
(2015) 02 P&H CK 0283

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 27665 of 2013 (O&M)

Fondant Propbuild Private Limited and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Haryana Development and Regulation of Urban Areas Act, 1975 — Section 2, 24, 3, 3(1), 3(2)

Penal Code, 1860 (IPC) — Section 120-B, 34, 406, 420

Citation : (2016) 1 RCR(Civil) 204

Hon'ble Judges : Satish Kumar Mittal, J;Deepak Sibal, J

Bench : Division Bench

Advocate : Sanjeev Sharma, Senior Advocate and Shekhar Verma, for the Appellant; Akshay Bhan, Senior Advocate, Ravi Dutt Sharma, DAG and Rahul Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Sibal, J.

1. The petitioners have approached this Court through the present writ petition seeking quashing of License No. 64 of 2010 dated 21.08.2010 (wrongly mentioned in the writ petition as dated 24.08.2010) granted in favour of respondent No. 3, as according to the petitioners, the impugned license has been obtained fraudulently. The petitioners further pray for a writ in the nature of mandamus directing respondents No. 1 and 2 to initiate appropriate action against respondents No. 3 and 4 for having obtained the impugned license through fraud. Still further, the petitioners pray for the issuance of a writ in the nature of prohibition restraining respondent No. 3 from acting upon the impugned license.

2. The factual matrix of the matter leading to the filing of the present writ petition, as borne out from the record is that on an application moved by several persons including the petitioners and respondent No. 3, a license for setting up of

plotted residential colony on land measuring 151.569 acres falling in Revenue Estate of Village Nangli, Umarpur, Ullahawas, Maidawas, Kadarapur in Sectors 60, 61, 62, 63 and 65, Gurgaon was granted on 24.08.2010 by the Director, Town and Country Planning, Haryana (hereinafter referred to as - the Director). Soon thereafter, an application was moved on behalf of the petitioners to the Director, bringing to his notice a glaring fact that land measuring 2.29 acres, which was subject matter of an earlier license granted to the petitioners, had been wrongly included in the total area, for which the license had been granted on 21.08.2010. It was further brought to the notice of the Director that for this land, there was no collaboration agreement entered into between the petitioners and respondent No. 3. To the same effect, a legal notice was also served upon respondent No. 3 by the petitioners. The criminal proceedings were also sought to be lodged on behalf of the petitioners for the alleged fraud played by respondent No. 3 and for this purpose, FIR under Sections 420, 406, 120-B read with Section 34 of the IPC was got registered. In purported response to the objections filed on behalf of the petitioners, vide order dated 05.12.2011, the Director passed an order to the following effect:--

"Whereas a licence No. 64 of 2010 dated 21.08.2010 was granted to you for setting up of a residential plotted colony on the land measuring 151.569 acres in the revenue estate of village Nangli Umarpur, Maidawas, Ullahawas and Kadarapur in Sector-60, 61, 62, 63 and 65 of Gurgaon-Manesar Urban Complex. It has come to the notice that the Khasra Nos. 6//22 (8K-0M), 23(8K-0M), 9//7(7K-13M), 14(8K-0M) and 26//20/2/1(2K-13M), total area measuring 33K-26M i.e. 4.2875 acres in village, Maidawas have been included inadvertently in the land schedule issued with the above said licence. Therefore, the above said khasra Nos. are excluded from the said licence. Now, this Licence (no.64 of 2010 dated 21.08.2010) will be only for an area of 147.281 acres as per the revised land schedule annexed as Annexure-A.

All other terms and conditions stipulated in the licence and LC-IV Agreement/ Bilateral Agreement as executed at the time of grant of licence shall remain unaltered."

3. From the above reproduced order, it is clear that though the objection filed on behalf of the petitioners was only qua wrong inclusion of 2.29 acres of their land, as much as an area of 4.2875 acres was ordered to be de-licensed on the ground that the same had been inadvertently included in the land schedule issued along with the above said license. Thus the license No. 64 dated 21.08.2010 was now for 147.281 acres instead of 151.569 acres. Along with the above reproduced order, a revised land schedule was now annexed as Annexure- A.

4. The other order, which is of considerable relevance, is the order dated 08.05.2014 passed by the District Town Planner (HQ) for Director General, Town and Country Planning, Haryana. Through this order, approval was granted to the provisionally Revised Demarcation Plan-cum-Layout Plan and Zoning Plan of residential plotted colony along with community sites in residential plotted colony

measuring 151.569 acres instead of 147.281 acres. In the main body of Revised Demarcation Plan-cum-Layout Plan and Zoning Plan, approval had been granted to an area of 151.569 acres. The relevant portion of the order is reproduced below for ready reference:--

"Please find enclosed a copy of provisionally approved Revised Demarcation Plan cum Layout plan bearing Drg. No. DG, TCP-3917 dated 05.05.2014, alongwith provisional Zoning Plan of the above said Residential Plotted Colony and Commercial and Community sites falling in the above said colony. These plans are approved provisionally with condition that the outcome of the decision of CWP No. 27665 of 2013 will be binding upon you and the development works to be undertaken on undisputed land will be sole your responsibility. The area earmarked on the Revised Demarcation Plan cum Layout plan shown in hatch has been freezed in reference of the order dated 03.02.2014 of the Hon"ble Punjab and Haryana High Court Chandigarh in CWP No. 27665 of 2013.

The revision proposed in the Demarcation Plan cum Layout plan has been considered by this office and in-principle approval for the said revision in Layout Plan for the purpose of inviting objections is hereby granted subject to the following conditions:--

- a. Objections shall be invited from all existing allottees with reference to the said revision in the Demarcation Plan cum Layout plan through an advertisement to be issued in at least three of the following daily newspapers Times of India, Hindustan Time, Indian Express, The Tribune (English), Dainik Jagran, Dainik Bhaskar and Hindustan (Hindi) having wide circulation, within a period of 10 days from the issuance of this memo.
- b. Each existing allottee shall also be informed about the proposed revision through registered post with a copy to District Town Planner, Gurgaon. A certified list of all existing allottees shall also be submitted to District Town Planner, Gurgaon. Moreover, you shall submit an affidavit before issuance of Final Revised Demarcation Plan cum Layout plan that all the allottees of the said colony have been intimated individually/personally about the changes made in the approved Revised Demarcation Plan cum Layout plan.
- c. A copy of the earlier approved layout plan and the revised Demarcation Plan cum Layout plan being approved in principle shall be hosted on your company"s website for information of all such existing allottees.
- d. The allottees shall be granted 30 days time to file their objections in the office of District Town Planner, Gurgaon from the date of issue of advertisement or intimation through registered post, whichever is later. During this 30 days period the original layout plan as well as the revised Demarcation Plan cum Layout plan as approved in-Principle shall be available in the office of the colonizer as well as in the office of District Town Planner, Gurgaon for reference of the existing allottees.

e. The objections received in the office District Town Planner, Gurgaon, if any, shall be examined by the office of District Town Planner, Gurgaon and report shall be forwarded to DG, TCP, Haryana through Senior Town Planner, Gurgaon. After giving an opportunity to the colonizer to explain its position in the matter, the DG, TCP, Haryana, within a period of 90 days from the inviting of objections, may decide to make amendments in the Demarcation Plan cum Layout plan which shall be binding upon you.

f. You shall submit a report clearly indicating the objection, if any, received by you from the allottees and action taken thereof alongwith undertaking to the effect that the rights of the allottees have not been infringed, and that no objection on the changes in location of the green space has been received from any existing allottee.

g. Moreover, these plans are approved provisionally and with the condition that you will start the development works/construction only after the final approval of the revised Demarcation Plan cum Layout plan.

h. You shall submit the relevant documents for final transfer of the licence as demanded vide this office letters dated 18.09.2012 and 05.11.2012.

A copy of the Revised Demarcation Plan cum Layout plan approved in principle public notice for the purpose of inviting objections alongwith a draft of letter to be issued to each existing allottee for inviting objections are enclosed for further necessary action at the earliest under intimation to this office."

5. The record reveals that though the above order was passed for an area of 151.569 acres, the attached schedule was for 147.281 acres.

6. The other relevant facts, which have emerged from the record and after hearing of the matter are that in the total land, for which the license had been granted, land of several other individuals had been included by respondent No. 3, who had not even applied for the license and who had not entered into any collaboration agreement with respondent No. 3 for inclusion of their land, in the application submitted on behalf of respondent No. 3 for the grant of license. Details of such persons has been given by the petitioners, which is as under:--

"14. That qua 2.29 acres of land of Land Parcel B, though the petitioners did not execute any collaboration agreement with the private Respondent No. 4 yet it was included in the layout of the impugned licence. It is pertinent to mention here that the said land was already part of licence Number 10 of 2009 (Annexure P-6). At this stage, it would be relevant to mention here that not only petitioners' land but land of certain other land owners was also included as part of the project land/layout plan by the private Respondent number 4 without knowledge/consent, for obtaining the impugned Licence as shown in the tabulated form hereinafter:--

15. That the official respondents for reasons yet to be explained by them, without any collaboration agreement or title document in favour of private

respondent number 4, considered the aforesaid land measuring 06 acres (approx) for processing its licence application and was pleased to grant the impugned license in its favour. At this stage, it would be relevant to mention here that what is crucial is the placement of the aforesaid land parcels and not the quantum which is very much clear from the accompanying map. The aforesaid land parcels were absolutely necessary for contiguity of the project and access to Sectoral roads."

7. The above averments made on behalf of the petitioners, if summarized, are that several parcels of land had been included by respondent No. 3 in its application for the grant of license only to project contiguity and access, which are essential for approval of layout plans, but these persons had never consented to their lands being included in the application moved by respondent No. 3. Thus, it was submitted by the petitioners that respondent No. 3 had indulged in fraudulent acts for securing the license. These averments made on behalf of the petitioners have been responded to by respondent No. 3 as under:--

"14-15. That the contents of para No. 14 and 15 of the application are false and hence denied. It is most respectfully submitted that qua the parcels of land referred in para No. 14 at serial No. 1 and 2, the answering respondent has got the sale deeds executed in its favour. Qua parcels of lands mentioned at serial No. 3 and 4, it is submitted that the same already stands de-licensed and the matter pertaining to parcel of land mentioned at serial No. 2 is sub judice before the competent court of law."

8. The above response on behalf of respondent No. 3 was considered by us and on that basis, questions were posed so as to the date when sale deeds were got entered into between Budhi son of Gubdu and Parduman Kumar with respondent No. 3 and further that when a suit for specific performance was pending between respondent No. 3 and Jai Kishan Promoters Ltd., then how could there be a sale deed entered into between the parties. In response to our queries, learned senior counsel appearing on behalf of respondent No. 3 responded that there was no sale deed between respondent No. 3 and Jai Kishan Promoters Ltd. and that this mention in his response was incorrect. We were also informed that the sale deed with regard to the land owned by Budhi son of Gubdu in favour of respondent No. 3 was dated 08.01.2014 and the sale deed for the land owned by Parduman Kumar in favour of respondent No. 3 was dated 05.04.2013.

9. The above stand taken by respondent No. 3 is not just sketchy but also found by us to be false. It further proves that at the time when the application was moved on behalf of respondent No. 3 for the grant of license, which was in the year 2010, the above lands were not under its ownership and that the same had been included with an oblique motive to present contiguity and access so that the layout plans could be approved.

10. It is in the light of the above facts that the petitioners have knocked the doors of this Court for the reliefs prayed for by them, as noticed earlier.

11. We have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

12. Before we proceed further, it would be appropriate for us to refer to the relevant portions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as - the Act). Section 3 of the Act, which is relevant, is reproduced below for ready reference:--

"3. Application for licence-[(1) Any owner desiring to convert his land into a colony shall, unless exempted under section 9, make an application to the Director, for the grant of license to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed. The application shall be accompanied by an income-tax clearance certificate and conversion charges:

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.

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

- (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 neighboring 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 in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case of cyber city or cyber park purposes] 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 licence granted;

[(ii) to pay proportionate development charges if the external development

works as defined in clause (g) of section 2 are to be carried out 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 centers and other community buildings on the lands set apart for this purpose, in a period as may be specified, and failing which the land shall vest with the Government after such specified period, free of cost, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit;

Provided that in case of licenses issued prior to the notification of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012, the licensee, the purchaser or the person claiming through him shall construct the school, hospital, community center and other community buildings on the land set apart for this purpose, within a period of four years, extendable by the Director by another period of two years, for reasons to be recorded in writing, from the notification of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012;

Provided further that at the end of the period as specified under the proviso, if the sight is not utilised for the purpose, it was meant for, the land shall vest with the Government and in which case, the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit;

Provided further that a show cause notice and an opportunity of hearing shall be issued before vesting the land in the Government]

[(iv-a) to pay proportionate cost of construction of such percentage of sites of such school, hospital, community center and other community buildings and at such rates, as specified by the Director;]

(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;

[(vi) to fulfill such terms and conditions as may be specified by the Director at the time of grant of licence through bilateral agreement as may be prescribed:]

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 license so granted shall be valid for a period of [four years], and will be renewable from time to time for a period of [two years], on payment of prescribed fee:

[Provided that in the licensed colony permitted as a special project by the Government, the license shall be valid for a maximum period of five years and shall be renewable for a period of as decided by the Government.]

(5) Each colony may comprise of one or more licences with contiguous land pockets.]

(6) After the coloniser has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved design and specifications, he may apply to the Director for grant of completion or part-completion certificate. The Director may enquire into such matters, as he deems necessary before granting such certificate.

(7) After enquiry under sub-section (6), the Director may, by an order in writing, grant completion or part-completion certificate on such terms and conditions and after recovery of infrastructure augmentation charges, as may be prescribed:

Provided that where in the agreement executed to set up a colony, a condition was incorporated for deposit of surplus amount beyond maximum net profit @ 15% of the total project cost and the coloniser has not taken the completion certificate of the said project, then notwithstanding the said condition in the agreement, the coloniser shall have the option either to deposit the infrastructure augmentation charges as applicable from time to time at any stage before the grant of such completion certificate and get the exemption of the restriction of net profit beyond 15% or deposit the amount as per terms of the agreement.]

13. The procedure to consider the application so made under Section 3 of the Act has been given under the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as - the Rules). The relevant rules are reproduced hereunder for ready reference:--

"3. Application for licence [Sections 3 and 24]- (1) Any owner of land desirous of setting up a colony shall make an application in writing to the Director in form LC-I and shall furnish therewith;-

[(a) a demand draft for licence fee at the rates (given in the Schedule to these rules) for the plotted colony, group housing colony and commercial/office complexes in residential sectors and for industrial colony;]

- (b) income tax clearance certificate;
- (c) particulars of experience as colonizer showing number and details of colonies already established or being established;
- (d) particulars about financial position [so as to determine the capacity to develop the colony for which he is applying]; and
- (e) the following plans and documents in triplicate;-
 - (i) copy or copies of all title deeds and other documents showing the interest of the applicant in the land under the colony, along with a list of such deeds and documents;
 - (ii) a copy of the Shajra Plan showing the location of the colony along with the names of revenue estate, Khasra number and area of each field;
 - (iii) a guide map on a scale of not less than 10 centimetre to 1 Kilometre showing the location of the colony in relation to surrounding geographical features to enable the identification of the land.
 - (iv) a survey plan of the land under the proposed colony on a scale of 1 centimetre to 10 metres showing the spot levels at a distance of 30 metres and where necessary, contour plans. The survey will also show the boundaries, and dimensions of the said land, the location of streets, buildings, and premises within a distance of at least 30 metres of the said land and existing means of access to it from existing roads;
 - (v) layout plan of the colony on a scale of 1 centimetre to 10 metres showing the existing and proposed means of access to the colony the width of streets, sizes and types of plots, sites reserved for open spaces, community buildings and schools with area under each and proposed building lines on the front and sides of plots;
 - (vi) an explanatory note explaining the salient feature of the colony, in particular the sources of wholesome water supply arrangement and site for disposal and treatment of storm and sullage water;
 - (vii) plans showing the cross-sections of the proposed roads indicating in particular the width of the proposed carriage ways cycle tracks and footpaths, green verges, position of electric poles and of any other works connected with such roads;
 - (viii) plans as required under sub-clause (vii) indicating, in addition the position of sewers, storm water channels, water supply and any other public health services;
 - (ix) detailed specifications and designs of road works shown under sub-clause (vii) and estimated costs thereof;
 - (x) detailed specifications and designs of sewerage, storm, water and water

supply schemes with estimated costs of each;

(xi) detailed specification and designs for disposal and treatment of storm and sullage water and estimated costs of works;

(xii) detailed specification and designs for electric supply including street lighting.

(2) The triplicate plans mentioned in clause (e) of sub-rule (1) shall be clear and legible azo prints with one set mounted on cloth.

(3) If the applicant wants to be exempted from providing any one or more of the amenities in a colony he shall furnish detailed explanatory note in triplicate along with application if necessary, indicating the reasons as to why the said amenity or amenities need not or cannot be provided.

4. Percentage of area under roads, open space etc. in layout plans [Sections 3(3) 4 and 24] -

(1) In the layout plan of a colony, other than an industrial colony, the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony;

Provided that the Director may reduce [after recording reasons therefore] this percentage to a figure not below thirty-five where in his opinion the planning requirements and the size of the colony so justify.

(2) In the layout plan of an industrial colony, the land reserved for the purposes specified in sub-rule (1) shall not be less than thirty-five percent of the gross area of the land under the colony:

5. Development works to be provided in colony [Section 3(3)].--The designs and specifications of the development works to be provided in a colony shall include:--

(a) metalling of roads and paving of footpaths;

(b) turfing and plantation [of] trees [in] open spaces;

(c) street lighting;

(d) adequate and wholesome water supply;

(e) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(f) any other works that the Director may think necessary in the interest of proper development of the colony.

6. Preparation of layout-plans on payment of fees [section 4]:-An owner of land intending to make an application under rule 3 may request that any or all the plans and documents referred to in sub-clauses (v) to (xi) of clause (e) of sub-rule (1) of rule 3 may be got prepared for him by the Director [on payment at

rate of {five rupees per square metre.}

7. Return of application [Section 3(1)]. - No application under rule 3 shall be considered to be valid unless it is made in the prescribed form and is accompanied by the requisite documents and plans required to be furnished along with the application. In case of failure of such compliance, the application together with other documents, if any, received therewith will be returned to the applicant intimating him the grounds for returning the application, for re-submission after compliance with the rules;

8. Enquiry by Director [Section 3(2)] - (1) On receipt of application in the prescribed form and complete in all respects, the Director shall enquire into the following matters and such other matters as he may consider necessary;

(a) title to land;

(b) extent and situation of the land;

(c) capacity to develop the colony;

(d) layout plan of the colony;

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

(f) conformity with the development scheme of the land in question and the neighbouring areas; and

[(g) conformity with the development plan.]

[(2) Before making enquiries under sub-rule (1), the Director shall, by an order in writing, require the applicant {except industrial colonies of Haryana Urban Development Authority and Haryana State Industrial Development Corporation} to furnish, within a period of thirty days from the date of service, of such order, a scrutiny fee at the rate of [twenty rupees per square meter, calculated for the gross area of the land, under low-density eco-friendly colony]{ten rupees per square metre}, calculated for the gross area of the land under low-density eco-friendly, {ten rupees per square metre}, calculated for the gross area of the land under the plotted colony], and {ten rupees per square metre} calculated on the covered area of all the floors in a group housing colony, in the form of a demand draft in favor of the Director, Town and Country Planning, Haryana and drawn on any scheduled bank.]

(3) If the applicant fails to furnish the requisite fee as provided in sub-rule (2) above, the Director shall reject the application.

9. Rejection of application [Section 3].--The Director may after making inquiry as mentioned in sub-rule(1) of rule 8 and after giving reasonable opportunity of being heard to the applicant by an order in writing reject the application to grant licence in [form LC II], if-

(a) it does not conform to the inquirements of rule 3,4, and 5 and 8;

(b) the plants and designs of the development works submitted with the application are not technically sound and workable; or

(c) the estimated expenditure on water-supply mains or extramural and outfall sewers is not commensurate with the size of the colony.

10. Applicant to be called upon to fulfill certain conditions for grant of licence [Section 3(3)].--(1) after scrutiny for the plans and other necessary inquiries which the Director may deem fit, he is satisfied that the application is not for the grant of licence, he shall before granting licence, call upon the applicant to fulfill conditions laid down in rule 11 within a period of thirty days from the date of the service of notice in form LC-III:

Provided that on an application within the aforesaid period, for the extension of time limit, the Director, if satisfied of the reasons given therein extend such time up to thirty days:

(2) If the applicant fails to fulfill the conditions under sub-rule (1) within the specified or extended period, the grant of licence shall be refused.

11. Conditions required to be fulfilled by applicant [Section 3(3)]- (1) the applicant shall:--

(a) furnish to the Director a bank guarantee equal to twenty five percent of the estimated cost of the development works as certified by the Director and enter into an agreement in form LC-IV for carrying out and completion of development works in accordance with the licence finally granted;

(b) undertake to deposit fifty percent of the amount to be realized by him from the plot-holders, from time to time, within ten days of its realization in a separate account to be maintained in a scheduled bank and this amount shall only be utilized towards meeting the cost of internal development works in the colony;

(c) undertake 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;

(d) undertake responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate under rule 16 unless earlier relieved of this responsibility and there upon 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;

[(e) undertake to construct at this own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centers and other community buildings on the land set apart for this purpose, or undertake to

transfer to the Government at any time, if so desired by the Government free of cost, the land set apart for schools, hospitals, community centers and community buildings in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit;

(f) undertake to permit the Director or any other officer authorized 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.

[(g) pay such development charges including the cost of development of State/ National Highways, Transport, Irrigation and Power facilities as determined by Director (given in the {Schedule-A}to these rules); and

(h) execute bilateral agreement in Form LC-IV-A for group housing colony, in Form LC-IV-B for plotted colony, in Form LC-IV-C for industrial colony and in Form LC-IV-D for commercial colony.]

(2) If the Director, having regard to the amenities which exist or are proposed to be provided in the locality, decides that it is not necessary or possible to provide such amenity or amenities, the applicant will be informed thereof and clauses (c), (d) and (e) of sub-rule (1) shall be deemed to have been modified to that extent.

12. Grant of licence [Section 3(3) and (4)].--(1) After the applicant has fulfilled all the conditions laid down in rule II to the satisfaction of the Director, the Director shall grant the licence in form LC-V.

(2) The licence granted under sub-rule 1) shall be valid for a period of two years from the date of its grant during which period all development works in the colony shall be completed and certificate of completion obtained from the Director as provided in rule 16."

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18. Cancellation of licence [Section 8(1)]- (1) If the Director determines at any time that the execution of the layout plans and the construction or other works is not proceeding according to the licence granted under rule 12 or is below specification or is in violation of the provisions of these rules or of any law or rules for the time being in force, he shall by notice in form LC-X require the colonizer to remove the various defects within the time specified in the notice.

(2) If the colonizer fails to comply with the requirements detailed in the notice issued under sub-rule (1), the Director shall issue him a further notice in form [LCXA] to afford him an opportunity to show cause within a period of one month why the licence granted should not be cancelled.

(3) After hearing the colonizer and considering such representation as he may

make the Director may either cancel the licence or grant him further time for complying with the requirements of the notice issued under sub-rule 1). if, however, the colonizer does not comply with the said requirements within such extended period, the Director shall cancel the licence and thereafter, [within one month], shall cause a proclamation made in the locality about the cancellation of the licence by beat of drum [within thirty days of cancellation of licence.]

(4) On cancellation of the license, no further work shall be undertaken or carried out by the colonizer."

14. A perusal of Section 3 of the Act, as quoted above, makes it amply clear that it is only an owner, who can make the application for the grant of license and that the application has to be in the prescribed form and has to be accompanied by, among other things, such fee and conversion charges, as may be prescribed.

15. On receipt of the application, Section 3(2) of the Act provides that the Director is then mandatorily required to inquire into, among other things, the following:--

"(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 neighboring areas."

16. From the above, it is clear that the Director, only after holding an inquiry into the title of the land, the extent and situation of the land, capacity to develop the colony, the layout of the colony, plan regarding the development works to be executed in a colony etc., and finding the particulars so given to be correct and on his being satisfied, is to then pass an order in writing to grant a license in the prescribed form. Moreover, under proviso to Section 3(3)(vi)(b), if, after inquiry the facts so stated in the application are not found to be correct or that the Director is not satisfied with the contents thereof, he can refuse the grant of a license by means of a speaking order after affording the applicant an opportunity of being heard.

17. A perusal of Rule 3 of the Rules, as quoted above, spells out the details to be provided by an applicant along with his application for the grant of license. Amongst other requirements, plans and documents in triplicate of copies of all title deeds and other documents showing interest of the applicant in the land under the colony, along with list of such deeds and documents, a copy of the shajra plan, guide map, survey plan, layout plan, plans showing the cross-sections of the proposed roads and other amenities etc. are to be supplied.

18. Rule 7 of the Rules provides that no application under Rule 3 shall be construed to be valid unless it is made in the prescribed form and is accompanied by the requisite documents and plans required to be furnished along with the application. In case of failure, the application together with other documents, if any, received therewith, is required to be returned along with grounds for returning the application. Rule 7 clearly enjoins upon the office of the Director to scrutinize each and every application and to see whether the same is in order and is in accordance with the provisions of the Act and Rules quoted above. Only if on such scrutiny the application is found to be in order, the same would be processed, otherwise returned by passing a speaking order giving the grounds for returning the application.

19. In case the application is found to be in order, accompanied by the prescribed fee and documents, Rule 8 then casts a statutory duty upon the Director to hold an inquiry into the facts so projected in the application to verify whether those facts are correct or not.

20. The main issues, which the Director is required to inquire into, is the title to the land, extent and situation of the land, capacity to develop the colony, layout plan of the colony etc. For the above scrutiny, a hefty amount is charged, which is equivalent to Rs. 10/- per sq. metre.

21. If the inquiry made by him reveals that the application does not conform to the requirements of Rules 3, 4, 5 and 8 of the Rules, the plans and designs of development work submitted with the application are not technically sound and workable or the estimated expenditure on water-supply mains or extramural and outfall sewers is not commensurate with the size of the colony, then under Rule 9 of the Rules, the Director may, after making an inquiry as per Rule 8(1) and after giving reasonable opportunity of hearing to the applicant, by an order in writing, reject the application to grant the license. If the contents of the above application are found to be in order, then the applicant is required to furnish bank guarantees, undertakings and pay such development charges as prescribed under Rule 11 of the Rules and it is only thereafter that the Director, would grant the license under Rule 12 of the Rules.

22. From the above, it is clear that the above provisions of law cast upon the Director a statutory mandate to consider the application filed for the grant of a license by due application of mind. Several relevant parameters have been prescribed. One of the most relevant parameters is with regard to the verification whether the owner of the land has made the application and whether the land so mentioned in the application is actually owned by the applicant or if there is any collaboration agreement for that land between the owner and the applicant.

23. In the case in hand, the record reveals that the Director miserably failed in his duty so prescribed under the above statutory provisions. The initial license granted on 21.08.2010 was for an area of 151.569 acres. The total area, for which the license was granted also included land which was the subject matter of

another license granted earlier. The total area, for which license was granted, also included land of persons, who were neither applicants nor had entered into any collaboration agreement with respondent No. 3. Thereafter, through order dated 05.12.2011, an area of 4.2875 acres was de-licensed, but the record of this case reveals that still, there remained land included in the total area, for which license had been granted, which had not been applied for by its owners nor there was any collaboration agreement between those owners and respondent No. 3. In this regard, the averments made in paragraph 14 of the application filed on behalf of the petitioners (as reproduced above) would show that more than six acres of land was included in the total area, for which license had been granted, but through order dated 05.12.2011, only 4.2875 acres was de-licensed.

24. Shockingly, in the order dated 08.05.2014, again the layout plans have been approved for 151.569 acres of land. This approval could certainly not have been granted for 151.569 acres of land. Even the approval could not be granted for 147.2815 acres, in the order passed on behalf of the Director General dated 08.05.2014, since vide orders dated 17.12.2003 and 03.02.2014, this Court had granted status quo with regard to 15.4268 acres of land, which were under the ownership of the petitioners. Proprietary demanded that the Director should not have included 15.4268 acres of land in his order dated 08.05.2014 granting approval to the layout plans. The orders passed by this Court on 17.12.2003 and 03.02.2014 are reproduced below:--

"Notice of motion for February 03, 2014.

Notice regarding stay as well.

In the meanwhile, status quo regarding alienation and construction be maintained"

XX XX XX

"As prayed for by learned State counsel, adjourned to 28.04.2014 for arguments.

Meanwhile, reply, if any, be filed with an advance copy to the counsel opposite. Other pleadings be also exchanged and completed.

After hearing learned counsel for the parties, the interim order dated 17.12.2013 is clarified to the extent that the same shall be applicable qua the land measuring 15.4268 acres claimed to be owned by the petitioner. As regard to the remaining undisputed land owned by the private respondents, they may continue with the development works and/or alienate the same at their own risk and responsibility and subject to final outcome of the writ petition.

The official respondents are directed to produce the original records re: grant of licence in favour of the private respondents on the date fixed."

25. From the above, it is clear that at every stage, the Director and his Office have been totally negligent. When license is to be granted for development of the

colony, and that too in Gurgaon, where land can be weighed in gold, the duty of the Director, as enjoined upon him under the above quoted Act and Rules, is required to be undertaken by him with utmost seriousness. Unfortunately, in the facts of the case in hand, we have found the same missing.

26. On summoning of the record by us, we found that respondent No. 3 had included lands of other land owners in the application submitted for the grant of license without their consent. We also found that most of those parcels of land had been included in the application only for maintaining contiguity and access. We also found the land of one Bela Builders included in the application submitted by respondent No. 3. It was later admitted by respondent No. 3 that so far as the above land was concerned, there was no consent of the owners for including this land in the application. Further, land of Jai Kishan Promoters Ltd. had also been included by respondent No. 3 in the application though admittedly, there was litigation pending between the parties qua the same land.

27. The objection raised on behalf of respondent No. 3 with regard to the petition suffering from delay and laches and the question raised by respondent No. 3 on the locus standi of the petitioners to maintain the present writ is required to be considered only to be rejected. Fraud vitiates everything. It has been found by us that the application submitted by respondent No. 3 was not with clean hands as in the application were intentionally included parcels of land of land owners without their consent and without any collaboration agreement with them. Also, in view of the glaring irregularities on the part of the Director in considering the application filed by respondent No. 3, we are not inclined to accept this objection raised on behalf of respondent No. 3, which, according to us, is only technical. So far as the issue of locus standi of the petitioners is concerned, it is true that the petitioners had collaborated with respondent No. 3, but it is equally true that in spite of the collaboration, respondent No. 3 had included lands of the petitioners in the application for grant of the license, which were not part of the collaboration. Thus, the petitioners would validly have a grievance against respondent No. 3 irrespective of the fact that at one point of time, their land was de-licensed. Respondent No. 3, having played fraud with the petitioners, gave a valid cause to the petitioners to approach this Court against respondent No. 3.

28. In view of the above, we quash License No. 64 of 2010 dated 21.08.2010 (Annexure P-7) and the subsequent orders dated 05.12.2011 (Annexure R-1) and 08.05.2014 (Annexure R-4/2) and remand the matter back to the Director for considering the application of respondent No. 3 afresh strictly in accordance with the provisions of the Act and the Rules. We make it clear that the application filed by respondent No. 3, as submitted in the first instance, would be considered and that no fresh license fee or scrutiny fee would have to be deposited. We further direct the Director to decide the application within a period of two months from the date of receipt of this order, by passing a speaking order and of course, after complying with all the provisions of the Act and the Rules and the principles of natural justice.

29. The writ petition is allowed in the above terms.

30. No costs.