(2012) 02 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 9029 of 2009 (O and M)

Gurcharan Singh APPELLANT

Vs

Union Territory Chandigarh and others RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 1(2), 22(2), 226, 227, 228
Constitution of India, 1950 — Article 265
Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 2(15), 2(4), 3, 6
Punjab General Sales Tax Act, 1948 — Section 5
Punjab Municipal Corporation Act, 1976 — Section 2, 3(1), 5(2), 7, 7A

Citation : (2012) 3 RCR(Civil) 387

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of aforementioned three writ petitions i.e. CWP Nos.9029 of 2009; 9030 of 2009 & 12184 of 2009, wherein the questions of law and facts are identical.

2. The petitioners in all three writ petitions are either the purchasers or the original allottees of Shop-cum-Flats (SCFs) situated at Motor Market, Manimajra, Chandigarh. However, it is asserted by the petitioner in CWP No.12184 of 2009 that the site allotted to the petitioner is a commercial site and not a Shop-cum-Flat (SCF).

3. The petitioners have sought quashing of the notices served upon them u/s 8A of the Capital of Punjab (Development & Regulation) Act, 1952 (for short ''the Act'') alleging misuse of the premises owned by the petitioners. It is alleged in the notices that the sites have been allotted to the petitioner for use as Shop-cum-Flats (SCFs), whereas the petitioners have started running the first and second floor of such building for guest houses/lodges, which is not permissible. It

is the stand of the administration that until and unless the petitioners seek firstly conversion of the first and second floor portion for use as for the office purposes and secondly to seek permission to use the office portion for commercial purpose i.e. for tourist lodges and guest houses, the petitioners are violating the provisions of the Act and the building is liable to be resumed.

4. The petitioners have alleged that the Notified Area Committee for the area of Manimajra, within the territorial area of Chandigarh was constituted under the provisions of the Punjab Municipal Act, 1911 (for short ''the Municipal Act''). Such Committee allotted sites in the year 1978 to the petitioners. The petitioner in CWP No.9029 of 2009 was allotted Shop-cum-Flat (SCF) site No.304, petitioner in CWP No.9030 of 2009 was allotted Shop-cum-Flat (SCF) site No.305, whereas the description of site of petitioner in CWP No.12184 of 2009 is site No.222. The allotment letter does not specify that the site is meant for Shop-cum-Flat, but the trade mentioned is other than motor trade. mentioned is other than motor trade. All sites were measuring 16''-6'' x 60''-0" i.e. 110 sq. yards

5. Ms. Lisa Gill, representing the Municipal Corporation, has produced the lay out plan of the area, wherein the row of the buildings where site No.222 is situated is described as Shop-cum-Flat (SCF). There is another row at the back of the said row, where the site Nos.304 & 305 are located. Such sites are also described as sites for Shop-cum-Flats. It is pointed out that the building plan of site No.222 was sanctioned as Shop-cum-Flat (SCF) specifically wherein the first and second floors are meant for residential purposes. It is also pointed out that earlier the said petitioner has filed a writ petition before this Court along-with other allottees bearing CWP No.11953 of 2004 (Annexure R-3/2), wherein the petitioners have described the site as SCF No.222. This Court has permitted the allottees to file objections to the show cause notices dated 10.08.2004. In the said objections, the aforesaid writ petitioner again described the site as Shop-cum-Flat (SCF). It is also pointed out that the petitioner filed an appeal against the order passed by the Estate Officer deciding the objections on 25.11.2004. In the said appeal, the petitioner has again described the site as Shop-cum-Flat (SCF). The appeal was dismissed on 02.04.2008. It is, thus, contended on behalf of the respondents that omission of the words "Shop-cum-Flat (SCF)" in the letter of allotment is an inadvertent mistake, as such allotment is of Shop-cum-Flat (SCF) and the parties have understood the same from the date of allotment. The entire record reflects the said site, is a site meant and allotted for use as Shop-cum-Flat (SCF).

6. After going through the documents on record and the respective contentions, we find that the stand of the petitioners that the site No. 222 allotted to the said petitioner is not a Shop-cum-Flat (SCF) site, is not tenable. In fact, an inadvertent mistake has crept in the letter of allotment, wherein the description Shop-cum-Flat (SCF) was omitted by the person filling up the details in hand.

7. Coming to the substantive arguments, the stand of the petitioners is that the sites allotted to the petitioners are governed by the provisions of the Municipal

Act including the subsequent extension of the Punjab Municipal Corporation Act, 1976 to Chandigarh vide notification dated 27th July, 1994 issued in terms of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 (Act No.45 of 1994) (for short "the Municipal Corporation Act"). The said notification reads as under:

No.4628 UTFI(4)-94/10249 -In exercise of the powers conferred by sub-section (1) of Section 3 of the Punjab Municipal Corporation Act, 1976 as extended by the Punjab Municipal Corporation Law (Extension to Chandigarh) Ordinance, 1994, the Administrator, Union Territory, Chandigarh, is pleased to specify the area mentioned in the Schedule to be the Municipal Area of the Corporation of the Chandigarh.

SCHEDULE

1. City of Chandigarh comprising the area of the site of the Capital of Punjab as notified by the Government of Punjab before the 1st November, 1966 and such other area as notified by the Administrator, Union Territory, Chandigarh, thereafter.

2. Notified Area Committee, Manimajra:

East: -Starting from South-Eastern corner of Khasra No.126/12 of Village Manimajra along the common boundary line of Village Mauli-Jagran, (Union Territory, Chandigarh) and Villages Budhan Pur, Dhillan, Judian and Bhainsa Tibba up to North-Eastern corner of Khasra No.54/27.

North and West: -Starting from North-Eastern corner of Khasra No.54/27 along the Southern and Eastern side of Khasra No.138/1 i.e. railway line up to South-Western corner of Khasra No.103/23.

South: -Starting from South-Western corner of Khasra No.103/23 along the Southern side of Khasra No.103/23 / 24/124/2 and Southern side of Khasra No.386 and Southern side of Khasra No.109/4/2. 5/1, 5/2 and No.110/1 to North-Eastern corner of Khasra No.228 from North-Western of Khasra No.228 to South-Western corner of this very Khasra No. and from South-Western corner of Khasra No.228 to South-Eastern corner of Khasra No.126/12 along Western and Southern side of Khasra No.126 and 126/12, respectively,

3. Village

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8. The argument of the learned counsel for the petitioners is that the Municipal Corporation Act does not provide for the condition for the use of the building, therefore, the allegation that the petitioners are misusing the premises is not tenable. It is argued that the Administration or the Municipal Corporation cannot claim conversion charges, as the provisions of the Act are not applicable to the sites in question. It is also argued that even if the said Act is applicable, the conversion fee is claimed u/s 7 of the Act i.e. of levy of tax or fee for providing

amenities. Since no amenity has been provided or even contemplated to be provided after conversion of the flat portion for the commercial purpose, therefore, the Administration cannot claim conversion charges. It is also argued that the Section 7 of the Act does not provide any guideline as to when such tax or fee is to be levied nor there is any upper or lower limit of charge of tax or fee. Therefore, Section 7 of the Act suffers from the vice of excessive delegated legislation. The tax or fee can be levied only if a Statute is enacted in terms of Article 265 of the Constitution of India. Since the provisions of Section 7 are vague, undefined and without any guidelines, therefore, Section 7 suffers from the vice of illegality. Reliance is placed upon Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., and on Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, . It is also argued that in response to information sought under Right to Information Act, 2005, the petitioners have been informed that the conversion charges are transferred to the Consolidated Fund of India. Once the charges are transferred to the said fund, therefore, the levy is in the nature of tax and such levy cannot be left to be determined to subordinate legislation. Even if, it is treated to be fee, the element of quid pro con is not satisfied, as admittedly the respondents are not even suggesting to provide any services in lieu of levy of conversion charges.

9. On the other hand, learned counsel for the respondents has argued that the land over which motor market has been developed was forming part of Notified Area Committee of Manimajra after its acquisition for a public purpose under the Land Acquisition Act, 1894. The allotments were made by Notified Area Committee specifying the purpose for the use of the building. The building plans have been sanctioned specifying the ground floor to be used for the commercial purpose, whereas first and second floor are meant for use of the residential purpose. The allotment letter itself specifies that the construction will be governed by architectural control sheets, as fixed by the Chief Architect. Such architectural control sheets are prepared in terms of Rule 2(iv) of the Punjab Capital (Development and Regulation) Building Rules 1952 (for short the Building Rules). The territorial area of Municipal Corporation of Chandigarh was specified vide notification dated 27.7.1994 which notification included the area of motor market of the notified area committee as well. It is contended that the provisions of the Act were applicable prior to notification dated 27.07.1994. After the said date, the Act came to be extended over the Notified Area Committee specifically vide notification dated 27th July, 1994. The said notification reads as under:

No.4627 UTFI(4)-94/10255 -In exercise of the powers conferred by sub-section (2) of Section 1 of the Capital of Punjab (Development and Regulation) Act, 1952 as applicable to the Union Territory, Chandigarh, the Administrator, Union Territory, Chandigarh is pleased to notify the area mentioned in the schedule to be the area to which the provisions of the aforesaid Act of 1952 shall extend.

SCHEDULE

1. Notified Area Committee, Manimajra:

East: -Starting from South-Eastern corner of Khasra No.126/12 of Village Manimajra along the common boundary line of Village Mauli-Jagran, (Union Territory, Chandigarh) and Villages Budhan Pur, Dhillan, Judian and Bhainsa Tibba up to North-Eastern corner of Khasra No.54/27.

North and West: -Starting from North-Eastern corner of Khasra No.54/27 along the Southern and Eastern side of Khasra No.138/1 i.e. railway line up to South-Western corner of Khasra No.103/23.

South: -Starting from South-Western corner of Khasra No.103/23 along the Southern side of Khasra No.103/23 / 24/124/2 and Southern side of Khasra No.286 and Southern side of Khasra No.109/4/2. 5/1, 5/2 and 110/1, khasra No.139 part between South-Eastern corner of Khasra No.110/1 to North-Eastern corner of Khasra No.228 from North-Western of Khasra No.228 to South-Western corner of this very Khasra No. and from South-Western corner of Khasra No.228 to South-Eastern corner of Khasra No.126/12 along Western and Southern side of Khasra No.126 and 126/12, respectively,

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10. In view of the above notification, the area of the motor market of the notified area committee is also now governed by the provisions of the Act. It is pointed out that the Act was enacted on the lines of the Municipal Bye-Laws so long as properly constituted local body does not take over the administration of city, as mentioned in the Objects of such enactment. Therefore, while extending the provisions of the Act, the provisions in contained in Sections 226 to 275 appearing in Chapter XIII; Sections 286 to 312 appearing in Chapter XV pertaining to Sanitation and Public Health and Sections 343 to 346 appearing in Chapter XVIII of Markets, Slaughter- Houses, Trades and Occupations particularly dealing with the user of the premises were omitted in its application to the Chandigarh. The Municipal Corporation Act also incorporated Section 424A, whereby the provisions of the Act were applied to the entire area of Chandigarh. The relevant statutory provisions of the Act and the Municipal Corporation Act read as under:

Capital of Punjab (Development and Regulation) Act, 1952

1. Short, title, extent and commencement. -(1) This Act may be called the Capital of Punjab (Development and Regulation) Act, 1952.

(2) It extends to the City of Chandigarh which shall comprise the areas of the site of the Capital of Punjab as notified by the Government of Punjab before the Ist November, 1966 and to such areas as may be notified by the Central Government from time to time.

(3) It shall come into force at once.

2. Definitions - In this Act, unless the context otherwise requires, -xxx xxx xxx

(b) "amenity" includes roads, water-supply, street, lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh.

3. Power of Central Government in respect of transfer of land and building in Chandigarh. - (1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

(2) The consideration money for any transfer under sub-section (1) shall be paid to the Central Government in such manner and in such instalments and at such rate of interest as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government.

4. Power to issue direction in respect of erection of building. - (1) For the purpose of proper planning or development of Chandigarh, the Central Government or the Chief Administrator may issue such directions, as may he considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof, regarding any one or more of the following matters, namely:-

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(d) prohibition regarding erection of shops, workshops, ware-houses, factories or buildings of a specified architectural character or buildings designed for particular purposes in any locality;

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(f) restrictions regarding the use of site for purposes other than erection of buildings.

5. Bar to erection of buildings in contravention of building rules - (1) No person shall erect or occupy any building at Chandigarh in contravention of any building rules made under sub-section (2).

(2) The Central Government may, by notification in the official Gazette, make rules to regulate the erection of buildings and such rules may provide for all or any of the following matters, namely:

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(f) the minimum dimensions of rooms, intended for use as living rooms, sleeping rooms, or rooms for the use of cattle;

(g) the ventilation of'' rooms, the position and dimensions of'' rooms, or projections beyond the outer faces of external walls of a building and of doors or windows;

(h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings;

7. Levy of fee or tax for amenities - (1) For the. purpose of providing maintaining or continuing any amenity at Chandigarh the Central Government may levy such fees or taxes as it may consider necessary (which shall be in addition to any fee or tax for the time being leviable under any other law) in respect of any site or building on the transferee or occupier thereof.

(2) If the Central Government considers it necessary or expedient so to do having regard to the fact that the transferee or occupier is a religious or charitable institution or that he does not enjoy the amenity for which any fee or tax is levied, the Central Government may, by general or special order, exempt wholly or partly any class of such transferees or occupiers from the payment of fees or taxes levied under sub-section (1). 7A. Power to apply certain provisions of Punjab Act 42 of 1976 to Chandigarh: (1)The Chief Administrator may, from time to time by notification in the official gazette, and with the previous approval of the Administrator of the Union Territory of Chandigarh, apply to Chandigarh or any part thereof with such adaptations and modifications not affecting the substance as may be specified in the notification, all or any of the provisions of the Punjab Municipal Corporation Act, 1976 (Punjab Act 42 of 1976), in so far as such provisions are applicable to Chandigarh.

(2) While exercising the powers or performing the functions under the provisions of the Punjab Municipal Corporation Act, 1976 (Punjab. Act 42 of 1976) applied to Chandigarh by a notification under Sub-section (1), the Chief Administrator shall be subject to the control of the Administrator and not to that of the Commissioner or Deputy Commissioner.

(3) Notwithstanding the substitution of Section 7-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as substituted section), the substituted section shall not -

(a) affect the previous operation of the substituted section or anything duly done or suffered thereunder; or

(b) affect any right, privilege obligation or liability acquired, accrued or incurred under the substituted section; or

(c) affect any penalty, forfeiture, punishment incurred in respect of any offence committed against substituted section; affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may he instituted, continued or enforced, and any such privilege, forfeiture or punishment may he imposed and if this substitution has not been made.]

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22. Power to make rules. - (1) The Central Govermnent may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) the terms and conditions on which any land or building may be transferred by the Central Government under this Act;

(b) the manner in which consideration money for any transfer may be paid;

(c) the rate of interest payable, and the procedure for payment of instalments, interest, fees, rents or other dues payable under this Act;

(d) the terms and conditions under which the transfer of any right in any sit or building may be permitted;

(e) erection of any building or the use of any site;

(f) levy of fees or taxes u/s 7;

(g) the terms and conditions for the breach of which any site or building may be resumed;

(h) the conditions with regard to the buildings to be erected on sites transferred under this Act;

(i) the form of notice and the manner in which notices may be served;

(j) the form and manner in which appeals and application under this Act may be filed and the court fees leviable on such appeals and applications;

(k) the matters referred to in sub-section (2) of section 5.

(l) any other matter which has to be or may be prescribed.

The Punjab Municipal Corporation Act, 1976

3. (1) for the purposes of this Act, the Administrator shall, by notification, specify such territorial area of the Union Territory of Chandigarh to be the municipal area of the Municipal Corporation of Chandigarh.

(2) The Administrator may, from time to time, after consultation with the Corporation, by notification, alter the limit specified under sub-section (1) so as to include therein or to exclude therefrom such area as may be specified in the

notification. The Corporation shall send its views to the Administrator within a period of three months of the date on which it is first consulted.

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424A. Notwithstanding anything contained in this Act, the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act XXVII of 1952) and of the Punjab New Capital (Periphery) Control Act, 1952 (Punjab Act 1 of 1952) and the rules, regulations, bye-laws, notifications, orders, scheme, form or notice, made thereunder shall continue to be applicable in relation to the development and regulation of the Union Territory of Chandigarh as immediately before the commencement of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994.

11. It is also argued that the conversion charges are not being claimed as an amenities. The expression amenity has been defined u/s 2(b) of the Act. Such charges have not levied u/s 7 of the Act. The conversion charges are being claimed as a part of charges for transfer by sale or lease in terms of Section 3; the user of the building as contemplated under Sections 4 & 5 and in exercise of the powers to frame Rules to give effect to the said provisions u/s 22 of the Act. It is, thus, contended that in terms of Section 424A of the Municipal Act, the area of notified area committee is governed and regulated by the provisions of the Act. The said area is also governed by the Act, in terms of the notification reproduced above. Therefore, the erstwhile area of notified committee came at par with rest of the city of Chandigarh, where both the Act and the Municipal Corporation Act are applicable. The provisions of the Act and the Municipal Corporation Act have been enacted to achieve distinct purpose. It is pointed out that the question of applicability of the Act; Municipal Act and the Punjab New Capital (Periphery) Control Act, 1952 was examined by this Court in a judgment rendered in CWP No.16970 of 2007 titled "Paramjeet Singh Rai Vs. Union Territory, Chandigarh and others" decided on 04.03.2010, wherein one of us (Hemant Gupta, J.) was a member. Therefore, the Act and the Municipal CorporationAct can co-exist over the area in question. Under the Act, the Administration is competent to levy conversion and user charges as part of the terms of sale under Sections 4 & 5 of the Act.

12. We have heard learned counsel for the parties at length. We find that the following questions arise for our consideration:

1. Whether the provisions of Capital of Punjab (Development & Regulation) Act, 1952 are applicable to the area of motor market of the notified area committee consequent to the notification dated 27.7.1994?

2. Whether the conversion charges claimed by the Administration to permit the change of user of the flat (residential) portion to office is a part of terms of sale or lease u/s 3 or its user under Sections 4 & 5 of the Act?

3. Whether the conversion charges are part of provision of amenity contemplated

u/s 7 of the Act and whether such provisions suffer from the vice of excessive delegated legislation and thus, liable to be struck down?

Question No.1

In Paramjeet Singh Rai''s case (supra), the issue was applicability of Punjab New Capital (Periphery) Control Act, 1952 to the areas not governed by the Capital of Punjab (Development & Regulation) Act, 1952. The territorial area of Municipal Corporation, Chandigarh was specified vide notification dated 27.07.1994, when part of notified area committee, Manimajra ceased to exist. The challenge to the territorial area of Municipal Corporation has remained unsuccessful in a judgment reported as Bhupinder Singh and others Vs. Union of India and others (1997) PLR 334. In view of the said judgment, the Municipal Corporation Act containing Section 424A came to be extended to the notified area committee including motor market. Section 424A contemplates that notwithstanding anything contained in Municipal Corporation Act, the provisions of the Act and of the Punjab New Capital (Periphery) Control Act, 1952 and the rules, regulations, bye-laws, notifications, orders, scheme, form or notice, made thereunder shall continue to be applicable in relation to the development and regulation commencement of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994.

Therefore, from 27th July, 1994, both the Act and the Municipal Corporation Act came into operation in the area of the Motor Market, the subject matter of the present writ petitions.

Question No.2

Section 3 of the Act empowers the Central Government to frame Rules for sale, lease or transfer of any land and building belonging to Government. Section 22(2)(a)(b)(c)&(d) empowers the Government to frame rules in terms of such provisions of the Act. The Chandigarh (Sale of Sites and Building) Rules, 1960 (for short ''1960 Rules'') have been enacted contemplating transfer of the property on freehold basis, whereas Chandigarh Lease Hold of Sites and Building Rules, 1973 have been enacted contemplating transfer of land on leasehold basis. Section 4 of the Act empowers the Central Government or the Chief Administrator to issue directions for the purpose of proper planning or development of Chandigarh in respect of any site or building either generally for the whole of Chandigarh or for any particular locality thereof. Section 4(f) of the Act deals with restrictions regarding the use of site for purposes other than erection of buildings. Whereas, Section 5 of the Act prohibits the erection or occupation of any building constructed in contravention of Building Rules contemplated to be provided under sub-Section (2). Under sub-section (2), the Building Rules have been framed. The Building Rules defines building to mean any construction or part of construction in Chandigarh, transferred by the Central Government u/s 3 of the Act, intended to be used for residential, commercial, industrial or other purposes. The ''class of buildings'' has been defined in Rule

2(xv) of Building Rules to mean residential building, commercial building, warehouse and industrial building or public building. The ''commercial building'' has been defined in clause 2(xvi) to mean a building used or constructed or adapted to be used wholly or principally for shops, offices, banks or other similar purposes or for industries other than factories and shall include motor garage, where general repairs are done. The "residential building" is defined in clause (xli) to mean a building used or constructed or adapted to be used wholly or principally for human habitation and includes all garages, stables, or other out-building appurtenant thereto. The ''warehouse and industrial building'' shall include a factory, a workshop or a motor garage. The definition of ''public building'' does not arise for consideration in the present case. Rule 3 enjoins an obligation on a person, who erects or re-erects or occupies any building shall comply with these rules and in addition shall comply with the restrictions shown on the Zoning plans. A building in special area in Schedule I is to comply with the restrictions given in the "Architectural Control Sheet" and any other directions that may be issued by the Chief Administrator. Rule 9 of the 1960 Rules restricts the transferee to use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings, the transferee shall not carry on any trade or employ any industry other than that specified by the Estate Officer. To permit the general trade, semi-industrial trade and special trade, sub-Rule (3) has been amended in the year 2002. The rule prior to amendment and after such amendment read as under:

Before amendment:

9. Use of Site or Building - (Section 22(2)(c) - The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings the transferee shall not carry on any trade or employ any industry other than that specified by the Estate Officer.

(2) Instead of specifying any particular trade or industry, the Estate Officer may specify that the transferee shall not carry on any trade or employ any industry other than General Trade, Semi Industrial Trade or Special Trade.

The following Sub Rule 3 and the proviso stands inserted to Sub-Rule 3 of Rule 9 vide notification dated 5.6.2002:

(3) The expression "General Trade", "Semi-industrial Trade", "Special Trade", "New General Trade" and "New Special Trade" shall mean one or more of the trades respectively mentioned in Part A, B and C of the Schedule I and Parts A and B of the Schedule II, annexed to these rules and shall include any other trade which is not so mentioned provided that such other trade is similar to and carried on in the same fashion as mentioned in the respective part of these Schedules;

Provided that the Chief Administrator, may, in the case of residential buildings, for reasons to be recorded in writing and with the prior approval of the Administrator, Union Territory, Chandigarh, allow such a building or portion thereof to be used for a purpose other than that for which the site was allotted subject to such conditions as he may by an order specify in this behalf:

Provided further that trades shall be classified in two categories as indicated in Schedule (II) annexed to these rules and conversion from a particular trade in Schedule ''I'' to that in Schedule ''II'' shall be allowed on payment of conversion charges as determined by the Chandigarh Administrator."

13. Similar provisions exist in the Lease Hold of Sites and Building Rules, 1973, as contained in Rule 17. Such rules are pari materia to 1960 Rules. Therefore, the same are not reproduced for the sake of brevity.

14. In terms of Section 3 of the Act, Building Rules have been framed which contemplate ''zoning plan'' defining the layout of any numbered sector of the Master Plan of Chandigarh showing the streets, boundaries of CWP No.9029 of 2009, 17 CWP No.9030 of 2009 & CWP No.12184 of 2009 building plots etc.; ''Architectural Control Sheets'' to be observed in the special areas; ''Frame Conrol Area'' to mean the area in the Zoning Plan; and also the ''Class of building'' to mean a residential building, commercial building, warehouse and industrial building and public building. The building plans are approved under such Building Rules. The permission to occupy on construction of a building in terms of building plan is also granted in the aforesaid Rules.

15. On the other hand, 1960 Rules deal with sale of plots by auction or allotment and also restrict the use of such site and building in terms of Rule 9. The source of power of Rule 9 is Section 22(a)(d) & (e) and Section 4(f) of the Act. Once, 1960 Rules empowers the Administration to specify the use of the building, the permission to change the specified use is ancillary and supplementary to such Rule only. Therefore, the claim of conversion fee is a claim relating to the use of the building referred to in the aforesaid statutory provisions and are not referable to Section 7 of the Act, as contended by the petitioner. We may record that there is no challenge to the framing of Rule 9 restricting the use of a building in a particular manner or Section 4 of the Act, empowering the Chief Administrator to issue directions in respect of use of the site. Therefore, we do not find any merit in the argument raised by the learned counsel for the petitioners that the conversion fee has been levied u/s 7 of the Act. In fact, the conversion fee is a condition precedent for term ''change of use'' as contemplated under Rule 9 of 1960 Rules or Rule 17 of the Lease Hold of Sites and Building Rules, 1973.

Question No.3

Section 7 of the Act deals with levy of fee or taxes for the purpose of providing, maintaining or continuing any amenity at Chandigarh. The expression "amenity" is defined u/s 2(b) of the Act. It includes roads, water-supply, street, lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh. The charges claimed by the

Administration for conversion of residential portion of the building for the purpose of use as commercial or for the purpose of office, does not deal with any amenity. The condition of use of any site or building for a specific purpose is not an amenity as defined under the Act. Therefore, the amenities within the scope of Section 7 of the Act, does not include the charges for the allowing the change of use from residential to commercial and as commercial for the use of tourist lodge etc.

16. Learned counsel for the petitioners referred to the various judgments to contend that the conversion fee claimed from the petitioners is an amenity u/s 7 without any guideline or limitation. Thus, it is a case of excessive delegated legislation. Reliance is placed upon M/s Devi Das Gopal Krishnan etc. (supra) wherein uncontrolled power given to the provincial Government to levy tax in the absence of any guidelines was found to be ultra vires. It was observed as under:

16. u/s 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the provincial government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct. Under that section, the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other provisions of the Act....no other provision was brought to our notice. The argument of the learned counsel that such a policy could be gathered from the constitutional provisions cannot be accepted, for, if accepted, it would destroy the doctrine of excessive delegation. It would also sanction conferment of power by Legislature on the executive Government without laying down any guidelines in the Act. The minimum we expect of the Legislature is to lay down in the Act conferring such a power of fixation of rates clear legislative policy or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that Section 5 of the said Act, as it stood before the amendment, was void."

In Bimal Chandra Banerjee (supra) it was observed as under:

18. No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made specially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be trangressed by the rule-making authority. A rule making authority has no plenary power. It has to act within the limits of the power granted to it.

In Ahmedabad Urban Development Authority (supra), it has been held to the following effect:

7. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter, it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for

imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power...."

17. We need not examine the said issue, as we have found that the levy of conversion fee is not claimed in exercise of the powers u/s 7, but is in exercise of powers conferred under Sections 3, 4 & 5 of the Act read with Building Rules and 1960 Rules framed in exercise of the rule making power conferred u/s 22 of the Act.

18. In view of the findings recorded above, we do not find any merit in the present writ petitions. Consequently, all the petitions are dismissed with liberty to the petitioners to seek conversion of the use of buildings in terms of the scheme framed under the Act.

