

(1996) 12 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 2890 of 1995 and 7536 of 1996

Gulmohar Estates Limited and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 5
Haryana Development and Regulation of Urban Areas Rules, 1976 — Rule 11
Interest Act, 1978 — Section 3, 4

Citation : (1997) 116 PLR 547 : (1997) 3 RCR(Civil) 415

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.K. Chhibbar, instructed by Anand Chhibbar, for the Appellant; H.S. Hooda, General, Ritu Bahri, AAG for Respondent Nos. 1 and 2, M.L. Sarin instructed by Hemant Sarin and H.S. Mattewal instructed by R.S. Virk, for Respondents 3 to 12, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—These two petitions are inter-related and, therefore, we are disposing them by a common order. In the petition filed by Gulmohar Estate Ltd., prayer has been made to quash order dated 20.1.1995 passed by the Director, Town and Country Planning, Haryana and also for restraining respondent No. 2 from taking any action pursuant to the impugned order. In the writ petition filed by the Garden Estate Residents Welfare Association, the petitioner has prayed for issuance of a mandamus directing respondent No. 2 to comply with the provisions of Section 8 of the Haryana Development and Regulation of Urban Areas Act, 1975 and the provisions of the Haryana Apartments Ownership Act, 1983 as well as Article 3 of the agreement entered into between respondents 2 and 3. It has also been prayed that respondent No. 2 be directed to take over the colony and to complete the external and internal works within a period of three months and to provide amenities in the colony at the cost of the residents and/or

to transfer this responsibility to the petitioner association. A prayer has also been made to register the sale deeds in the names of the residents who have paid full and final consideration money.

2. Keeping in view the complex nature of the dispute raised by the petitioners, it is necessary to set out some facts from both the petitions.

C.W.P. No. 2890 of 1995

3. Petitioner-Gulmohar Estates is a public limited company incorporated under the Companies Act, 1956 with one of its objects as construction and development of property. On the basis of an application made by it, the petitioner was granted a licence on 24.6.1985 under "1975 Act" for setting up group-housing colony in District Gurgaon. The licence was valid upto 23.6.1987. In terms of the licence, the petitioner was required to pay the amount specified therein and also to comply with other conditions of the licence. It appears that the petitioner did not comply with the terms of the licence. Therefore, notice dated 22.8.1986 was issued to the petitioner by respondent No. 2 u/s 8 of 1975 Act to show cause as to why the licence be not cancelled. The petitioner filed its reply to the show cause notice. At the same time an affidavit was filed by the petitioner expressing its willingness to pay external development charges at the revised rates which may be determined by the respondent No. 2 and also to pay interest for the deferred payment and penal interest to be determined by respondent No. 2. The representative of the petitioner also agreed to execute revised agreement incorporating the conditions mentioned in the affidavit. After considering this affidavit, the respondent No. 2 passed order dated 4.6.1987 dropping the proceedings subject to the fulfilment of the conditions specified therein.

4. After issue of the order dated 4.6.1987, the petitioner undertook construction of the group-housing colony. On 29.11.1989, respondent No. 2 wrote a letter to the petitioner squiring it to deposit the revised external development charges at the rate of Rs. 22.06 lacs per gross acre. It was also directed to execute an agreement on non-judicial stamp paper incorporating the above rate and schedule of payment within a period of 30 days. On the basis of partial completion of the colony, the petitioner applied for issue of a partial/provisional completion certificate. After considering this application, respondent No. 2 issued order dated 5.6.1991 and granted partial/provisional completion certificate subject to the conditions enumerated in that letter including the one requiring payment of external development charges. The petitioner did not pay external development charges as required by order dated 4.6.1987 read with letters dated 2.11.1989 and 5.6.1991* but wrote letter Annexure P11 to the respondent No. 2 requesting him to grant extension of time in the payment of instalments upto December, 1991. The respondent No. 2 did not feel convinced with the genuineness of the petitioner's request and, therefore, notice dated 16.7.1992 was issued to the petitioner calling upon it to show cause as to why the licence granted to it be not cancelled. The representative of the petitioner appeared

before the Director and after hearing him, the respondent No. 2 passed order dated 14.1.1993 requiring the petitioner to deposit balance amount of Rs. 453.40 lacs towards external development charges along with the penal interest. The petitioner was directed to pay first instalment within 30 days from the date of issue of letter dated 14.1.1993 and second, third and fourth instalments after six months, one year and one & half year. Once again the petitioner defaulted in the payment of external development charges, but moved the Chief Minister of Haryana requesting him to intervene for rescheduling the payment of external development charges. The respondent No. 2 considered the representation made by the petitioner and called upon it to appear for personal hearing. A fresh show cause notice dated 4.8.1994 was also issued by respondent No. 2 requiring the petitioner to explain as to why the licence granted to it be not cancelled. After hearing the petitioner, the respondent No. 2 passed by impugned order cancelling the licence of the petitioner.

5. The petitioner has challenged the impugned order on the following grounds:-

(1) After issue of partial/provision completion certificate, respondent No. 2 had no jurisdiction to take proceedings against the petitioner for cancellation of the licence.

(2) Construction of the housing colony was completed in the year 1989 and thereafter, the respondent No. 2 could not initiate action for cancellation of licence.

(3) Respondent No. 2 did not have jurisdiction to initiate proceedings for cancellation of licence on the ground of non-payment of external development charges because the respondents did not fulfil their obligation to carry out external developmental work.

(4) Recovery of penal interest is not supported by any provision of law and in fact, it is contrary to the provisions contained in the Usurious Loans Act, 1918 and Interest Act, 1978.

(5) The external development charges are highly excessive and unreasonable and, therefore, the demand raised by respondent No. 2 should be nullified on the ground of violation of Article 14 of the Constitution of India.

6. Respondents 1 and 2 have questioned the locus standi of the petitioner to file writ petition on the ground that it has failed to avail an effective alternative remedy of appeal as provided u/s 19 of the 1975 Act. Respondents 1 and 2 have pleaded that on its application the petitioner was granted licence No. 13 of 1985 to develop group housing colony on 26 acres 6 kanals and the petitioner was obliged to fulfil the conditions of licence. The respondents have stated that the petitioner deliberately avoided payment of external development charges in terms of the conditions of licence inspite of extensions given by respondent No. 2 and this necessitated appropriate action against the petitioner. The case set up by the respondents is that after the issuance of show cause notice the petitioner

gave an undertaking to pay the external development charges but it failed to pay the amount due and on account of its persistent default in making the payment in terms of the agreement and the affidavit the respondent No. 2 cancelled the licence. The respondents have contested the petitioner's assertion to the effect that the Haryana Urban Development Authority did not undertake external development work. In paragraph 9 of the reply, the respondents have given the details of the external development work undertaken by them and the amount spent on such works.

7. In its replication, the petitioner has more or less reiterated its grievance that the respondents have avoided to discharge their obligation to carry out the external development works. It has also been stated that the respondents have collected Rs. 2.85 crores from the petitioner towards external development works and another sum of Rs. 25 lacs has been paid by the petitioner and there is no justification whatsoever for demanding another sum of Rs. 524.4 lacs as on 1.8.1994. The petitioner has also tried to show that the amount of external development charges claimed from it is far in excess of its share and the respondents have misused their advantageous position for demanding highly exorbitant external development charges.

8. In their separate written statement, the respondents 3 to 12 have stated that they and other residents of Garden Estate have complied with the terms of purchase agreement inasmuch as they have paid their dues towards the external and internal development charges, but the petitioner has not undertaken external development works and the internal development works. They have further stated that the petitioner Company has deliberately avoided its liability to pay the amount of external development charges and has thereby cheated not only the Government but also the purchasers of the flats and other accommodations. These respondents have further alleged that the respondent-Company is guilty of non-implementation of the provisions of the Haryana Apartments Ownership Act, 1983 and the rules framed thereunder and in this manner, the private respondents have been seriously prejudiced. Through CM. No. 9394 of 1995, the petitioner made a prayer for directing the respondents to carry out the directions given by the High Court on 7.8.1995. In that application, it has been stated by the petitioner that a community centre and a club have been opened in the colony constructed by it. In their reply, the respondents 1 and 2 asserted that the external development charges are charged with a view to create finances for the development of major town level facilities/infrastructure like master water supply, master sewerage scheme, master storm water drainage, major community buildings, electricity and horticulture etc, and the same have to be shared by one and all and these services cannot be provided to Individual sector or scheme and it is not possible for the authorities-to plan, design and execute the scheme in isolation. The respondents further stated that cost of development of these services run into Rs. 700 crores which is being recovered from all colonisers and plot holders in HUDA sectors. It has also been pleaded by the respondents that the petitioner never asked the respondent No. 2

to provide the basis and method of assessing external development charges. Rather, it had accepted to pay revised development charges and filed an affidavit dated May 21, 1987 to this effect. The respondents also stated that the Garden Villas and the double storeyed block consisting of shops community centre and the medical facility have been completed upto ground floor, the first floor building is semi-finished, nursery school is semi-finished and has been erected within the restricted bell of 30 metres along with Gurgaon-Mahrauli Scheduled Road. The respondents also stated that the external development charges for the group housing pocket in a plotted colony were Rs. 18.10 lacs per gross acre and for independent group housing colony the said rates were Rs. 22.60 lacs per gross acre and when the rates of external development charges were revised in the year 1992, the same were fixed at Rs. 20 lacs per gross acre for plotted colony and Rs. 25 lacs for group housing colony.

9. By filing CM. No. 11615 of 1996, the petitioner sought a stay on a part of Annexure CMA/2 whereby the respondent No. 2 had declared that payment of maintenance charges should not be made to the colonisers. It also prayer for directing the respondents to provide common services. In their written reply, the respondents again stated that the petitioner is not entitled to charge anything from the purchasers in view of the fact that the Government had authorised the Gulmohar Residents Welfare Association to operate, maintain and replace, if need be, the generating sets used for running the water supply/lifts at their own costs till the completion of the development works by the department.

C.W.P. No. 7536 of 1996.

10. The petitioner is an association of the residents of the apartments constructed by Gulmohar Estates Limited. They have filed this writ petition virtually as a counter to the attempt made by the Gulmohar Estate Limited for seeking the quashment of order dated 20.1.1995 passed by the respondent No. 2. Sum and substance of the grievance made by the association is that the management of the respondent No. 3 (petitioner in CWP No. 2890 of 1995) have cheated the Government as well as the purchasers by charging the entire amount from the purchasers and not paying the external development charges to the Haryana Urban Development Authority resulting in denial of services to the owners of the flats etc. The petitioner-association has pleaded that even if the coloniser has failed to take action, the Government should carry out its duty u/s 8 of 1975 Act and the provisions of the Act of 1983.

11. The respondent No. 3 has contested the writ petition by raising some preliminary objections to the maintainability of the writ petition. It has been alleged by the respondent No. 3 that the petitioner-association has sought similar relief before the National Consumers Disputes Redressal Commission in OF No. 139/95, before the M.R.T.P.C. in U.T.P. No. 159 of 1995 and before the Senior Sub Judge, Gurgaon by means of a civil suit. According to the respondent No. 3, after having availed the remedies in different forums, the petitioner-association cannot invoke the extraordinary jurisdiction of the High Court. On

merits, the reply of the respondent No. 3 is more or less a reiteration of the averments made in C.W.P. No. 2890 of 1995. The respondent Mo. 3 has also placed on record a copy of the order dated 18/21.5.1990 passed by the Demi High Court in Suit No. 1048A/70 to show that the parties are already in litigation in a Court of co-ordinate jurisdiction.

12. In their written statement, the respondents 1,2,4, 5 and 6 have come forward with the statement that as per the approved lay-out plan of the Garden Estate Colony, the occupation certificates of 195 dwelling units/EWS flats have been issued to the colonisers, but as many as 275 number dwelling units/EWS flats have been occupied. These respondents have stated that the licence of the respondent No. 3 has been cancelled after following the procedure established by law and as far as the petitioner-association is concerned, it has no locus standi to seek a direction for implementation of the provisions of Section 8 of 1975 Act or the provisions of the Act of 1983.

13. Before proceeding further, we may take notice of the fact that on 13.3.1995, this Court had issued notice of motion and stayed the operation of the order dated 20.1.1995 subject to the condition that the petitioner deposits a sum of Rs. 50 lacs on or before 7.4.1995 and another sum of Rs. 50 lacs on or before 21.4.1995 with the Director, Town and Country Planning, Haryana. On 7.8.1995, it was noticed by the Court that the petitioner had not deposited the instalment falling due in July, 1995, but still the Court did not vacate the stay order on the assurance of the counsel appearing for the petitioner that the instalments due in the months of July and August, 1995 shall be paid on or before 15.9.1995. Further extension was given by the Court on 16.10.1995 with a clear stipulation that failure of the petitioner to comply with the Court's order will result in vacation of the stay order. Notwithstanding the directions given by the High Court and the assurance given on its behalf, the petitioner did not pay the requisite instalments. Consequently on 22.11.1995 this Court declared that the stay order stands vacated.

14. Having set out the factual matrix of the two petitions, we shall now deal with the scheme of 1975 Act and the rule framed thereunder and then will deal with the various contentions raised on behalf of the petitioners. The Act of 1975 has been enacted to regulate the use of land in order to prevent ill-planned and haphazard urbanisation in and around towns in the State of Haryana. The statement of objects and reasons incorporated in the bill presented before the Legislative Assembly of the State of Haryana took cognizance of the judgment of this Court in C.W.P. Nos. 2419 and 3624 of 1973 whereby the provisions of the Haryana Restriction on (Development and Regulation of Colonies) Act, 1971 were declared unconstitutional. The Government took notice of the observations made by the High Court and decided to bring about a legislation by re-defining the word "colony" and by restricting its area within the limits of the local authorities and 5 kms. beyond the limits of the local authorities. The words "colony", "colonizer", "development works", "external development works" and "internal

development works" have been defined in Section 2(c), (d), (e), (g) and (i) respectively. Section 3(1) provides for making of an application by an owner desiring to convert his land into a colony. Section 3(2) provides for enquiry by the Director on various aspects and grant of licence in the prescribed form in case the Director is satisfied that the applicant fulfils the conditions enumerated in the Act. Section 5 requires the colonizer to deposit 50% of the amount realised by him from the plot holders within a period of 10 days of its realisation and this amount is to be utilised by him towards meeting the costs of internal development works in the colony. The remaining 50% of the amount is to be retained by the colonizer to meet the cost of the land and external development works. Section 8 provides for cancellation of licence and the actions which the Government can take after cancellation of the licence.-Section 10 speaks of penalties for contravention of the provisions of 1975 Act or the rules made thereunder. Section 12 contains provision to deal with the offences by the Companies. Section 19 provides for an appeal by a person aggrieved against an order passed by the Director. Section 20 confers power of revision upon the Government and Section 21 empowers the Director to review any order passed by himself or by his predecessors in office. For the purposes of these cases, it will be useful to reproduce Section 2(c), (d), (e), (g) and (i); Section 3(1), (3)(a) (i) to (iv), Section 5, Section 8 and Section 10:-

"2 (c) "colony" means an area of land divided or proposed to be divided into plots for residential, commercial or industrial purposes, but an area of land divided or proposed to be divided -

(i) for the purpose of agriculture; or

(ii) as a result of a family partition, inheritance, succession or partition of joint holding not with the motive of earning profit; or

(iii) in furtherance of any scheme sanctioned under any other law; or

(iv) by the owner of a factory for setting up a housing colony for the labourers or the employees working in the factory; provided there is no profit motive; or

(v) when it does not exceed one thousand square metres, shall not be a colony.

2(d) "colonizer" means an individual,, company or association or body of individuals, whether incorporated or not, owning or acquiring or agreeing to own or acquire, whether by purchase or otherwise land for converting it into a colony and to whom a licence has been granted under this Act.

2(e) "development works" means internal and external development works.

2(g) "external development works" include sewerage, drainage, roads and electrical works which may have to executed in the periphery of, or outside, a colony for the joint benefit of two or more colonies.

2(i) "internal development works" mean - (i) metaling of roads and paving of footpath;

- (ii) turfing and plantation with trees as open spaces;
- (iii) street lighting;
- (iv) adequate and wholesome water-supply;
- (v) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and
- (vi) any other work that the Director may think necessary in the interest of proper development of a colony.

3. Application for licence:- (1) Any owner desiring to convert his land into a colony, shall unless exempted u/s 9, make an application, to the Director, for the grant of a licence to develop a colony in the prescribed form and pay for it such fee as may be prescribed. The application shall be accompanied by an Income Tax clearance certificate.

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

(a) grant, a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty-five per centum of the estimated cost of development works as certified by the Director and has undertaken -

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

(ii) to pay proportionate development charges if the main lines of roads, drainage, sewerage, water-supply and electricity are to be laid out and constructed by the Government or any other local authority. The proportion in which, and the time within which, such payment is to be made shall be determined by the Director;

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public parks 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 fall such roads, open spaces, public parks and public health services free of cost to the Government of the local authority, as the case may be;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government free of cost the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deemed fit.

(v) xx xx xx (b) xx xx xx

5. Cost of development works - (1) The colonizer shall deposit fifty per centum of the amount realised, from time to time, by him, from the plot-holders within a period of ten days of its realisation in a separate account to be maintained in a scheduled bank. This amount shall only be utilised by him towards meeting the cost of internal development works in the colony. After the internal development works of the colony have been completed to the satisfaction of the Director, the colonizer shall be at liberty to withdraw the balance amount. The remaining fifty per centum of the said amount shall be deemed to have been retained by the coloniser, inter alia, to meet the cost of land and external development works.

8. Cancellation of licence; (1) A licence granted under this Act, shall be liable to be cancelled by the Director if the colonizer contravenes any of the conditions of the license or the provisions of the Act or the rules made thereunder; provided that before such cancellation the coloniser shall be given an opportunity of being heard.

(2) After cancellation of the licence, the government may, if it deems expedient, acquire the area of the colony under the provisions of Land Acquisition Act, 1894, and may develop it in accordance with any other law.

(3) The Government may, while allotting plots in the area so acquired and developed, give preference, to the plot holders in the colony in the manner prescribed.

10. Penalties - (1) Any person who contravenes any of the provisions of this Act or the rules made thereunder or any of the conditions of a licence granted u/s 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine;

Provided that where any of the provisions of section 9 are contravened the punishment of imprisonment shall not exceed six months."

15. We may also refer to some of the provisions of the Haryana Development and Regulation of Urban Areas Rules, 1976 which have been made by the Governor of Haryana in exercise of powers u/s 24 of "1975 Act". Rule 2 of these Rules defines various forms. Rule 3 thereof specifies "the application form" and the documents which are required to be submitted along with the application for setting up of a colony. Rule 5 speaks of developmental works to be provided in the colony and enjoins upon the colonizer to submit design and specifications of the developmental works. Rule 8 deals with the enquiry which is required to be made by the Director before grant of a licence. Rule 11(1) specifies conditions which are required to be fulfilled by the applicant. Rule 12 provides for grant of licence in form LC-V. Validity period of the licence is 2 years from the date of its grant. Rule 12 provides for renewal of licence. Rule 16 speaks of completion certificate. Rule 18 provides for the mode for cancellation of the licence. For our purposes, it will be useful to quote Rules 11(1)(a), (b), (c), 12, 18 and 20 of the Rules of 1976.

"11(1) The applicant shall -

(a) furnish to the Director a bank guarantee equal to twenty-five per cent 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 per cent of the amount to be realised by him from the plot-holders, from time to time, within ten days of its realisation in a separate account to be maintained in a scheduled bank and this amount shall only be utilised 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)

to XXX XXX XXX XXX XXX (f)

(2) XXX XXX XXX XXX XXX

12.(1) After the applicant has fulfilled all the conditions laid down in Rule 11 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 all development works in the colony shall be completed and certificate of completion obtained from the Director as provided in Rule 16.

18. (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 the area of the colony under the provisions of the Land Acquisition Act, 1894 and may develop it in accordance with any other law.

20. After the layout and development works or part thereof in respect of the colony or part thereof in respect of the colony or part thereof have been completed and a completion certificate in respect thereof issued, the Director may, on an application in this behalf from the colonizer, release the bank guarantee or part thereof, as the case may be;

Provided that if the completion of the colony is taken in parts only, the part of the bank guarantee corresponding to the part of the colony completed shall be released;

Provided further that the bank guarantee equivalent to 1/5th amount thereof shall be kept unreleased to ensure upkeep and maintenance of the colony or part thereof, as the case may be, for a period of five years from the day of the issue

of the completion certificate under Rule 16 or earlier, in case the colonizer is relieved of the responsibilities in this behalf."

16. The Usurious Loans Act, 1918 was enacted to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind. Section 2(1), (2), (3) and section 3(1) of the Act of 1918, which are relevant for the purposes of these cases are reproduced below:-

"2(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "suit" to which this Act applies" means any suit -

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

3. Re-opening of transactions - (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe -

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may -

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that, in the exercise of these powers the Court shall not -

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation :- In the case of a suit brought on a series of transactions the expression "the transaction" means, for the purposes of proviso (i), the first of such transactions."

17. The Interest Act, 1978 has been enacted to consolidate and amend the law relating to allowance of interest in certain cases. Section 3 of this Act confers powers upon a Court to allow interest to the persons entitled to the debt or damages or to the persons making such claims for recovery of any debt or damages. Section 4 contains a non-obstante clause and makes a provision for award of interest in cases not covered by Section 3. This section is relevant to the subject matter of these cases and, therefore, it is reproduced below :-

"4. Interest payable under certain enactments :-

(1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of Sub-section (1), the court shall, in each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely: -

(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action."

18. Having taken note of the facts of the two writ petitions and the relevant provisions of law, we shall now examine the various points raised in C.W.P. No. 2890 of 1995 for challenging the legality of the order dated 20.1.1995.

19. Grounds No. 1, 2 and 3 raised by the petitioner for challenging the impugned order are inter-related and, therefore, it will be appropriate to consider their tenability in one go. Perusal of Annexures P1 and P2 shows that the licence was

granted to the petitioner subject to the conditions that the "colony" is laid in conformity with the approved plan and development works are executed according to the design and specifications and the conditions of the agreement as well as the provisions of "1975 Act" and the rules made thereunder are duly complied with. In terms of the agreement, the petitioner undertook to furnish bank guarantee equivalent to 25 per cent of the estimated cost of the development works. As per the clause "M" of the agreement, the petitioner was to pay external development charges as determined by the Chief Engineer, Haryana Urban Development Authority in four six-monthly instalments. As per clause (U), it was also required to pay appropriate development charges as and when called upon to do so and as determined by the Director in respect of the external development charges at any time during the execution of the scheme. Due to non-compliance of the terms of the agreement and the licence, show cause notice dated 22.8.1986 was issued to the petitioner. In response to that notice, the petitioner filed a reply and submitted that lapses on its part were not of serious nature warranting cancellation of licence. The representative of the petitioner expressed his willingness to rectify the lapses. An affidavit was also filed by the petitioner for payment of external development charges at revised rates. This would be evident from the extract of the affidavit Annexure P3, which reads as under:-

"(iii) That we shall pay external development at such revised rates as may be determined by the Director, Town & Country Planning and as per such schedule including rate of interest for deferred payment and penal interest as may be determined by Director, Town & Country Planning.

(iv) We shall execute the revised agreement incorporating above conditions whenever called upon to do so."

20. The respondent No. 2 took notice of the undertaking given by the petitioner through the affidavit and observed:-

"Therefore, in the given situation and keeping in view the undertaking given by the coloniser in the affidavit, it is considered desirable that the action be dropped against the coloniser for the present and they may be allowed to continue with the development activity. They shall complete the project in a time bound manner which shall be specified and which shall among other details include the following: -

(i) xx xx xx

(ii) The first instalment of revised external development charges as per the schedule approved by me shall be paid by the colonisers within 30 days of the conveying of such instalment by me. No delay in the payment of this first instalment shall be permitted and the coloniser shall not be allowed to take shelter behind the penal interest clause for making delayed payment of this first instalment.

(iii) xx xx xx (iv) xx xx xx (v) xx xx xx

Subject to the coloniser fulfilling these conditions, the action against these colonisers is hereby dropped for the present. However, the action will be initiated again if it is found at any stage that the coloniser is not conforming of licence or agreement or the conditions enumerated in this order. This order also does not entitle the coloniser to any new licence as a matter of right and all the requests of the coloniser for any new licence shall be considered on merits. Such licence shall be granted only if I am satisfied that these are in conformity with the objectives of the N.C.R. Development Plan, with the general development policy of the area and are within the competence and capability of the coloniser."

21. Later on, the respondent No. 2 issued memo dated 29.11.1989 and called upon the petitioner to deposit the external development charges at the rate of Rs. 22.60 lacs per gross acre. This memo refers to the affidavit dated 21.5.1987 filed by the representative of the petitioner whereby it had agreed to pay revised external development charges. The petitioner was directed to make deposit of the external development charges within 30 days of the issue of the letter. However, the petitioner continued to commit default in payment of the external development charges despite the fact that the extension was given by the respondent No. 2 vide letter No. 5DP-91/8008 dated 10.5.1991. Even while issuing the partial/provisional completion certificate Annexure -P.10, the respondent No. 2 had imposed a condition upon the petitioner to pay external development charges. This would be evident from the following extract of the Annexure P10 :-

"2. Partial/provision completion certificate of the above said building blocks is hereby granted subject to the following terms and conditions:-

(i) xx xx xx (ii) xx xx xx (iii) That the conditions of payment of external development charges as per extension granted vide this office letter No. 5 DP-91/8008 dated 10.5.1991 shall be duly complied with.

(iv) xx xx xx 3. It is made clear that in the event of non-compliance of the above terms and conditions, the partial/provisional completion certificate so granted shall be cancelled without any further action in this regard."

22. Vide Annexure P11 dated nil, the petitioner sought extension of time in payment of the external development charges upto December, 1991. However, the petitioner again committed default in payment. This led to the issue of show cause notice dated 17.7.1992 for cancellation of the licence. The representative of the petitioner once again assured the respondent No. 2 that they would make payment of the external development charges and relying on this assurance, the respondent No. 2 dropped the proceedings by order dated 14.1.1993. While doing so, the respondent No. 2 made it clear that the petitioner shall pay the balance amount of external development charges including penal interest in four equal instalments with first instalment being payable within 30 days of the issue of the letter. The petitioner persisted with the default and instead of making the

payment, it approached the Chief Minister, Haryana vide representation Annexure P14 with a request for rescheduling the payment of external development charges. For a period of more than one year and six months of the passing of order Annexure P13, the petitioner did not make payment of external development charges. This compelled the respondent No. 2 to give notice Annexure P16 dated 4.8.1994 which culminated in passing of the impugned order. The maze of correspondence entered into by the petitioner with the respondent No. 2 and the issue of three show cause notices by the respondent No. 2 and their replies by the petitioner unmistakably show that the petitioner volunteered to accept the condition to pay the external development charges as determined by the respondent No. 2. The petitioner also agreed to treat the revised external development charges as part of the agreement entered into by it with the Haryana Urban Development Authority. From time to time, the petitioner sought extension of time for payment of the external development charges without raising any objection to the rate of external development charges or the interest/penal interest levied by the Haryana Urban Development Authority. In the background of these facts, it is not possible to accept the submission of Shri Chhibbar that after having granted partial/provisional completion certificate, the respondent No. 2 had no jurisdiction to initiate action for cancellation of the licence. We also do not find any substance in his contention that after completion of the housing colony, the respondent No. 2 cannot initiate action for cancellation of the licence. Perusal of Section 8 of "1975 Act" shows that the respondent No. 2 is entitled to cancel the licence of a coloniser for contravention of the conditions of the licence or the provisions of the 1975 Act or the Rule made thereunder. Rule 11 of the Rules of 1976 also provides for cancellation of the licence on similar grounds. As per Section 5, a coloniser is duty bound to make provision for external development charges. The terms of the agreement which form part of the licence also postulate payment of the external development charges by coloniser. Therefore, violation of the conditions of the licence or provisions of "1975 Act" constitutes valid basis for initiation of action by the Director to cancel the licence. A plain reading of Section 8 shows that there is no embargo on the exercise of power by the Director to cancel the licence. Therefore, mere issue of partial/provisional completion certificate or making of construction by the petitioner cannot in any manner restrict the power of the Director to cancel the licence. It is important to bear in my mind that even while issuing partial/provisional completion certificate, the Director had made it clear that the petitioner will be required to pay development-charges as per extension granted vide his office letter dated 10.5.1991. Notices issued to the petitioner from time to time and the replies filed by it assuring the Director to make payment of external development charges provided sufficient justification for initiation of action by the respondent No. 2 to cancel the licence issued in favour of the petitioner due to its persistent default in payment of external development charges.

23. The justification offered by the petitioner for non-payment of the external

development charges, namely, the failure of the official respondents to fulfil their obligation to carry out development works is without any (sic)ostanance. In none of the letters written by the petitioner to the respondent No. 2, any indication was given by the petitioner about its inability to pay external development charges on the ground of alleged non-fulfilment of the conditions by the authorities of the Haryana Urban Development Authority. It is only at the last stage of the proceedings that the petitioner tried to create a false plea to save itself from the liability of-payment of external development charges. In our opinion, such a plea cannot be entertained by this Court in view of the conditions of the licence/agreement, the affidavit submitted by the petitioner on 21.7.1987 and the undertaking given by it to the official respondents to make payment of the external development charges. In our considered opinion, such a plea deserves to be termed as vexatious and nothing but an attempt to deprive the public authority of its right to recover the public money which the petitioner had undertaken to pay as a part of the contract entered between the parties. We are further of the opinion that the petitioner cannot challenge the terms and conditions of the contract which it had entered with the Haryana Urban Development Authority and on the basis of which it amassed wealth by developing a colony and allotting flats and other residential apartments to private individuals. No doubt, the licence was issued to the petitioner under the provisions of "1975 Act" and the rules framed thereunder, but only on that account the petitioner cannot invoke the provisions of Article 14 of the Constitution of India for the purpose of being relieved of its burden to pay the amount due to the public authority in terms of the agreement and in any case the writ jurisdiction under Article 226 of the Constitution of India cannot be allowed to be invoked in such like matters.

About 20 years ago, a similar a question was examined by the Apex Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, . A Constitution Bench of the Supreme Court declared that the High Court should not exercise jurisdiction under Article 226 of the Constitution of India in such like matters and observed: -

"On the preliminary objection it was finally urged by the appellants that the objection was misconceived because there was in fact, no contract between the parties and therefore, they were not attempting to enforce any contractual rights on to wriggle out of contractual obligations. The short answer to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on these terms that licences me granted to the successful bidders in Form L-14-A of the Rules. As stated in *Cheshire and Pifoot's Law of Contract* (Eighth Edn., 1972; p. 24),

"In order to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of

offer and acceptance. In other words, the court examines all the circumstances to see if the one party may be assumed to have made a firm "offer" and if the other may likewise be taken to have "accepted" that offer. These complementary ideas present a convenient of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases."

Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."

24. In *Panna Lal and Ors. v. State of Rajasthan and Ors.* : 1975(2) S.C.C. 633, their Lordships held that a person who enters into a contract with the State and its agencies cannot resile from the express obligation undertaken by him. In that case the licencees had sought quashing of the conditions of contract on the ground that the same were extremely onerous and arbitrary. The High Court of Rajasthan rejected their continuation. In appeal, their Lordships of the Supreme Court held;-

"The licences in the present case are contracts between the parties. The licensees voluntarily accepted the contracts. They full exploited to their advantage the contracts to the exclusion of others. The High Court rightly said that it was not open to the appellants to resile from the contracts on the ground that the terms of payment were onerous. The reasons given by the High Court were that the licencees accepted the licence by excluding their competitors and it would not be open to the licensees to challenge the terms either on the ground of inconvenient consequence of terms or of harshness of terms."

25. In *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*, , the licensees did not get the additional quantities applied for by them. They claimed rebate/remission on the amounts payable by them under the contracts. While rejecting their plea that the State had acted arbitrarily and unreasonably, their Lordships of the Supreme Court observed:-

"In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law filed to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. But it can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e. where it is a statutory contract-or rather more so.....

We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licencees in such contracts. There is no warranty against incurring losses. It is a business for the licencees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the Contract."

26. In *Rajendra Singh Vs. State of Madhya Pradesh and others*, , their Lordships reiterated the principles laid down in *Har Shankar's* case (supra) and held that writ jurisdiction is not intended to facilitate avoidance of obligation voluntarily incurred. That was a case in which the appellant had given highest bid for liquor shops for the year 1994-95. Licence was granted to the appellant after completion of formalities. He failed to pay monthly rental (licence fee) for the months of July and August, 1994. After giving notice to him, the competent authority re-auctioned the shops. A learned Single Judge accepted writ petition whereby the appellant had challenged the re-auction of the liquor shops. That decision was reversed by a Division Bench. In appeal their Lordships of the Supreme Court affirmed the view taken by the Division Bench and held that failure of the appellant to pay monthly rental on or before the particular date was rightly made basis for cancelling the licence granted to him and for re-auctioning of the liquor shops.

27. In *Indore Development Authority Vs. Sadhana Agarwal (Smt) and Others*, , their Lordships recognised the rights of the Courts to examine whether the decision making process was reasonable and rational and consistent with Article 14 of the Constitution or not. The Supreme Court observed ".....decisions of the Apex Court, it stand settle that Article 226 of the Constitution is not proper remedy or forum for re-opening of contracts for avoiding its burdens or for getting back the purchase money paid under the contract, but at the same time the Courts can certainly examine whether "decision making process" was reasonable, rational and arbitrary and violative of Article 14. Once the procedure adopted by the authority is held to be against the mandate of Article 14, the Court cannot ignore such saying that the Authority concerned must have some latitude or liberty in contractual matters and any inference by Court amounts to encroachment on the exclusive right of the executive to take such decision."

In *Delhi State Entrepreneurs Association (Regd.) and Ors. v. Delhi State*

Industrial Development Corporation and Ors. 1994 (3) DRJ 609, the High Court of Delhi held;-

"Public interest requires a proper administration of public funds. Public bodies cannot be expected to suffer losses and shoulder heavy financial burdens to meet the alleged expectations of the beneficiaries under any welfare scheme. This principle equally governs the application of the doctrine of "promissory estoppel" obligations to the public properly if the amount due to it is not paid by the beneficiaries of welfare schemes. Petitioners have taken advantage of the writ jurisdiction to continue in possession of public premises all these years, disregarding their obligations under the lease deeds. For them equity and fairness have become a "one way street" where these are to move only towards them and not from them."

29. Apart from our conclusion that the petitioner cannot invoke jurisdiction of this Court under Article 226 of the Constitution of India to relieve itself of the burden which it had voluntarily incurred on the basis of the agreement, the licence, the affidavit and the written assurance given to the officials of the Haryana Urban Development Authority, we find that the claim of the petitioner regarding failure of the official respondents to undertake the external development works is far from truth. In paragraph 9 of their written statement, the official respondents have set out the details of the external development works taken up for providing external sewerage on Gurgaon-Mahrauli road upto the colony of the petitioner. It has been categorically stated by the official respondents that 10 meters metalled road has already been constructed. A dedicated water supply channel having length of 69 KMs. has been constructed from Sonapat to Gurgaon. The land for water treatment plant has been acquired and one unit of Treatment Plant of 20 mgd. capacity is already functioning. Street-lighting has already been provided on National Highway as well as on the main roads of the town with an expenditure of Rs. 177 lacs. The Haryana Urban Development Authority has prepared a master sewerage disposal scheme for Gurgaon Town which covers the estate of the petitioner. Storm water drainage has been completed by spending Rs. 188.92 lacs and further budget provision of Rs. 73.50 lacs has been made. The total works completed upto March, 1995 have already costed the Haryana Urban Development Authority to the tune of Rs. 73.70 crores and another sum of Rs. 6.32 crores is being invested by it. The official respondents have also given out that failure of the coloniser like the petitioner has prevented the completion of various other works and in the act due to such failure other segments of the population also suffer. This shows that the petitioner and similarly situated persons are responsible for thwarting development works. It appears to us that after having collected money from the purchasers the petitioner wants to usurp the same which it was bound to pay to the Haryana Urban Development Authority for the purpose of the external development works. This conduct of the, petitioner is an additional ground for our refusal to exercise writ jurisdiction in a matter like the present one.

30. The challenge to the charging of interest/penal interest also deserves to be rejected. The provisions of Usurious Loans Act, 1918 and the Interest Act, 1978 have no relevance to the case of the petitioner. The provisions of 1918 Act are applicable to the suits filed for recovery of loans made after the commencement of the said Act and it has nothing to do with payment of interest by the person who voluntarily undertakes to do so to the public authority in the event of his/its failure to pay the dues. Likewise the provisions of the Interest Act, 1978 are applicable only in respect of the proceedings covered by this Act. The Act of 1978 applies to the recoveries of debts or damages. The Statue restricts the liability of a person who pays interest at a particular rate. The provisions of "1978 Act" have been considered by this Court in *Vijay Kumar and Ors. v. State of Haryana and Ors.* 1996 (2) A.I.J. 252. That case involved adjudication of the claim of a liquor licensee who claimed interest on the amount deposited by it as a part of the price of the liquor licence. This Court rejected the contention of the petitioner that they were not liable to pay interest in view of the provisions contained in Sections 3 and 4 of 1978 Act. In this case, the petitioner is required to pay interest due to its failure to pay instalment of the external development charges and we do not find any illegality in the charging of penal interest from the petitioner particularly when the petitioner voluntarily agreed to pay the same.

31. The argument of Shri Chhibbar that the rate of external development charges is highly excessive and unreasonable and, therefore, it should be declared unconstitutional has no substance whatsoever. The petitioner has done nothing else than to make a bald statement that the amount of external development charges claimed from it are excessive and unreasonable. Before filing the writ petition, the petitioner did not question the rate of the external development charges fixed by the respondent No. 2. In fact, the petitioner gave unequivocal undertaking to pay external development charges at the rates fixed by the respondent No. 2. Failure of the petitioner to place any material before the Court to show that external development charges being collected from it are excessive or arbitrary is sufficient to negative its challenge to the rate of the external development charges because it is a settled principle of law that a person who invokes Article 14 of the Constitution of India on the ground of unreasonableness of the State action is under a duty to place sufficient material before the Court to prima facie prove the charge of discrimination or arbitrariness. The petitioner has neither pleaded nor has it produced any evidence before the Court to show that the rate of external development charges claimed from it are higher than those claimed from other colonisers of the area. Thus, we do not find any merit in the argument of Shri Chhibbar that the rate of external development charges fixed by the respondent No. 2 is contrary to Article 14 of the Constitution of India.

32. In view of the above discussion, C.W.P. No. 2890 of 1995 is liable to be dismissed.

33. The writ petition filed by the Residents Welfare Association is liable to be declared as infructuous in view of the fact that the main relief sought by the

petitioner-association is for sustaining the order dated 20.1.1995. Regarding other reliefs, the statement made by the respondent No. 2 in the reply to CM. No. 11615 of 1996 (filed in C.W.P. No. 2890 of 1995) is sufficient to meet the grievance made by the petitioner-association. However, in regard to other reliefs, individual resident may make representation to the respondent No. 2 or approach appropriate civil Court for grant of relief.

34. For the reasons mentioned above, the writ petitions are dismissed. Liberty is, however, given to individual residents of the Garden Estate to seek appropriate relief by making representation to the respondent No. 2 (Director, Town & Country Planning Haryana) or by invoking jurisdiction of the civil Court or any other competent forum.