or consuming avarice ? Is the petitioner truly a Trust working to promote the cause of education ? Or is

it merely a "duplicate" of the respondent "colonizer" created to fiddle with the figures and collect funds ? Do the provisions of the "Haryana

Development and Regulation of Urban Areas Act, 1975" and the Rules permit the licensee to transfer the sites without the permission of the

Government ? And are the restrictions imposed by the authorities through various "circulars" arbitrary, illegal and unfair ? This is the core of the

whole controversy.

2. The ""DLF Qutab Enclave Complex Education Charitable Trust"" is the petitioner. M/s. DLF Universal Limited - a Public Limited Company

(respondent No. 3) is the licensee under the provisions of the Hary-ana Development and Regulation of Urban Areas Act, 1975 (hereinafter

referred to as the Act). The petitioner-Trust is the progeny of the respondent-licensee. It alleges that the State Government and the Director, Town

and Country Planning, Haryana have arbitrarily refused to recognise ""the fourth party interesis created in the community sites of the DLF Qutab

Enclave Complex.... by means of Agreement to Lease after 7.8.1991 but before 9.2.1994 and in sanctioning their building plans"". As a result, the

process of development of the DLF Qutab Enclave Complex in so far as it relates to the construction of the community buildings like schools,

Hospitals, dispensaries etc. has been ''stalled''.

3. Respondent No. 3 was granted several licences for the development of a residential colony in Villages Chakkarpur, Sikandarpur Ghosi,

Shahpur, Sarhul and Nathupur etc. in District Gurgaon. It was named as the DLF Qutab Enclave Complex. The third respondent has entered into

an agreement with the second respondent viz. the Director, Town and Country Planning in accordance with the provisions of the Act and the rules.

It has executed an agreement in the prescribed proforma - LC IV. A copy of this agreement has been produced as Annexure P.2 with the writ

petition.

4. On February 3, 198S, Ihe licensee viz. respondent No. 3 executed a deed by which the petitioner-Trust was created. All the community

building sites earmarked for the construction of schools in the DLF Qutab Enclave Complex were transferred to Ihe Trust for a paltry sum of Re. 1

per annum so as to enable to it provide ""educational facilities through the construction of buildings and running and maintaining schools..... in the

said colony."" A copy of this deed has been produced as Annexure P.3 with the writ petition. In Clause (3) of this deed, it was inter alia provided

that ""the Trustees may construct the buildings required for the provision of educational facilities themselves and run the schools or have it done

through other persons. Trusts, societies or institutions by giving the plots or any one or more of them or buildings constructed thereon on lease or

by outright transfer or in any other manner and on such terms and conditions as they may consider appropriate."" It was also provided that ""the

income of the Trust from whatever source derived shall be applied or accumulated for future applications solely for the purpose of promoting

education and its assets shall also be held with the same object.

5. The petitioner in turn ""entered into various agreements to lease on perpetual basis with fourth parties for the development and construction of the

buildings meant for the educational purposes."" A copy of one of such agreements has been produced as Annexure P.4. The list of plots in respect

of which such agreements were executed is at Annexure P.5 with the writ petition. The petitioner alleges that the fourth parties ""were selected after

a close scrutiny of their past experience, financial capabilities, past antecedents etc. so as to ensure that these persons do not default in the

construction of the community buildings or act contrary to the license issued to respondent No. 3 herein"". Under the agreements to lease, the

petitioner received premium from the fourth parties. It was also provided that the party shall set up and run schools having all the essential facilities

and that the plot or the building shall not be used ""for any purpose other than the purpose of providing school and educational facilities and

activities incidental or ancillary....."" thereto. The petitioner maintains that despite the creation of fourth party rights in the sites, the Trust and the

licensee ""retained the overall control over the development of the community buildings thereon"".

6. On January 11, 1988, the second respondent issued a demand letter (Annexure P.6 with the writ petition) whereby the external development

charges were fixed at Rs. 3.72 lacs per gross acre. An amount of Rs. 61,000/- was included ""on account of internal community building"". The

petitioner alleges that this demand for Rs. 61,000/- was unconstitutional. However, the third respondent deposited the amount without prejudice to

its rights. This demand has been challenged separately in CWP No. 6565 of 1994 which is still pending. On the demand being challenged, the

respondent-authorities adopted an arbitrary attitude and started refusing sanction to the construction of the community buildings. Vide letter dated

August 30, 1993, the District Town Planner informed one of the parties that the issue regarding ""the third fourth party is pending with the State

Government"". Thus, no final decision with respect to the sanctioning of the building plans can be taken. A copy of this letter has been produced as

Annexure P.7 with the writ petition. On February 9, 1994, the second respondent directed the licensee that it shall ensure that ""no further fourth

party right is created on the community sites, wherever creation of the third party was allowed, prior to 7.8.1991....."". A copy of this letter has

been produced as Annexure P.8. The petitioner maintains that this decision is wholly illegal. In any case, it can be effective prospectively from

February 9, 1994. Vide letter dated November 12, 1993, the third respondent had given information to the Director (respondent No. 2) with

regard to the fourth parties to whom the sites had been transferred. By its letter of May 31, 1994, the position was further clarified. Copies of

these letters are at Annexure P.9 and P.10 with the writ petition.

7. On August 16, 1994, a meeting was held under the Chairmanship of the then Chief Ministry, Haryana. It was desired that the matter regarding

the third and fourth party rights for construction of community buildings be finalised. However, on Oclober 25, 1994, the second respondent

issued the impugned memorandum, a copy of which is at Annexure P.11. Various conditions regarding reservation of seats etc. for the local

residents and persons belonging to the weaker sections of the Society at concessional rate were laid down. The third respondent agreed to these

conditions. Vide letter dated November 2, 1994, a copy of which is at Annexure P. 12, the licensee had communicated its assent.

8. On April 26, 1995, the second respondent demanded the documents regarding the creation of the third party rights. By another communication

of date, the request of the licensee for extension of time for constructing the buildings was declined. A copy of the two memos issued on April 26,

1995 has been produced as Annexure P.13 collectively.

9. On November 1. 1992. one of the sites had been given on lease by the petitioner to Mr. Som Bakshi for the construction of a Nursery School.

Vide letter dated November25, 3994, a copy of which has been produced as Annexure P. 14, the Senior Town Planner, Gurgaon asked the

licensee and the lessee (Mr. Som Bakshi) to file an affidavit/undertaking (as stipulated in the letter of October 25, 1994) so that its building plans

could be sanctioned. The petitioner alleges that even in cases where fourth party rights had been created after August 7, 1991, the building plans

have been sanctioned. The details regarding three such cases have been given in the document at Annexure P. 15 with the petition. Despite these

facts, the second respondent issued the impugned memorandum dated February 13, 1996 wherein it was inter alia provided that the time schedule

of ""three years for the construction of community buildings from the date of this communication shall apply to all the community sites where

third/fourth party rights have been created before 7.8.1991"". The petitioner alleges that this circular is being interpreted to mean that ""the

third/fourth party rights which have been created after 7.8.1991 shall not be recognised."" A copy of this memorandum has been produced as

Annexure P. 16.

10. On March 15, 1996, the third respondent requested the Director to approve the zoning plans of the community sites so as to enable the fourth

parties to submit their building plans for approval. The respondents did not respond. A copy of this letter has been produced as Annexure P. 17.

Thus, the zoning plans as also the building plans are not being sanctioned. On July 12, 1996, the third respondent submitted another representation.

A copy of this letter is at Annexure P. 18. The petitioner alleges that the second respondent having failed to act on the representation, the Trust

sent tetter dated August 16, 1996 to the fourth parties to take the refund of the amount if they so desired. A copy ofthis letter isat Annexure P.19.

The fourth parties did not accept the offer and threatened legal action. A copy of one of the notices received by the petitioner has been produced

as Annexure P.20. Various representations were subsequently submitted. A copy of one of such letters has been produced as Annexure P.21. In

the meantime, the fourth parties were threatening legal action. Hence this petition.

11. The petitioner alleges that the action of the respondents is wholly illegal and violative of Articles 14 and 19. It prays that the office

memorandum dated October 25, 1994 and February 13, 1996, copies of which have been produced as Annexures P.11 and P.16 be quashed. It

further prays that a writ of mandamus be issued directing the authorities to consider and approve the building plans submitted by the fourth parties

as listed in Annexure P. I to the writ petition.

12. The third respondent has filed a written statement. It has, for obvious reasons, supported the stand of the petitioner. However, respondent

Nos. 1 and 2 have not acquiesced in the claim. They contest the petition.

13. According to the two respondents, there is no agreement between the Director (respondent No. 2) and the petitioner-Trust. The petitioner has

not even exhausted alternative remedy of appeal as provided u/s 19 of the Act. Primarily, it has been pointed out that the Act and the Rules cast a

statutory obligation on the coloniser ""to construct the community buildings at his own cost or to get constructed from any other institution/individual

at its cost...."" The Act authorises the Government to take over such sites or to transfer them to any other person or institution. By leasing out the

sites to the private individuals at an exorbitant premium, the rights of the State Government as preserved under the Act have been frustrated. In

order to resolve the stalemate, the Government had decided to recognise the rights of the third or fourth parties which had been transferred upto

August 7, 1991. Vide letters dated August 16, 1988 and March 5, 1992, copies of which have been produced as Annexure R. 1 and R.2, the

second respondent had informed the licensee that all the community building sites should be transferred to the Government. As the petitioner''s

Trust is ""also a Trust of the licensee, the Trustees were fully aware of the decision taken by the Government that no third or fourth party rights can

be created on the community sites."" The petitioner and the licensee have knowingly acted contrary to the decision of the Government. The sites

earmarked for community buildings could not be transferred to any third or fourth party by the licensee after 7.8.1991 without the prior

permission of respondent No. 2"". The sites for community buildings are ""a part of the 45% non-saleable area which has to be transferred to the

Government free of cost after the completion of the project and therefore, the licensee (i.e. respondent No. 3) cannot transfer these sites on long

lease to third/fourth parties....".

14. The respondents point out that before granting the licence to a coloniser, two agreements are executed. It has been inter alia provided in the

bilateral agreement that ""the owner shall derive maximum net profit at the rate of 15% of the total cost of development of a colony after making

provision of statutory taxes. In case, the net profit exceeds 15%. after completion of the project period, surplus amount shall either be deposited

within two months in the State Government Treasury by the owner or he shall spend this money on further amenities/facilities in his colony for the

benefit of the residents therein,"" Thus, the colonsier is debarred from making exorbiiant profits by extracting huge premium from the general public,

The letter dated October 25, 1994 was issued to all the licensees. They were directed that where third/fourth party rights had been created before

August 7, 1991. the community buildings should be constructed within a period of three years or the lesser period as provided in the lease/sale

deed. Respondent No. 3 has failed to construct the building sites even after ten years. Third party rights have been created even after the decision

of August 7, 1991. Therefore, the guide-lines were issued vide letter dated October 25, 1994. Despite that, Ihe licensee has not constructed the

buildings. Keeping in view the representations of the licensees, the time schedule was revised vide letter dated February 13, 1996.

15. On merits, the respondents aver that the licensee has transferred community building sites measuring 31.79 acres of land to the petitioner-Trust

without charging anything. The petitioner has leased out these sites to fourth parties at exorbitant prices. With reference to the document at

Annexure P.4, it has been pointed out that a community site measuring 0.47 aces was leased out to Shri A.H. Handa for a period of 95 years at a

premium of 9.40 lacs. This was done with the object of making huge profits from the sites rather than getting the buildings constructed. To support

this allegation, it has been pointed out that one of the parties viz. the Society for Education and Welfare filed CWP No. 11064 of 1993 for the

issuance of directions to approve the building plans of the community sites meant for Secondary Schools. It was disclosed that a site had been

leased out to the Society on a premium of Rs. 75 lacs. During the pendency of the petition, it was ""mutually agreed upon by the Government (first

party), M/s. DLF Universal Limited (second party), DLF Qutab Enclave Educational Charitable Trust (third party) to execute agreements to (he

effect that the petitioner would construct the school building within the time schedule laid down in the lease deed executed in his favour reckoning it

from the date of the sanction of the building plan failing which the site would ultimately revert to the State Government."" Thereafter, the building

plans of the society were approved. The decision was conveyed to respondent No. 3 vide letter dated February 9, 1994. It was made clear in this

letter that no other fourth party rights would be created on the community sites.

16. It was observed that the licensees were not constructing community sites. They had started transferring the sites to their own Trusts and private

individuals. Thus, the State Government had taken a decision to take over these sites. It is maintained that under the provisions of Section 3, the

licensee has to construct the building or get it constructed. The Act does not permit the licensee to transfer the land set apart for the construction of

community buildings to its own Trusts or private individuals as the sites are a part of the 45% non-saleable area which has to be handed over to the

Government or the local authority free of cost after the completion of the project. If the licensee is allowed to transfer the rights to other parties, the

right of the Government to take over the community sites would be defeated. Still further, if the buildings are not constructed for years, the public

will be deprived of the basic facilities. The licensee is bound by.the terms of the agreement and it is not open to it to challenge it on the ground of

violation of the Constitution. It has also been alleged that the deeds of declaration have not been registered. Thus, there is no legal transfer of the

property rights. It is also maintained that under the terms of the licence and the bilateral agreement, the licensee is bound to construct the

community buildings himself or through any other individual or institution at its own cost. The licensee being fully aware of the conditions of the

licence has ""worked out the cost of Ihe plot and charged for the entire area from the plot-holders"". If the transfer of rights in the sites to the

third/fourth party is permitted, it would be difficult for the Government to rescind such rights. Thereafter, in the meeting held on 7.8.1991, it was

decided that ""no third party rights would be created without obtaining the prior permission of the Director, Town and Country Planning"". The

petitioner-licensee is now trying to lease out these sites to frustrate the rights of the Government. The purpose of creating the Trust was a clever

move ""to derive maximum benefit by sale of community sites.... and not for the purpose of better management"". By transferring the community sites

to the Trust, the licensee has acted cleverly. The premium derived from transfer of sites to the fourth party goes to the Trust. It would not be

deposited with the State Government as required under the law.

17. The petitioner''s allegation that the levy of Rs. 61,000/- per gross acre on account of construction of the portion of the community buildings

was illegal, has been controverted. It is admitted that the licencee has already deposited the external development charges at the rate of Rs. 3.72

lacs per gross acre which ""includes the component of Rs. 61,000/- levied for the construction of community buildings within the licensed colonies"".

Since this levy has to be paid by the licensee, the petitioner has ""no legal right to challenge"" it. In para 21 of the written statement, instances of the

approval of the zoning plan as also the building plans have been given. The respondents admit the receipt of letters dated November 12, 1993 and

May 31, 1994. However, it is maintained that the transfer of property in favour of the fourth parties was not proper. Therefore, in response to the

letter dated November 12, 1993, the respondents sent a communication dated May 31, 1994 to the third respondent conveying that ""the

agreements to lease the sites to fourth party do not specify the dates when these documents (stamp papers) were purchased by respondent No. 3

which is an essential requirement for every judicial document purchased from an authorised stamp vendor"". It was also conveyed that the

documents were required to be registered. In the absence of proper registration, the documents cannot be legally admissible. There was no valid

transfer of rights in the property. Thus, the 35 agreements to lease were returned. The third respondent has not re-submitted these documents to

the office for examination. Thus, the petitioner cannot allege that it has ""created legal fourth party rights between 7.8.1991 and 9.2.1994"".

18. The petitioner alleges that a meeting was held on August 16, 1994 under the Chairmanship of the then Chief Minister, Haryana. The factum of

this meeting has been admitted. However, it has been pointed out that it was on the request of Mr. K.P. Singh - the Managing Director M/s. DLF

Universal Limited that the letter dated October 25, 1994 was issued giving ""guide-lines for construction of the community building sites vesting with

the third/fourth parties before 7.8.1991"". Thus, the allegation that the respondents were not clear with respect to the policy regarding creation of

third or fourth parly rights has been controverted. The petitioner''s suggestion that the letter recognises the creation of the third/fourth party rights

between August 7, 1991 and February 9, 1994 has been controverted. It is maintained that the licensee was not permitted to create further rights

after 7.8.1991. Thus, the letter ""automatically puts a ban on the transfer of the community building sites to fourth parties by the licensee"". It has

been also pointed out that vide letter dated February 9, 1994, addressed to respondent No. 3, it was specifically provided that no fourth party

rights can be created even in cases where creation of third partyright was allowed prior to August 7, 1991. The petitioner''s allegation that the letter

dated October 25, 1994 or the subsequent communication dated February 16, 1996 are illegal or unjust has been controverted. The various

grounds raised by the petitioner have been controverted. On these premises, the respondents maintained that the petition deserves to be dismissed.

19. A rejoinder has been filed on behalf of the petitioner by one of the Trustees. The preliminary objections have been controverted. However,

since none of the objections were pressed at the time of the hearing of the case, detailed reference to the submissions is not necessary. It has been

averred that ""although rule 4(1) states that a minimum of 45 per cent of the gross area of the land in the colony must be reserved for ''internal

development works'' and ''community sites'' whereas a maximum of 55 per cent of the areamay be plotted (inclusive of the commercial

component), this is a mere repetition of the words contained in Rule 4(1) of the 1976 rules"". It is maintained that the conclusion drawn by the

respondents that 45% of the area is also ""non- saleable"" is based on conjectures and surmises and that there is no logical or rational nexus to arrive

at such a conclusion. It is alleged that the concept of non-saleable area is erroneous and misconceived. According to the petitioner, ""the main

purpose of the Act is to invite private participation for developing urban residential colonies in the State of Haryana and to regulate such

development for the benefit ofthe residents ofthe colonies developed under the 1975 Act."" The liberty granted to the Government to take over

such sites ""must be interpreted as a residuary, quasi judicial and supervisory power"". Still further, it has also been pointed out that the transfer to

the Trust being ""antecedent to Annexure R.1 attached with the reply"" is strictly in accordance with law. The petitioner maintains that it has been set

up to promote the development of educational facilities. There is a stipulation in the declaration that ""all monies accruing to the Trust shall be

reinvested and utilised for the purpose of promoting educational facilities for the residents of the colony itself."" The petitioner maintains that the

fourth and subsequent 5th, 6th etc. party rights, if any, would merge and be covered under the words of..... by any other institution or individual

as they occur in Section 3(3)(a)(iv). Besides alleging that the two letters dated August 16, 1988 and March 5, 1992 (which are at Annexure R. I

and R.2 with the written statement) as being illegal, the petitioner maintains that these have become infrustuous because respondent No. 3 had no

transferable interest in the properties. Otherwise, a direction to the coloniser ""to transfer such sites to the Government ''free of cost'' as is sought to

be interpreted by the respondents is ultra vires Articles 14 and 19(i)(g) of the Constitution as it shall lead to expropriation of property of the

colonsier/licensee without compensation thus violative of their fundamental rights"".

20. The petitioner also alleges that the imposition of a ""blanket time period of three years for the completion of construction on all the sites is highly

arbitrary and it would lead to wastage of development funds"". Still further, it has also been alleged that out of the 45 community sites which had

been transferred to the respondents, ""as many as 41 sites were lying idle, uncon-structed except for three police posts and the telephone exchange.

This is despite the fact that the respondents have already recovered huge amounts at the rate of Rs. 61,000/- per gross acre.of the colony from the

coloniser....."" On the three sites ""out of the 32-sites transferred after 7.8.1991"", schools are running. No construction can be raised on the 29 sites

as the approval of the building plans is being illegally withheld by respondent No. 2. The petitioner controverts the allegations that the licensee ""has

recovered costs for such community sites from plot holders"" as being ""wrong, patently misconceived and in fact merely academic and

indeterminable in view of the profitability clause"". It has been stated that the said clause ""binds respondent No. 3 to a specific limit of profitability

margin, irrespective of the reason for the receipts"". The petitioner denies that ""respondent No. 3 has charged for UK construction of the said

community buildings from the plot holders"". The petitioner maintains that it is a completely independent legal entity and that there are no ""common

funds or accounts between the petitioner-Trust and respondent No. 3"". The averment that the agreement to lease requires registration has been

controverted. It is maintained that ""when the conditions of the agreement are satisfied and such agreement matures into a lease deed, the same shall

be got executed and registered."" The grounds as raised in the writ petition have been reiterated.

21. Respondent No. 3 has filed an additional affidavit to controvert the written statement filed on behalf of respondent Nos. 1 and 2. However, it

deserves notice that in para 14 of the written statement filed on behalf of respondent Nos. I and 2, it has been specifically averred as under :

As mentioned above, the licensee knowing its obligation to construct the community buildings at its own cost has already charged for the

construction of the said community buildings from the plot holders. Now the licensee is trying to lease out these sites on long lease to its own

created trusts thus frustrating the rights of the Government to take over such sites. As the Directors of the licensee firm are also the Trustees of

these so-called Trusts, the licensee will also have full control over such sites"".

22. In the additional affidavit filed by the third respondent, it has been stated as under :

That the allegations contained in para 14 of the reply are incorrect. It is most respectfully submitted that it is in fact the respondent Nos. 1 and 2

who are accumulating exorbitant funds under the garb of construction on the community sites and at the same time also transferring them to third

parties for exorbitant premiums. Furthermore, it is the sites handed over to respondent Nos. 1 and 2 which are lying idle and unconstructed.

It is thus, clearthal the specific (sic)nent that the licensee has already charged for the construction of the said community buildings from the plot

holders has not been specifically denied by respondent No. 3.

23. These are the pleadings. It is in this background that the issues as raised at the hearing of the case have to be considered.

24. Mr. P. Chidambaram, learned Counsel contended that the petitioner is the owner of the land. It is entitled to transfer the rights in the property

to any one. The Act and the rules place no bar on this right. In fact, the provisions of Section 3 enable the licensee to have the building constructed

from any individual or institution ""at its own cost"". The respondents have themselves recognised the transfer to third or fourth parties. The decision

restraining the licensee from transferring the rights in the sites after August 7, 1991 was not communicated to the petitioner. Thus, the transfers

made between the period from August 7, 1991 to February 9, 1994 are not illegal. The refusal of the respondents to recognise these transfers and

the circulars dated October 25, 1994 and February 13, 1996 are illegal and arbitrary. Thus, they are bound to recognise the rights of the lessees

and consider their cases for sanction of the zoning and building plans.

25. The claim made on behalf of the petitioner was controverted by Mr. Surya Kant, Advocate General, Haryana. He submitted that the licensee

cannot act in violation of the terms of the licence and the bilateral agreement. The rights created by the licensee in favour of the third or fourth

parties have no sanction of the statute. These are violative of the provisions of Section 3 and the Rules. These have rightly been ignored by the

respondent- authorities.

26. Mr. Girdhar Govind, who appeared forthe newly added respondents pointed out that the Government had not taken any action against the

licensee at any stage. Therefore, the claim that the had done anything illegal, cannot be sustained. If any action had been initiated, the respondents

would not have invested any - money in the properties.

27. In view of the above facts and submissions, the questions that arise for consideration are :-

(i) Is the petitioner a truly independent entity or merely a duplicate of the licensee company ?

(ii) Is the licensee debarred from transferring the " sites reserved for community buildings to third and fourth parties ?

(iii) Are the circulars issued by the respondent-authorities vide letters dated October 25, 1994 and February 13, 1996, copies of which have been

produced as Annexure P.11 and P.I6 respectively with the writ petition in so far as these provide that the coloniser shall not create any further

rights, violative of the provisions of Section 3(3)(a)(iv) and Article 14 of the Constitution ?

(iv) Should the Court put its seal of approval on the transfer of sites merely because the ''authority'' has taken no action ?

Reg (i) : Is Ihe petitioner Trust a truly independent entity or merely a duplicate copy of the licensee company ?

28. Mr. Chidambam contended that the petitioner is a charitable Trust. It is the owner of the land. It has, thus, an indefeasible right to deal with the

property in the manner it likes. Js it so ?

29. The petitioner claims that it is a public charitable Trust. It is interested in ensuring that the community sites reserved for schools are developed

in accordance with the requirements of a good residential colony under the guidance of able professionals. Thus, it has agreed to transfer the sites

on perpetual lease to the fourth Parties who have been selected after close scrutiny of their past experience and financial capabilities.

30. The respondents maintain that the Trust is managed by ""the same Directors who are the Directors of the main company"". The action of the

licensee in transferring the sites to the Trust ""free of cost"" is ""a clever move"". The Trust is ""leasing out these sites to private individuals..... at an

exorbitant premium on lease basis ranging from 95 to 99 years"". By way of instance, it has been specifically pointed out that ""a community site

measuring 0.47 acres was leased out to one Shri A.H. Handa for a period of 95 years at a premium of Rs. 9.40 lacs"". Another ""site was leased

out by the present petitioner to the Society for Education and Welfare on a premium of Rs. 75 lacs"". With the creation of the Trust and the transfer

of the sites, the premium derived from the fourth parties would ""go to the Trust instead of the licensee. Therefore, instead of depositing the excess

amount (in case it exceeds 15% of the total project cost) in the State Government Treasury, the coloniser would keep the amount himself through

the Trust"". This would also ""frustrate the right of the State Government to take over such rights.

31. In the rejoinder filed by the petitioner, it has been inter alia averred that ""respondent No. 3 transferred these sites to the petitioner-Trust at a

very nominal sum i.e. Re. ; - only per annum with a view to enable Ihe Trust to apply all its funds for promotion of education in Qutab Enclave

Complex, Gurgaon"",

32. Before proceeding to consider the matter, the position regarding the first and subsequent parties as repeatedly mentioned in the pleadings and

correspondence needs to be clarified. The Government/the Director are being mentioned as the first party. The licensee is described as the second

party. The petitioner-Trust is treated as the third party. The lessee to whom the land has been transferred by the petitioner-Trust is described as

the fourth party.

33. The petilioner claims to be an independent entity. Respondent Nos. 1 and 2 have categorically asserted that Ihe Trust consists of the Directors

of the licensee-company. The Trust deed is on record as Annexure P.3 with Ihe writ petition. A perusal thereof shows that Ihe three Trustees were

Shri Raghvendra Singh, Shri K.P. Singh and Shri Kewal Singh. Shri K.P. Singh is admittedly the Chairman and Managing Director of the

respondent-licensee. Shri Raghvendra Singh is a whole-time Director. Shri Kewal Singh appears to be the only outsider. Still further, the petitioner

had filed a Civil Misc. application No. 11467 of 1997 lo place on record certain additional facts. Therein, the names of Trustees as on May 27,

1997 were given. This list is irrelevant as the dispute in the present case relates to the period from August 7, 1991 and February 4, 1994. During

the relevant period, it appears that out of the three Trustees, the Chairman and the whole-time Director of the respondent-licensee constituted the

majority in the Trust.

34. Still further, the petitioner claims to be a public charitable Trust. However, not an iota of evidence has , been placed on record to show that the

Trust has actually spent any money on providing facilities for education to the residents of the colony. There is a studied silence on this issue. What

to talk of giving any money, the Trust and the Company have not even given away their secrets to this Court.

35. In this situation, it appears obvious that the petitioner and the licensee are basically one. The two are combining to plaster the true and the false

together so as to make it look plausible. If the claims of the petilioner regarding its being ''independent'' and ''charitable'' were correct, it could have

placed necessary material before the court. It could have been shown that the Trust of the relevant time consisted of eminent educationists who had

nothing to do with the licensee-company. It would have easily established its bona fides by showing that it had actually spent money on providing

facilities for education to the residents of the colony. These facts could have proved the petitioner''s independence as well as the credentials. In the

absence of this evidence, we are left with merely a fusillade of platitudes and promises which have no foundation. The creation of the Trust by the

licensee appears to be calculated to deliberately create a duplicity with the object of fiddling with the figures. On the material placed before us. it is

not possible to hold that the Trust is an independent entity and not a ''duplicate'' or the licensee.

36. There is another aspect. The land admittedly belonged to the licensee. On the petitioner''s own showing, land measuring 31.79 acres has been

transferred by the licensee to the Trust @ Re. t/- per annum. Thereafter, the petilioner has admittedly given different sites on lease for different

periods of time ranging from 95 10 99 years for exorbitant amounts of money. As noted above, land measuring less than half an acre has been

given on lease for Rs. 9.40 lacs. Another site has been given to a society for Rs. 75 lacs. It is, thus, clear that the land is worth its weight in gold. It

has been given away for Re. 1.00 per annum. Why ? Charity has clearly begun at home. For personal good. Not for surviving any public cause.

The performance has belied the promise.

37. Thus, the first question is answered against the petitioner. It is held that the petitioner Trust is not an independent entity. Its creation is only a

device adopted by the licensee-Company to fiddle with the figures of money. To hoodwink the State Treasury. To avoid the deposit of profits

beyond 15% with the State as required under the bilateral agreement and the law. To defeat or at least complicate and delay the transfer of sites to

the Government. A person or institution that adopts such methods cannot have the sympathy of the Court when it exercises equitable jurisdiction.

Reg : (ii) Is the licensee debarred from transferring the community sites to third and fourth parties ?

38. Mr. Chidambaram contended that under the provisions of the Act, the licensee can construct the community buildings ""at his own cost or get

constructed by any other institution or individual at its cost"". Thus, it is implicit in the provisions that the licensee can transfer the site to an individual

or institution. Is it so ?

39. Before proceeding to consider the submission, it would be apt to notice the provision contained in Section 3 on which reliance has been placed

by the counsel. Section 3 provides as under ;-

Application for licence. -(1) Any owner desiring to convert his land into a colony, shall, unless exempted u/s 9, make an application, to the

Director, for the grant of a licence to develop a colony in the prescribed form and pay for it such fee as may be prescribed. The application shall

be accompanied by an Income Tax clearance certificate.

(2) On receipt of the application under sub-section (1), the Director shall, among other things, enquire into the following matters, namely :-

(a) title to the land;

(b) extent and situation of the land;

(c) capacity to develop a colony;

(d) the layout of a colony :

(e) plan regarding the development works to be executed in a colony; and

(f) conformity of the development schemes of the colony land to those of the neighbouring areas.

(3) After the enquiry under sub-section (2), the Director, by an order in writing, shall -

(a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per centum of the

estimated cost of development works as certified by the director and has undertaken -

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted;

(ii) to pay proportionate development charges if the main lines of roads, drainage, sewerage, water-supply and electricity are to be laid out and

constructed by the Government or any other local authority. The proportion in which, and the time within which, such payment is to be made shall

be determined by the Director;

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years

from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open

spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other

community buildings on the lands set apart for this purpose, or to transfer to the Government at any ti)ne, if so desired by the Government, free of

cost the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to

transfer such land to any person or institutions including a local authority on such terms and conditions as it may deem fit;

(v) to permit the Director or any other officer authorised by him to inspect the execution of the layout and the development works in the colony and

to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the

licence granted :

Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the locality, is of the opinion that it is not

necessary or possible to provide one or more such amenities, may exempt the licensee from providing such amenities either wholly or in part;

(b) refuse to grant a licence, by means of speaking order, after affording the applicant an opportunity of being heard.

(4) The licence so granted shall be valid for period of two years, and will be renewable from time to time for a period of one year, on payment of

prescribed fee.

(5) A separate licence shall be required for each colony.

40. A perusal of the above provision shows that an application for the grant of a licence to develop a colony can be made only by the owner of the

land. On receipt of the application, the Director Town and Country Planning has to make an inquiry. In particular, the inquiry has to be made into

the title of the land and the capacity of the applicant to develop a colony. After the inquiry, the Director can either accept the application or refuse

to grant the licence. In the latter case, the applicant is entitled to an opportunity. Thereafter, the authority has to pass a speaking order.

41. For the purposes of the present case, the provision in sub-clause (iv) is most relevant. It requires the licensee to construct the buildings for

schools, hospitals and community centres etc. at his own cost. It also permits the licensee to get the buildings ""constructed by any other institution

or individual at its cost"". The purpose is obvious. In a colony, the number of community buildings can be large. For example, even in the present

case, the number of sites for schools alone is stated to be 42. In case of 10 sites, it w_as stated before us that the transfer had taken place prior to

August 7, 1991. Still 32 sites remain. Admittedly, there are other sites also for construction of hospitals and other community buildings. In such a

situation, the licensee may find it difficult to raise all the buildings on its own. Thus, the Legislature has provided that it shall construct the buildings

or get these constructed. However, the cost has to be borne by the licensee.

42. Mr. Chidambaram contended that the licensee has the option to get the buildings constructed at his own cost or get these constructed by an

individual or institution at the cost of the said person or body.

43. We are unable to accept this contention. It deserves notice that the licence under the provisions of Section 3 is given to the land owner. The

inquiry is held into his capacity to develop a colony. The agreement is between the authority and the licensee. In the very nature of things, the

obligation to have the buildings constructed is that of the licensee. The cost of the buildings has to be borne by the licensee. The provision merely

permits the licensee to have the building constructed by any other institution or individual but the cost has to borne by it.

44. Mr. Chidabaram laid great emphasis on the use of the words "his" and "its". He contended that the licensee is entitled to allow the individual or

the institution to construct the building ""at its cost"".

45. We are unable to accept this contention. It is undoubtedly correct that normally, the use of different expressions should carry different

meanings. However, keeping in view the text and the context, we think it is necessary to give it a restricted meaning. Otherwise, the provision can

lead to anomalous results. It can create avoidable complications. Under the Act and the agreement, the licensee is under an obligation to provide

facilities for education, health and community services. Thus, all that the provision provides is that he can engage an individual contractor or a con-

struction company to raise the building but the cost has to be borne by it viz. the licensee.

46. Mr. Chidambaram contended that the provision specifies the purpose and not the person. In our view, the provision aims at achieving the

purpose of providing community services through the agency of the licensee. Thus, it specifies the purpose as well as the person.

47. In this context, it deserves notice that the provision of Clause (iv) itself requires that the licensee has to give an undertaking to the Government

to free of cost transfer the land set apart for schools, hospitals, community centres and community buildings if so required. The Government in turn

can transfer the sites to any person, institution or local authority. Thus, the provision embodies a clear restriction on the right of the licensee to

transfer the land set part for community services to any other individual or institution.

48. If the interpretation as sought to be given by Mr. Chidambaram is accepted, the licensee shall be able to get the building constructed from any

one. The person or institution engaged by the licensee shall bear the cost. The building may cost a substantial sum. Obviously, the person or

institution that spends the amount shall claim an interest in the property. He will not undertake the arduous task of raising the building without any

consideration. If he invests money, he would claim an interest. The provision does not contemplate the transfer of any right in the property to the

builder of the building.

49. In the petition, it has been suggested that the provision for compulsory transfer of land to the Government would amount to compulsory

acquisition of property without payment of compensation. Thus, the provision would be unconstitutional. However, at the hearing such a contention

was not raised.

50. Even such a plea would be untenable. Under the provisions of Section 24 of the Act, the Government has framed the 1976 rules. Rule 4 inter

alia provides that in the lay out plan of the colony, the land ""reserved for roads, open spaces, schools, public and community buildings and other

common uses shall not be less than 45% of the gross area of the land under the colony"". In view of this provision, it has been averred in the written

statement that the community buildings ""approved in the lay out plan form a part of the 45% of the gross area of the land under the colony"". It has

been further averred that ""the coloniser is supposed to sell only the plotted area (including commercial component) of the colony which is no case

can exceed 55% of the net planned area"". In para 14 of the written statement filed on behalf of respondent Nos. 1 and 2, it has been specifically

averred that ""the licensee knowing its obligation to construct the community buildings at its own cost has already charged for the construction of the

said community buildings from the plot holders"". This specific averment has not been denied by the licensee in the additional affidavit which has

been filed in response to the written statement. Thus, on facts, it is clear that the licensee has charged the cost of the buildings from the persons to

whom the plots in the colony have been sold. In this situation, it is clear that the licensee has already recovered the cost of the land reserved for

community buildings as also that of construction thereon from the plot holders. That being the factual position, the contention that the provision for

transfer of land free of cost would be ultra vires is wholly untenable. This fact also indicates that the licensee has to provide the buildings at its own

costs.

51. Mr. Chidambaram contended that a builder is not equipped to provide educational and health facilities. Experts are needed. Thus, the transfer

of sites is per missible.

52. We are unable to accept this contention. It is true that in case of construction of buildings for a hospital or even a school including its laboratory

etc., the requirements and needs are different from those of an ordinary building. But there are experts who design hospital and school buildings.

They provide services onpaymentoffees. Their services can be hired. However, the sites are not required to be transferred for the construction of

buildings.

53. Thus, it is held that under the provisions of Section 3(3)(a)(iv), a licensee has to provide the buildings for community services at its own cost

and is not entitled to transfer the land to any one.

Reg (in) Are the circulars issued by the respondent-authorities vide letters dated October 25, 1994 and February 13, 1996, copies of which have

been produced as Annexure P.11 and P.176 respectively with the writ petition in so far as these provide that the coloniser shall not create any

further rights, violative of the provisions of Section 3(3Xa)(iv) and Article 14 of the Constitution ?

54. Mr. Chidambaram contended that under the Anglo-Indian Jurisprudence, the executive must have a legislative authority for every action. Inthe

absence of a specific bar against the transfer of sites in the Act, the action of the Government in placing restrictions is without jurisdiction. It was

further contended that the impugned circulars are arbitrary and violative of Article 14 inasmuch as these place an embargo on the transfer of sites

after August 7, 1991.

55. The Act was promulgated with the object of regulating the use of land and to present ill-planned and haphazard urbanisation in or around the

towns in the State of Haryana. The work of developing the colonies has been assigned under the Act to the colonisers. The coloniser has to get a

licence and act in conformity with the terms thereof. As noticed above, the Act imposes all the obligations on the licensee. He has to provide the

facilities and services. The act aims at ensuring that the licensee develops a good colony. He does not indulge in profiteering beyond the permissible

limits. He has to maintain accounts. These have to be audited. A statement of accounts duly certified has to be filed. If the terms of the licence are

contravened, the authority can cancel it. Rules have been framed under the Act. These rules inter alia provide that a statement of account indicating

the amount realised from each plot holder, the expenditure incurred on internal and external development works etc. has to be filed. Still further,

the licensee has entered into a bilateral agreement with respondent No. 2. One of the Clauses of this bilateral agreement reads as under :

That the owner shall derive maximum net profit @ 15% of the total cost of development of a colony after making provisions of statutory taxes. In

case the net profit exceeds 15% after completion of the project period, surplus amount shall either be deposited within two months in the State

Government Treasury by the owner or he shall spend this money on further amenities/facilities in his colony for the benefit of the residents therein.

56. It is, thus, clear that the licensee has voluntarily undertaken that all amount in excess of 15% profit has to be deposited in the Government

Treasury. If the petitioner''s contention is accepted and the sites are allowed to be transferred to the individuals or institutions that are engaged to

construct the buildings, various avoidable complications would arise. Firstly, the site would pass to a person over whom respondent Nos. 1 and 2

shall have no right or control as there would be no probity of contract between them. Such a person or institution shall be under no obligation to

furnish accounts or comply with any conditions. Secondly, recognition of the right of the transferee by the department would lead to relieving the

licensee of his obligation to provide and maintain the facilities and to transfer the sites to the Government if so required.

57. It was pointed out by the counsel that written undertakings/affidavits have been filed by various fourth parties. Thus, they will be bound by the

conditions which govern the licensee.

58. We are unable to accept this submission. Firstly, all the undertakings are not unequivocal. Secondly, Mr. Surya Kant, learned Advocate

General appearing for the respondents stated that the Government is not willing to recognise or accept the undertakings as this would enable the

builder to defeat the Government''s right to claim transfer of the sites. Thirdlv. all the fourth parties are not even present before the Court, in any

case, the rules envisage the permission of the Gov-ernment. No such permission having been granted, we cannot, in the absence of all the parties,

put our seat of approval on the transfer made in derogation of thepro-vision of law.

59. The provision creates an obligation on the licensee to provide the buildings. In case of failure, the Act imposes an obligation on the licensee to

transfer the sites to the Government free of cost. The provision clearly, carries an implied embargo on the right of the licensee to transfer the land

reserved for community services/buildings to any other person.

60. Mr. Chidambaram referred to the decision of the Privy Council in Eshugbayi Eleko v. Officer Administering the Government of Nigeria, AIR

1931 Privy Council 248. In this case, it was observed as under :

The executive can only act in pursuance of the powers given to it by law. In accordance with British jurisprudence, no member of the executive

can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of

Justice.

This test is fully satisfied by the provision contained in Section 3(3)(a)(iv) of the Act. Thus, it cannot be said that the action is without legislative

authority.

61. It was then contented that the circulars in so far as these place an embargo on the transfer of sites after August 7, 1991 are violative of Article

14.

We are unable to accept this contention. As noticed above, we are of the view that Section 3 as also the terms of the licence and the agreement

embody an embargo on the licensee''s right to transfer the sites.

62. Mr. Chidambaram pointed out that the transfers upto August 7, 1991 have been recognised by the department. It is undoubtedly so. The

factual position has been explained by the respondents. It was in view of the peculiar facts that the State Government had taken a decision to allow

the transfers. This cannot constitute a binding precedent so as to be invoked on every occasion.

63. Mr. Chidambaram pointed out that under the rules, an agreement form has been prescribed. In that form, it has been inter alia provided as

under :-

No ihird party rights will be created without obtaining the prior permission of the Director Town and Country Planning.

All community buildings will be got constructed by the coloniser within time period so specified by the Director.

64. According to Mr. Chidambaram, this was a recognition of the right of the licensee to transfer. It was further pointed out that this form has been

amended in the year 1998. In the agreements executed by different licensees, it has been provided as under :-

No third party/subsequent rights will be created without obtaining the prior permission of the Director Town and Country Planning.

All community buildings will be got constructed by the coloniser within time period so specified by the Director.

The above provisions clearly indicate the intention of the respondent- authorities. These are a pointer towards the fact that all licensees have been

debarred from creating any third party rights without the prior permission of the Director Town and Country Planning. The petitioner has voluntarily

agreed to abide by this term. It is not the case of the petitioner that it had ever obtained the permission.

65. Thus, it is clear that the licensee is not free to transfer the site. It has to seek permission. It is implicit in this provision that when the licensee

seeks permission, the Government can make an inquiry of the kind provided for in Section 3(2) and the rules. If it is satisfied about the capacity

and financial position of the transferee, it can grant permission. It may impose appropriate conditions in accordance with law, Otherwise, it can

refuse the request. However, the provision clearly indicates that without permission, the licensee cannot transfer.

66. Mr. Chidambaram submitted that the State Government had not communicated any decision to the petitioner restraining it from transferring the

rights in the sites to the third or fourth parties. Reliance was placed on the decision of the Supreme Court in Bachhittar Singh Vs. The State of

Punjab, .

67. The contention cannot be accepted. There is a plethora of material to give a lie to the petitioner''s claim. It also deserves notice that the

relationship is between the State and the licensee. The licensee has not even feigned ignorance. Thus, we cannot accept the claim.

In view of the above even the third question is answered against the petitioner.

68. We may also notice that in the written statement, it has been clearly stated that the Government has ordered the transfer of sites to it. Copies

have been produced as Annexures R.1 and R.2. The petitioner and the licensee have not challenged these orders. No argument was addressed.

Reg.(iv) : Should the Court put its seal of approval on the transfer of sites merely because the authority took no action ?

69. Mr. Girdhar submitted that the Government has not taken any action against the licensee. Thus, the transfers made by the Trust should be

recognized.

70. It is true that the Trust has been transferring rights in sites. Openly and with impunity. The licence was never cancelled. Not even a veiled threat

appears to have been held out. Why ? Was there an unholy alliance between the "Builder" and the "Authority" ? Was the authority weighing

"carats" and not merits ? Whatever may be the truth, mere silence of the "authority" cannot persuade the court to put its seal of approval on all the

"deeds". We shall say no more.

71. No other point was raised.

72. In view of the above, our conclusions are :

(i) The petitioner is a "duplicate" of the licensee. It has been created to fiddle with figures. A consuming avarice and not charity is the cause for its

creation.

(ii) The Act and the Rules do not permit the licensee to transfer sites without the permission of the competent authority. The action of the

respondents in refusing to recognise the transfers cannot be said to be illegal.

(iii) The impugned circulars are not arbitrary, illegal or unfair. These do not impinge upon the protection of Article 14 of the Constitution.

(iv) The failure of the Authority "to act or the mere silence of the State cannot be a ground for the court to put its seal of approval on deeds" which

do not have the sanction of the statute and the Rules.

Resultantly, the writ petition is dismissed. No costs.

73 .Petition dismissed.