

(2012) 03 P&H CK 0416
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20425 of 2010

Aalok Jagga

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Punjab Apartment and Property Regulation Act, 1995 — Section 70, 71, 71, 72, 73
Punjab Land Preservation Act, 1900 — Section 4, 5
Punjab New Capital (Periphery) Control Act, 1952 — Section 11, 2(3), 3(1), 3(1), 3(2)
Punjab Regional and Town Planning and Development Act, 1995 — Section 183

Citation : (2012) 2 RCR(Civil) 748

Hon'ble Judges : Ranjan Gogoi, C.J.;Mahesh Grover, J

Bench : Division Bench

Judgement

Ranjan Gogoi, C.J.—The permissibility of a housing project proposed to be set up by the respondents in the name of Tata Camelot Housing Colony (Tata Housing Colony) is the core issue that has been raised in the present public interest litigation. The petitioner, who is an advocate by profession, has raised the aforesaid challenge on several grounds including what has been perceived to be an apparent conflict between the project and the vision of Mon Lee Corbusier, the architect of the planned city of Chandigarh. The project, according to petitioner, is in violation of the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the "Periphery Control Act"), as the various permissions and sanctions under the said Act which would enable commissioning/launching of the said project had not been obtained despite which advertisements have been issued proposing to "sell space" in the proposed housing colony. The petitioner contends that the project is not authorised under the provisions of the Environment (Protection) Act, 1986, inasmuch as, the report of the State Experts Appraisal Committee (Annexure P-9) states that the project lies in the eco-sensitive and protected area and is within 10 kilometres of the periphery of Chandigarh. The petitioner also contends that the project falls within the catchment area of Sukhna Lake. It is the further case of the petitioner

that being in close proximity to the Sukhna Wild Life Sanctuary, the project needed clearance under the Wild Life (Protection) Act, 1972 which has been refused. It has also been pleaded that the project runs counter to the edict of Chandigarh as visualised by its founder and that the same has the potential of adversely affecting the claim of Chandigarh to the status of a heritage city which matter is pending before the concerned world body. The promoters of the project and persons connected therewith, who are respondents No. 7, 8 and 9, have justified the project by contending that with the enactment of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as the "1995 Act"), the provisions of the Periphery Control Act would cease to have any application to the site where the project is proposed to be located. The master plan, which has statutory force, has been drawn up under the 1995 Act covering village Kansal where the project is to be located. The said master plan would alone cover the matter to the exclusion of the Periphery Control Act. The respondents have conceded that if the provisions of the Periphery Control Act are held to be applicable, they are ready and willing to approach the necessary authorities for requisite sanctions and permissions. Insofar as the requirements under the Environment (Protection) Act and the Wild Life (Protection) Act are concerned, according to the respondents, they have submitted to the jurisdiction of the authorities under the aforesaid enactments and the applications filed before the concerned authorities are pending. All these, according to the respondents, make the writ petition highly pre-mature and the same assumes the colour of a speculative litigation seeking to obtain some observations from the court which could adversely affect the project by casting unintended fetters on the powers of the different authorities under the enactments referred to above.

2. The broad contours of the present proceeding having been outlined, we may now proceed to take note of the specific contentions of the contesting parties as made before us. However, before we do so, it may be appropriate to mention the somewhat conflicting stand of the parties with regard to the present stage of the applications filed under the provisions of the Environment (Protection) Act as well as the Wild Life (Protection) Act. While the petitioner, who is supported by the respondent No. 6-Chandigarh Administration, asserts that necessary sanction/permission under both the Acts have been refused by orders passed by the competent authorities, the promoters of the project contend to the contrary. The facts, as unfolded before us, indicate that against the refusal of sanction under the Environment (Protection) Act, the respondents have sought a review of the order on the ground that the findings arrived at, which have formed the basis of the refusal, are ex-parte. No order in the review matter has been passed by the competent authority, perhaps, because of the interim order passed in the PIL which has been clarified by the Hon'ble Supreme Court by order dated 31.1.2012 permitting the concerned authority under the different statutes governing the matter to exercise their respective jurisdictions in accordance with law. Insofar as the Wild Life (Protection) Act is concerned, it appears that the

rejection has been made by the Chief Wild Life Warden who, the respondents claim, is merely a recommending authority and is required to forward his recommendation to the Central Government. As the rejection under the Wild Life (Protection) Act has been made by an authority not competent to do, the promoters of the project have sought a review of the order which is still pending for the same reason(s) as noticed above.

3. On these facts we are of the view that it would be prudent on our part to take the view that the issue with regard to clearance/sanction under the two enactments i.e. Environment (Protection) Act and Wild Life (Protection) Act is presently pending and as the promoters of the project have submitted themselves to the jurisdiction of the authorities under the said enactments we should refrain from addressing ourselves on any of the issues connected with either of the two statutory enactments as any such exercise, even though may be unintended, may have the effect of fettering the jurisdiction of statutory authorities functioning under the two relevant statutes.

4. If the above issues arising in the case are to be left to the wise discretion of the statutory authorities, the core question that would arise for consideration of the court is the applicability of the Periphery Control Act to the exclusion of the 1995 Act or vice-versa or whether both the Acts co-exist supplementing each other. This, to our mind, is the crucial question that has to be decided in the present case along with certain supplementary questions, details of which have been noticed earlier.

5. Learned counsel for the petitioner asserts that the Periphery Control Act would have full application to the present case and the requirements thereunder cannot be ignored as the respondents have done. This is because the Periphery Control Act is a special Act whereas the 1995 Act is a general Act. Reliance has been placed on Padma Ben Banushali & Anr. vs. Yogendra Rathore & Ors. 2006 (2) RCR (Rent) 90; Maya Mathew vs. State of Kerala & Ors. 2010 (2) SCT 568 (Para-11) and Didar Singh and Others vs. Jasbir Singh and Others 2011 (2) RCR (Civil) 623 (Paras 29 & 30). On the aforesaid broad premise, it is asserted that the project must be interdicted by the court as none of the requirements under the Periphery Control Act have been complied with by the respondents who, however, are set to go ahead with the project. Learned counsel for the petitioner has also contended that the proposed project, if allowed to continue, will destroy the pristine ecology and environment of the area in as much as the said project is in close proximity of Sukhna Wildlife Sanctuary and also within the catchment area of Sukhna Lake. Learned counsel has also contended that the project will do violence to the edict of the city of Chandigarh as laid down by its planner and designer, the noted French Architect Mon Lee Corbusier, and will also undermine the city's claim to heritage status which claim is presently pending consideration by the concerned world body.

6. Shri Sanjay Kaushal, learned Standing Counsel for the UT Administration has supported the case of the petitioner on the points urged on behalf of the

petitioner and on certain additional points. According to Shri Kaushal, the project runs counter to the vision of the architect of the city of Chandigarh to keep the northern area and its periphery free from any construction or structure which would obstruct an unhindered view of the Shivalik Hills. Emphasising on the details of the project, Shri Kaushal has submitted that such an obstruction is bound to arise if the project is to be completed. Apart from contending that the project falls in an eco-sensitive zone and the catchment area of Sukhna Lake, Shri Kaushal has submitted that both authorities under the Environment (Protection) Act and Wild Life (Protection) Act have rejected the sanction/no objection/permission sought for by the respondents under the aforesaid two statutes. Shri Kaushal has submitted that a Co-ordination Committee was constituted to oversee the coordinated development of the periphery area so that the beauty of city Chandigarh is not defaced. However, the Chandigarh Administration has not been taken into confidence and the master plan under the 1995 Act has been unilaterally prepared for the area (Village Kansal). It is further submitted that though the master plan prohibits high rises within an one kilometre area on the eastern side of the secretariat, the said embargo is an eyewash and the result of a conscious decision that the project is going to come up at its location which is at a distance of only 900 metres from the boundary of the stipulated one kilometre. The prohibition of high rises within the one kilometre distance has been so imposed keeping in mind the location of the project in question. Shri Kaushal has also contended that the application of the Periphery Control Act is clear from the provisions of Section 183 of the 1995 Act which specifically repeals two other Acts i.e. Punjab Scheduled Road and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and the Punjab Urban Estate (Development and Regulation) Act, 1964 without repealing the Periphery Control Act. The Periphery Control Act, therefore, applies with full vigour and the site of the proposed project being covered by the said Act, the provisions of the 1995 Act including the master plan will have no application. Shri Kaushal has also specifically urged that the land on which the project has been planned has been bartered away by the allottees thereof who are/were members of the legislative assembly to whom government land was allotted. It is the influence of such persons which has led to the preparation of the master plan showing the site as a residential area notwithstanding its close proximity to the Sukhna Wild Life Sanctuary; it being within the catchment area of the Sukhna Lake and above all being only 900 metres away from the outer limit of one kilometre from the secretariat within which no high-rise building is permitted. The master plan, therefore, is a mala fide exercise of power vested in the respondents.

7. In reply, Shri L.M. Singhvi, learned senior counsel appearing for the respondent No. 9 has contended that the present public interest litigation is not a bona fide exercise. On the contrary, according to Shri Singhvi, it is pre-mature and obstructive because clearances by different statutory authorities are still to be finalised. Yet, the public interest litigation has been filed which, if allowed,

would pre-empt the authorities from deciding what falls within their exclusive statutory domain. Shri Singhvi has also contended that the public interest litigation suffers from delay and laches, inasmuch as, the master plan was notified in the year 2009 and before the notification was published objections were invited; neither the petitioner nor the Union Territory Chandigarh filed any objections.

8. Continuing, Shri Singhvi has argued that the provisions of the Periphery Control Act and the requirements prescribed thereunder would be completely ousted in view of the 1995 Act. Even assuming the Periphery Control Act to be holding the field the question would be the extent to which the Act and the periphery policy framed thereunder would apply considering that the 1995 Act and the master plan framed thereunder are intended to achieve the purpose of regulated development in areas within the State of Punjab which are in the vicinity of the capital city of Chandigarh. Shri Singhvi has refuted the argument that the land was handed over to the respondents by the allottees (MLAs) and in this regard has submitted (a position later on accepted by Shri Kaushal) that the land was purchased and a society formed. Another group of persons belonging to the defence forces who had purchased the land joined the society and the respondent No. 7 made some individual purchases to increase the area of the land for the project. It is the contention of Shri Singhvi that the project envisages green area to the extent of 89 percent and construction will be confined to only 11 percent of the area. Shri Singhvi has also contended that the master plan being akin to a statute, no mala fides can be attributed to it. In any case, the very factual foundation on which the plea of mala fide has been sought to be established is incorrect as the land was not "gifted" to the respondent No. 7 but the same was the purchased land of persons who had formed a society and the respondent No. 7 came in as a promoter. Shri Singhvi has contended that the Co-ordination Committee referred to by the UT Administration is a defunct body the last meeting of which was held in the year 1998. Shri Singhvi has further submitted that it is not correct that in the master plan prepared the edict of Chandigarh has not been honoured and in fact the same has been specifically noticed and has formed the basis of the master plan. Coming to the provisions of the two Acts, according to Shri Singhvi, the 1995 Act would prevail but assuming both the Acts apply, the same will have to be harmoniously interpreted. In this regard, Shri Singhvi has elaborately relied upon the provisions of the periphery policy to contend that under the said policy regulated development of the areas falling within the periphery has been contemplated keeping in view the needs of the society. There is no challenge to the said policy, it is asserted.

9. Shri Rajiv Atma Ram, learned senior counsel for respondent No. 8 (builder) has supported the arguments advanced by Shri Singhvi and has refuted the fact that the site falls within the catchment area of Sukha Lake.

Shri M.L. Sarin, learned senior counsel appearing on behalf of the Sarin Memorial Legal Aid Foundation (impleaded as a party) has supported the arguments made

by the learned counsel for the PIL-petitioner and Shri Kaushal, learned counsel for the Union Territory Administration besides pointing out the fact that the site is in the catchment area of Sukhna Lake as proved and established by the maps prepared by the Survey of India. Construction of the project, therefore, would require due clearance under the Environment (Protection) Act which has been refused.

10. Having taken note of the contentions advanced on behalf of the respective parties we may now take note of the relevant provisions of the two statutory enactments that will require our consideration as well as the relevant details of the Periphery Policy.

11. The relevant provisions of the Periphery Control Act may first be noted:

1. Short title, extent and commencement,-(1) This Act may be called the Punjab New capital (Periphery) Control Act, 1952.

(2) It extends to that area of the State of Punjab which is adjacent to and within a distance of ten miles on all sides from the outer boundary of the land acquired for the Capital of the State at Chandigarh as that Capital and State existed immediately before the 1st November, 1966.

(3) xx xx xx xx

(2) xx xx xx xx

3. Declaration of controlled area.-The State Government may by notification in the Official Gazette declare the whole or any part of the area to which this Act extends to be a controlled area for the purposes of this Act.

(2) Not less than three months before making a declaration under sub-section (1) the State Government shall cause to be published in the Official Gazette, and in at least two newspapers printed in a language other than English, a notification stating that it proposes to make such a declaration, and copies of the notification or of the substance thereof shall be published by the Deputy Commissioner in such manner as may be prescribed at his office and in the area desired to be controlled.

4. xx xx xx xx

5. Restrictions in a controlled area.-Except as provided herein after, no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing.

6. Application for permission and the grant of or refusal of such permission.- (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to

which the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner, after making such enquiry as he considers necessary, shall, by order in writing, either-

(a) grant the permission, subject to such conditions, if any, as may be specified in the order; or

(b) refuse to grant such permission.

(3) When the Deputy Commissioner grants permission subject to conditions, or refuses to grant permission under sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case and the interest of the general public.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, if such building is required for purposes subservient to agriculture, nor shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for agricultural purposes.

(5) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the notification under sub-section (2) of section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than that for which it was used or designed on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under subsection (1) has been made to the Deputy Commissioner no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in the plans u/s 4 be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register as may be prescribed with sufficient particulars of all cases in which permission is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extract therefrom.

xx xx xx xx

xx xx xx

11. Prohibition on use of land.-(1) No land within a controlled area shall, except with the permission of the State Government and on payment of such conversion charges as may be prescribed by the State Government from time to time be used for purposes other than those for which it was used on the date of notification under sub-section (1) of section 3, and no such land shall be used for

the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brickfield or brick-kiln or for quarrying stone, bajri or kankar, or manufacturing surkhi, or stone-crushing, or for other similar extraction or ancillary operations except under and in accordance with the conditions of a licence to be obtained from the Director on payment of such fees and on such conditions as may be prescribed or as may be specified in the order.

(2) The renewal of such licence may be made after three years on payment of such fees as may be prescribed.

(3) No person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by the refusal to issue or renew a licence, except in cases where such kiln was in existence at the time of the notification under sub-section (1) of section 3 and in which case an application shall lie to the arbitrator within three months of the order of refusal in the manner provided in section 9.

12. The provisions of the Periphery Control Act have been made applicable to the city of Chandigarh initially by the notification dated 14.3.1952 followed by notification dated 5.9.1993 where village Kansal finds mention at item No. 103 in the list of villages and areas stated to form the periphery. The relevant extract of notification dated 5.9.1953 is as under:-

The 5th September 1953

No C-8725-53/IV/5452. Whereas in pursuance to the provisions of sub-section (2) of section 3 of the Punjab New Capital (Periphery) Control Act, 1958 (Punjab Act I of 1958) a notification No. 852-53/IV/1182, dated the 27th February 1958, published in the official Gazette, as well as in the newspapers printed in a language other than English, stating that Government proposed to declare the area comprised in the revenue Estate of the villages specified in the Schedule hereinunder appearing and located in Tehsil Kharar, District Ambala, as controlled area for the purposes of the said Act for the information of all to whom it may concern;

And whereas publication thereof in the area declared to be controlled has been made in the prescribed manner;

And whereas the period of three months after the date of the publication of the said notification before making the declaration under sub-section (1) of Section 3 of the said Act has expired;

And whereas no objections against the proposal of the Government have been received;

Now, therefore, in exercise of the powers conferred by subsection(1) of section 3 of the said Act, the Governor of Punjab is hereby pleased to declare that the area comprised in the Revenue Estate of the villages specified in the sub-joined.....and located in Tehsil Kharar, District Ambala, shall be controlled area

for the purposes of the said Act.

SCHEDULE

1 to 102.

xx

xx

xx

xx

xx

103.

Kansal

354

Entire part

of

villages outside

the Capital

Boundary

(excluding area

mentioned), vide

notification

No.C-2608

52/1630, dated the 24th March

1952.?

13. The site where proposed project is to come up concededly falls within the periphery of Chandigarh as defined in the Periphery Control Act. Section 5 of the said Act permits the erection or re-erection of any building or making or extending any excavation, or lay out any means of access to a road in the controlled area "in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing". The Deputy Commissioner has been defined in Section 2(3) of the Periphery Control Act to mean the Deputy Commissioner of the District and includes any person for the time being appointed by the State Government, by a notification in the official Gazette, to perform all or any of the functions of the Deputy Commissioner under the Act.

According to Section 6 of the Periphery Control Act, every person desiring to obtain the permission referred to in Section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed, whereupon the Deputy Commissioner on receipt of such application after making such enquiry as he considers necessary shall pass appropriate orders either granting the permission subject to conditions or refuse to grant such a permission. Section 6 also contemplates permission will be deemed to have been granted if after expiry of three months of the application being made, no order is passed.

Section 11 provides that no land falling within a controlled area is to be used for purpose other than those it was used on the date of notification u/s 3(1) except with the permission of the State Government and on payment of such conversion charges as may be prescribed from time to time.

14. Attention must also be had to the periphery policy declared by the State of Punjab on 20th January 2006 in the light of the experiences gathered under the provisions of the Periphery Control Act. The salient features of the periphery policy may be extracted hereinbelow:

1.1 The Chandigarh Periphery Controlled area was created with the twin objectives of ensuring a planned future expansion of the New Capital City and to prevent mushrooming of unplanned construction around it. The Punjab New Capital (Periphery) Control act, 1952 accordingly aimed at regulating the use of land and preventing unauthorized and unplanned urbanization in a 16 kilometre periphery.

1.2 Since then, planned satellite townships of SAS Nagar (Mohali) and Panchkula have come up in the Periphery in addition to a large cantonment. Further in 1990, the State Government declared an area of 10,000 Acres near Dera Bassi, falling within 23 villages of Patiala district, to be a Free Enterprise Zone (FEZ), where the setting up of industries was to be permitted.

1.3 Notwithstanding the regulatory framework, enforcement has been patchy. Appreciating the emerging ground realities, the Punjab Government had in 1998 decided to permit an across-the-board regularization of all unauthorized constructions, which had already come up within the Periphery up to and including 7th December, 1998. Simultaneously, it was also decided to evolve a policy framework which would permit the setting up of institutions related to education, health etc., with low density of built-up area, within the Periphery, apart from permitting activities related to leisure and tourism.

....

3.2 At the outset the Committee observed that it was first necessary to take into account the changing character of the city of Chandigarh. It was seen in this context that the city was initially conceived as the capital of post partition Punjab

and its planning by and large reflected the needs thereof. Over time, however, Chandigarh is not only the administrative capital of two State Governments and a Union Territory but also an important commercial and institutional hub which houses the regional offices of Companies and Institutions catering to several States in the northern region. It has also become an important investment destination for Indian and multinational Companies. The changed character of the city has put considerable pressure on housing and social infrastructure, which was not initially catered for. There is also increased need for connectivity and the provision of civic amenities. A special mention needs to be made of a large population of the city, which is unable to afford housing on account of its very high cost and has gravitated into the villages in the immediate vicinity of the city as well as several unplanned and unauthorized new colonies. It is in this backdrop that a fresh look has to be taken of the regulatory framework that governs the areas immediately surrounding the city of Chandigarh so that the future needs of the city can be adequately catered for in a planned manner.

3.3 It is also necessary to take note of the fact that even with all difficulties being faced, Chandigarh is still one of the more liveable cities in the northern region. With its close proximity and easy connectivity to the national capital, it has also become an attractive investment destination. It would, in the view of the Committee, not be realistic for any State Government not to take advantage of this opportunity and leverage its proximity to Chandigarh to its best economic interest. Thus, industrial promotion in the vicinity of Chandigarh has also to be envisaged and provided for.

3.4 In the light of the issues brought out in the foregoing paragraphs, the broad policy framework within which the Committee approached the entire issue of controlling the periphery of Chandigarh are enumerated below:-

a) Housing for the increasing population of the city is perhaps the most urgent requirement that has to be provided for. In that context, a realistic view has to be taken of existing unauthorized structures. Policy also needs to cater for the normal growth of village populations as well as migration from outside specially of persons from economically weaker sections.

b) It is necessary also to take into account the increased attraction of the city and its environment as an investment destination.

Some of the recommendations made by the Committee would also be necessary to be referred and therefore, are extracted here below:

4(b) Housing Schemes in the Periphery,-With only limited planned urban areas available in the cities of Chandigarh, SAS Nagar and Panchkula and the growing demand for housing, it was noted that those who could not afford shelter in these urban areas, found place on the fringes of the city, usually in the adjoining settlements/villages, inside or outside the Abadi areas in an unauthorized manner. Considering the above situation, it is proposed that suitable pockets for Housing/Residential use in the Periphery area be earmarked which can be

developed by the Private parties or Government/Semi-Government Agencies. While permitting such development, it must be ensured that adequate provisions are made for public utilities/facilities and services. Special care must be taken to ensure that housing needs of the economically weaker sections are catered for in adequate measure. Detailed policy prescriptions in this respect are at Annexure "A".

.....

(f) Municipal Towns in Periphery.-Committee recommends that the existing towns of Kharar, Banur, Zirakpur, Dera Bassi should continue to provide avenues for future growth and development by ensuring adequate supply of developed land for residential, commercial, institutional and industrial purposes. Master Plans of these Towns need to be prepared under the Punjab Regional and Town Planning & Development Act, 1995, within the overall ambit of the Controlled Area Plan. Further expansion in the municipal limit of these towns has also to be regulated so that it conforms to the overall Development Plan for the Periphery Area. It is proposed that the future expansion of municipal limits of the existing Periphery towns should be frozen, until these Master Plans have been finally notified. Thereafter, if need arises, such expansion can be considered, strictly in accordance with the approved Master Plan subject, of course, to the payment of the conversion charges as are being proposed in the report. New Municipal Councils or Nagar Panchayats within the Periphery should be notified only after the overall Development Plan has been put in place.

(g) Existing Rural Settlements.-Considering the existing as well as future development needs of the villages falling within the Periphery as well as with a view to cater to their increasing population, it would be prudent to provide a sufficiently compact and contiguous belt of land around the village "phirni" for ensuring the organic growth of these villages. Any area falling between the "lal lakir" and the "phirni" of the village shall also be treated as a part of the extended belt. The area should be allowed to be used primarily for meeting individual residential and petty commercial needs of the existing and future population of a village. However, charges for change of land use should be levied on prescribed rates, except in the case of bonafide residents. No industry should be permitted in such area. Similarly, formal colonization shall also not be permitted in the extended "abadi" area on the pretext of this recommendation alone.

With these caveats, the Committee proposes to allow the village "Abadi" area extension by 60%, subject to a minimum of 50 metres and maximum of 100 metres in radial length from the "phirni". However, where the existing Abadi Deh or a part thereof is an area which forms a part of the rural/agriculture and afforestation zone of the Outline Master Plan/Draft Comprehensive Master Plan/ Comprehensive Master Plan prepared under the Punjab Regional and Town Planning & Development Act, 1995, the extent of such area shall be limited to 50 metres. Permitting construction in the notified forest area shall be limited to 50

metres. Permitting construction in the notified forest areas falling in these villages would, of course, be subject to due approval as regards change of land use. No permission should, however, be granted in any area which falls within the Special Grid of SAS Nagar (Mohali), as reflected in the Outline Master Plan. The extent of area where such constructions are to be permitted will be demarcated and certified for each village falling within the Periphery by the Revenue Authorities, subject to the final approval of PUDA. In order to promote planned development, it is proposed that construction in the area should be regulated by a set of simple building norms, subject to payment of Land-Use conversion charges and in accordance with other details as contained in Annexure-C.

However, to avoid hardship to villagers and land users, the area in the extended abadi deh shall be exempted from the provisions of the Punjab Apartment and Property Regulation Act, 1995.

....

(j) Total Repeal of the Periphery Act not recommended.-The Committee has received suggestions from different quarters to totally repeal the Periphery Act. In this context, attention is drawn to the changing character of the city of Chandigarh, alluded to in paragraph 3.2 of this report. This transition also necessitates a fresh look at the regulatory framework governing the Periphery. However, the Committee, even after due deliberation, is unable to recommend the total repeal of the Act, as it would remove all curbs on sub optimal construction and haphazard urban development in the Periphery.

The Committee then went on to conclude as below:-

7. CONCLUSION:

The Committee had to balance and optimise between divergent and often conflicting demands and requirements. For instance, the purist view of freezing the Periphery as agricultural was contradictory to the very reasonable demand to allow for the expansion of the "abadi dehs" or for permitting housing in a planned manner. Similarly, although institutions and leisure facilities have been recommended, the norms of FAR and built-up area, have been pegged on the lower side.

Conversion charges were also deemed necessary to raise resources for the overall development of the Periphery, although the Committee was acutely conscious that it may add to overall project cost. While the Committee recommends strict compliance with the up-to-date Outline Master Plan of SAS Nagar, it also suggests the speedy formulation of an over-arching Periphery Development Plan for the entire region. Nevertheless, pending finalization of the latter, the Committee recommends that limited change of land use may be permitted as per the recommendations contained in this Report.

Even though existing constructions have been proposed to be regularised on purely humanitarian grounds, the Committee has strongly recommended a zero

tolerance enforcement and regulatory regime, in the post-Policy phase. However, enforcement of the regulatory regime would only be sustainable in the long run if total Area Planning of the Periphery is taken up in right earnest and brought to its logical conclusion at the earliest.

The prescription proposed by the Committee is to be viewed as a comprehensive package, which needs to be comprehensively implemented. The Committee sincerely hopes that it would have addressed the concerns of all the stakeholders in a judicious, balanced and practical manner. It is now for the State Government to consider, approve and implement both the regulatory and development aspects of this policy in prescribed time frames.

Annexure "A" of the said policy refers to the guidelines for permitting planned and organized residential development in the periphery. The same is extracted here below:

ANNEXURE A

Guidelines for Permitting Planned and Organized Residential Development in the Periphery.

Planned residential development shall be permitted in the Periphery only in:

- (a) The area delineated as "residential" in the Outline Master Plan/Draft Comprehensive Master Plan/Comprehensive Master Plan, prepared under the Punjab Regional Town Planning and Development Act, 1995, subject to a minimum area of 100 acres;
- (b) The area beyond 10 kilometres of the Chandigarh boundary, as a completely self contained and integrated residential townships, subject to a minimum area of 500 acres. Such townships shall provide independent access from the highways, make sufficient provision for water supply and sewage disposal, provide adequate housing for weaker sections and will have adequate social infrastructure in terms of educational, medical and recreational facilities;
- (c) The Municipal and Nagar Panchayat towns, as a "mega project" or otherwise, subject to compliance with the Master Plan, or any draft master Plan, of the town.

However, no such permission shall be granted in:

- (i) The area notified for land acquisition for any public purpose; or
- (ii) Area notified under the Indian Forest Act, 1927 or the Forest Conservation Act, 1980 and under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 or any other law which prohibits such activity;

Provided the land shall be in the shape of a single compact unit held in single joint or corporate ownership.

2. "Residential" development may include:

(a) Normal plotted development; or

(b) High-rise apartments and Group Housing; or

(c) Commercial development, within the maximum stipulated norms in an approved residential township, or in the mixed land use zone.

3. The developer shall obtain a regular licence from the Competent Authority under the Punjab Apartment and Property Regulation Act, 1995. External Development Charges (EDC), Conversion Charges and Licence Fee shall be payable as per the approved/notified rates, unless specifically exempted by the Competent Authority. The recommendations of the Committee are at Annexure-D.

4. Development Norms

(a) The prescribed development norms under the PUDA Building Rules, 1996 including all statutory and town planning norms, under the Punjab Apartment and Property Regulation Act, 1995 shall apply.

(b) Compliance with the Master Plans, including any notified draft Master Plan would also be necessary.

15. The Periphery policy would indicate a new thinking as regards planned growth and development in the peripheral areas of Chandigarh which was dictated by the changing times. The ever increasing demand for housing in and around Chandigarh received the due attention of the Committee and planned growth in this specific area is visualised by the policy document which extends even to construction of high rises in accordance with the plans as may be drawn up under the 1995 Act.

16. It would also be prudent to refer to the relevant provisions of the 1995 Act, at this stage, which read as follows:

No. 11-Leg./95. -The following Act of the Legislature of the State of Punjab received the assent of the President of India on the 24th May, 1995, and is hereby published for general information :

An Act to make provision for better planning and regulating the development and use of land in planning areas delineated for that purpose, for preparation of Regional Plans and Master Plans and implementation thereof; for the constitution of a State Regional and Town Planning and Development Board, for guiding and directing the planning processes in the State; for Constitution of a State Urban Planning and Development Authority, Special Urban Planning and Development Authorities and New Town Planning and Development Authorities, for the effective and planned Development of planning areas; and undertaking urban development and housing programmes and schemes for establishing new town; and for matters connected therewith or incidental thereto.

Chapters VIII, IX, X and XI of the 1995 Act are codified in a sense that provides a methodical declaration of planning areas, setting up of agencies, the land use

map and preparation of regional plans as also the preparation and approval of master plans and control of development and use of land in areas where such master plan is in operation.

Some of the provisions of Chapter-X i.e. Sections 70, 71, 75, 76, 78 and 79 of the 1995 Act would be relevant and are therefore, extracted here below:-

70. Outline Master Plan.-(1) As soon as may be after the declaration of a planning area and after the designation of a Planning Agency for that area, the Designated Planning Agency shall, not later than one year after such declaration or within such time as the Board may, from time to time, extend, prepare and submit to the Board for its approval a plan (hereinafter called the "Outline Master Plan") for the planning area or any or its part and the Outline Master Plan so prepared shall -

- (a) indicate broadly the manner in which the land in the area should be used;
 - (b) allocate areas or zones of land for use for different purposes;
 - (c) indicate, define and provide the existing and proposed highways, roads, major streets and other lines of communication;
 - (cc) indicate areas covered under heritage site and the manner in which protection, preservation and conservation of such site including its regulation and control of development, which is either affecting the heritage site or its vicinity shall be carried out.
 - (d) include regulations (hereinafter called "Zoning Regulations") to regulate within each zone the location, height, number of storeys and size of buildings and other structures open spaces and the use of building, structures and land.
- (2) Subject to the provisions of the rules made under this Act for regulating the form and contents of the Outline Master Plan, any such plan shall include such maps and such descriptive matters as may be necessary to explain and illustrate the proposals in the Outline Master Plan.
- (3) As soon as after the Outline Master Plan has been submitted to the Board under sub-section (1), but not later than such time as may be prescribed, the board shall direct the Designated Planning Agency to make such modifications in the Outline Master Plan as the Board thinks fit and thereupon the Designated Planning Agency shall make the modifications accordingly.
- (4) The Board shall, after the modifications, if any, directed by it have been made under sub-sections (3), give its approval to the Outline Master Plan.

71. Draft Comprehensive Master Plan.-(1) As soon as the Outline Master Plan is approved by the Board u/s 70, but not later than two years after the approval of the Outline Master Plan or within such time as the State Government may from time to time extend:

- (a) where the Designated Planning Agency is a Municipal committee or a

Municipal Corporation, it shall prepare and submit to the Board for its approval a plan (hereinafter called the Draft comprehensive Master Plan) for the local planning area or any part thereof; and

(b) where the Designated Planning Agency is not a Municipal Committee or Municipal Corporation, it shall prepare and submit the draft Comprehensive Master Plan to the Municipal Committee or the Municipal Corporation, in whose jurisdiction the local planning area or part thereof for which the draft Comprehensive Master Plan has been prepared wholly or partly falls, for giving its consent to the Draft Comprehensive Master Plan.

(2) The Municipal Committee or the Municipal Corporation, as the case may be, shall give its consent under sub-section (1) within the prescribed period and if such a consent is not given within the prescribed period, the Designated Planning Agency shall presume that the Municipal committee or the Municipal Corporation, as the case may be, has no objection to the provisions of the Draft Comprehensive Master Plan and may thereafter submit the same to the Board for its approval. Provided that where the Municipal Committee or the Municipal Corporation, as the case may be, convey its refusal not to give consent to the Draft Comprehensive Master Plan within the prescribed period or where there is a difference of opinion between the Authority and the Municipal Committee or the Municipal Corporation, the matter shall be referred by the Designated Planning Agency to the Board for decision and the decision of the Board shall be final.

(3) The draft Comprehensive Master Plan may -

(a) indicate, define and provide for all the matters that have to be or may be indicated, defined and provided for in the Outline Master Plan with such modifications as the Designated Planning Agency deems fit;

(b) indicate, define and provide for -

(i) area reserved for agriculture, public and semi-public uses, open spaces and parks, play grounds and other recreational uses, green belts and natural reserves;

(ii) comprehensive land allocation of areas or zones for residential, industrial, agricultural and other purposes;

(iii) complete road and street pattern and traffic circulation patterns for present and future requirements;

(iv) major roads and street improvement;

(v) area reserved for public buildings and institutions and for new civic development;

vi) areas for future development and expansions and areas for new housing;

(vii) amenities, services and utilities.

(vii-a) protection, preservation and conservation of heritage site including regulation of heritage site and the manner in which development, affecting heritage site or its vicinity, shall be carried out;

(viii) all such matters as may be prescribed or as may be directed by the Board to be indicated, defined and provided for;

(c) include zoning regulations to regulate within each zone the location, height, number of storeys and size and number of buildings and other structures, open spaces and the use of buildings, structures and land;

(d) indicate the stages by which, the plan proposals are proposed to be carried out together with financial implications of each stage.

(e) indicate, define and provide for-

(i) all such matters including the planning standards, gross and net densities and guiding principles as the Designated Planning Agency may consider expedient to be indicated, defined and provided for in the Master Plan;

(ii) detailed development of specific areas for housing, shopping centres, industrial areas and civic centres, educational and cultural institutions;

(iii) detailed re-development or renewal of specific areas for housing, shopping centres, industrial areas, civic centres, educational and cultural institutions and other related purposes, widening of streets and roads and provision of amenities and infrastructures;

(iv) control of architectural features, elevation and frontage of buildings and structures; and

(v) a five year development programme; and

(f) designate land as subject to acquisition for any public purposes and in particular, but without prejudice to the generality of this provision, for the purpose of,

(i) the Union of India, the State and the local authorities or any other authority established by law and public utility concerns;

(ii) dealing satisfactorily with the areas of bad layout or obsolete development, and slum areas and provision for relocation of population;

(iii) provision for open spaces, parks and play grounds;

(iv) securing the use of the land in the manner specified in the development plan; and

(v) any of the matters as are referred to in this sub-section.

(4) Subject to the provisions of the rules made under this Act for regulating the form and contents of the draft Comprehensive Master Plan, any such plan shall

include such maps and such descriptive matters as may be necessary to explain and illustrate the proposals in the draft Comprehensive Master Plan.

....

75. Coming into operation of Comprehensive Master Plan.-(1) Immediately after the Comprehensive Master Plan has been approved by the State Government u/s 74, the Designated Planning Agency shall publish a public notice in the Official Gazette and in a local newspapers, of the approval of the Comprehensive Master Plan indicating therein the place or places where copies of the Comprehensive Master Plan may be inspected.

(2) The Comprehensive Master Plan shall come into operation from the date of publication of the notification under sub-section (1) in the Official Gazette.

(3) After coming into operation of the Comprehensive Master Plan, the Outline Master Plan shall stand modified or altered to the extent the proposals in the Comprehensive Master Plan are at variance with the Outline Master Plan.

76. Amendment of Master Plan.-At any after time after the date on which the Master Plan for an area comes into operation, and atleast once after every ten years, after that date, the Designated Planning Agency shall after carrying out such fresh surveys as may be considered necessary or as directed by the Board, prepare and submit to the Board, a Master Plan after making alterations or additions as it considers necessary.

(2) The provisions of Sections 73,74 and 75 mutatis mutandis as for as may be possible, apply to the Master Plan submitted under sub-section (1).

....

78. Master Plan of site of New Town.-After the designation of a site for a new town and after the designation of a Planning Agency for the same, the Designated Planning Agency shall prepare a Master Plan for the new town and the provisions of sections 70 to 75 shall mutatis mutandis apply to such a Master Plan.

79. Use and development of land to be in conformity with Master Plan.-After the coming into operation of any Master Plan in any area, no person shall use or permit to be used any land or carry out any development in that area otherwise than in conformity with such Master Plan:

Provided that the Competent Authority may allow the continuance of any use of any land, for a period not exceeding ten year, upon such terms and conditions as may be provided by regulations made in this behalf for the purpose and to the extent, for and to which it was being used on the date on which such a Master Plan came into operation.

17. A reading of the provisions of the Periphery Control Act along with the policy and the Act of 1995, in our considered view, reasonably gives rise to the

conclusion that the two statutes instead of confronting each other actually complement each other in their respective applications. The Periphery Control Act does not contemplate a complete embargo on the raising of construction in the periphery. On the contrary, a reading of the various provisions of the Periphery Control Act would go to show that the said provisions point to a regulatory mechanism where construction activity is permissible subject to certain checks and balances. The position is made very clear by the contents of the periphery policy which contemplates planned growth, particularly, housing schemes in the peripheral areas in accordance with the master plan which, naturally, has to be drawn up under the provisions of the 1995 Act. The constructions permissible under the Periphery Control Act and the policy framed thereunder has to abide by some norms of planning which are contemplated by the provisions of the 1995 Act. There is, therefore, no reason why the provisions of the said enactment i.e. the 1995 Act should be held to be inapplicable to the areas covered by the Periphery Control Act. The object behind enactment of the two statutes would be best served if both the enactments are allowed to prevail in the peripheral areas and even beyond such areas.

18. The court also cannot be oblivious to the fact that the periphery of Chandigarh which initially comprised of villages may have essentially lost its rural character and the country-cousin inched closer to its city compatriot in some ways even though it may not have emerged as its clone and these villages have become a source of cheap and affordable housing to those who cannot afford to bear the expenses of the city.

19. The Periphery Policy, therefore, rightly takes into consideration the changing ground realities which are never static like shifting sands. The provisions of the 1995 Act, the Periphery Control Act and the Periphery Policy converge on the need for a planned integrated development of the city, its periphery and its adjoining areas.

20. We would further like to emphasise that the Periphery Control Act lays down that the Act will apply to that area of the State of Punjab which is adjacent to and is within a distance of 10 miles on all sides from the outer boundary of the land acquired for the capital of the State at Chandigarh. The term "adjacent to" would necessarily imply an area within 10 miles of the boundary and also beyond it. Any other interpretation can result in horrendous situation where there is planned growth within an area of 10 miles but immediately beyond the said limit there is unplanned development. We, therefore, do not see any conflict in the application of the two statutes to the areas that fall in the periphery of Chandigarh and immediately beyond it. Rather we are of the view that the Periphery Control Act as well as the 1995 Act should be given strict effect to ensure regulated development in the peripheral area as well as in the immediate vicinity of such area. The authorities on whom the duty to give such effect has been cast are clearly identifiable under the provisions of the respective Acts and the task assigned must be performed keeping in mind the following principles

laid down by the Hon"ble Supreme Court in M.C. Mehta vs. Kamal Nath and Others (1997) 1 Supreme Court Cases 388 (para-41):-

In Phillips Petroleum co. vs. Mississippi 108 S.Ct. 791 (1988), the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying nonnavigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources. Our legal system -based on English Common Law -includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered in-violate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The esthetic use and the pristine glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources.

21. Insofar as the provisions of the Environment (Protection) Act and the Wild Life (Protection) Act are concerned, it need not be emphasised that every project attracting the provisions of the Periphery Control Act and/or the provisions of the 1995 Act must satisfy the ecological concerns of the area in the light of the provisions of the two statues in question. As already held by us, a public trust has been bestowed on the authorities by provisions of the said Acts which cast on such authorities a duty to interdict any project or activity which even remotely seems to create an imbalance in the pristine ecology and environment of the area on which the city of Chandigarh is situated or for that matter in the immediate vicinity thereof. As already observed, necessary clearances under the aforesaid two enactments, insofar as the respondents are concerned, are

presently pending before the concerned authorities and, therefore, it would be highly incorrect on our part to enter into any further discussion on the aforesaid aspect of the case.

22. This would bring the court to the last limb of the issues arising in the case, viz., whether the proposed housing colony would, in any way, violate the edict of Chandigarh. The edict of Chandigarh as envisioned by the great French Architect Mon Lee Corbusier (Planner and Designer of Chandigarh) engrafts the basic concepts of planning that had gone into building and designing the city of Chandigarh. It ends on what can be perceived to be a hope that the present and future citizens of Chandigarh would zealously guard the basic values of planning and design on which the city has been built. The particular edict which is alleged to have been violated is the embargo on construction on the north of the capital complex.

23. Viewed from the strict dictionary meaning of the word edict i.e. "a decree issued by the sovereign or the other authority or any authoritative proclamation or command", the words of Mon Lee Corbusier may not amount to an edict at all. It is in the nature of a formal wish of a person that the future generation would continue to preserve what has been built. Such a duty is cast upon every citizen who is permitted to enjoy the gifts of nature or the results of sustained human efforts only during his lifetime and bequeath to the next generation what he has inherited. This, according to us, is the spirit in which the different authorities, who are now in sesin of the matter under the Environment (Protection) Act and the Wild Life (Protection) Act as well as the authorities under the Periphery Control Act, whose jurisdiction will now have to be invoked by the respondents, should proceed while considering the necessary clearances/sanctions/permissions and other pre-conditions on fulfilment of which alone the housing project can make any further progress so as to avoid a situation where "the vision of one (Mon Lee Corbusier) is pitted against the myopia of the multitudes."

24. We also hasten to emphasise that a more rigorous regulated development in what are now the remnants of the periphery and the areas adjoining to it is the need of the hour for which the stakeholders i.e. the Administration of Chandigarh, the States of Punjab and Haryana as also the authorities under the Environment (Protection) Act and the Wild Life Protection Act have to demonstrate the need to engage themselves intensively and not acquire a placid approach indicating an eloquent acquiescence to the violation of the 1995 Act, Periphery Control Act and the Periphery Policy.

25. We thus conclude on the aforesaid note by holding and observing that the provisions of the Periphery Control Act and the 1995 Act are complementary to each other and the provisions of the two statutes would apply to the housing project in question. The respondents, therefore, will have to comply with all the requirements spelt out by both the aforesaid statutes. As the requirement of clearances under the Wild Life (Protection) Act and Environment (Protection) Act is not a contentious issue, and as we have already held that the process of grant

of such clearances is pending before the appropriate authorities under the respective Acts, the same will now have to be brought to its logical conclusion keeping in mind our observations and directions contained hereinabove. Accordingly, we dispose of the PIL in the above terms.