

(2003) 03 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17529 of 1999

The Indraprastha Colony Plot Holders Association (Regd) APPELLANT
Vs

The State of Haryana, The Haryana Urban Development Authority, Town and Country Planning, Chief Administrator, Faridabad Complex Administration, District Town Planner, Swatantra Land and Finance Pvt. Ltd., Shri V.K. Madan, Shri A.P. Nangia and Shri Ajay Madan RESPONDENT

Date of Decision : 14-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 15, 23, 8
Punjab Gram Panchayat Act, 1952 — Section 22

Citation : (2003) 134 PLR 615 : (2003) 3 RCR(Civil) 663

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Rajbir Sehrawat, Deputy Advocate General, Rajiv Atma Ram and Baljinder Singh, for the Appellant; Ashok Aggarwal and J.S. Sidhu, for respondents Nos. 5, 6 and 8, M.L. Sarin and Sweena Pannu, for the Respondents Nos. 10, 11, 17 and 21, for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—The petitioner Indraprastha Colony Plot Holders Association (hereinafter referred to as the "petitioner-association") claiming itself to be an association of about 400 plots holders has filed the present petition under Article 226 of the Constitution of India. The prayer made in the petition is for the issuance of a writ in the nature of mandamus directing respondent No. 1 to 4 to accord the benefits of Section 8 of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the "Act") to the petitioner. An additional prayer has been made for the issuance of a writ in the nature of certiorari for quashing exemption orders dated August 30, 1985 and November 20, 1992 issued by the respondents. Still further, a prayer has been made for

restraining the respondents No. 1 to 4 from granting a completion certificate to respondent No. 5 in respect of Indraprastha Colony.

2. The necessary facts may be noticed as under:

It has been claimed by the petitioner-association that it has 400 members who were plot holders and is a registered association under the Societies Registration act vide Registration Certificate dated September 29, 1971 Annexure (P/1). It has further been claimed by the petitioner-association that it jointly owns approximately 48 acres of land known as Indraprastha Colony in village Itmadpur in District Faridabad in the State of Haryana. The writ petition has been filed by the petitioner-association through Shri R.C. Khanna, the then President of the petitioner-association, who is stated to have since died, on the authority of a resolution dated March 4, 1997 (Annexure P/2).

3. As per the averments in the writ petition, respondent No. 5 -M/s. Swatantra Land & Finance Pvt. Ltd. (hereinafter referred to as the "Colonizer-Company") in the year 1962-63 advertised that they had acquired land measuring about 100 acres for the development of a Colony known as "Indraprastha Colony" adjacent to Delhi in village Itmadpur (presently falling within District Faridabad). The aforesaid advertisement was repeated by the Colonizer-Company in the year 1965-67. A copy of the aforesaid advertisement appearing in the Hindustan Times has been appended as Annexure P/3 with the present petition. As per the aforesaid advertisement tarred roads sweet water, tubewells with electric connection, sewage, drainage etc. were to be available to the plot holders. It is claimed by the petitioner-association that the price of the plots varied from Rs. 17/- to Rs. 50/- per sq. yards as per the assurance given by the Colonizer-Company. The petitioner-association claims that these plots were "purchased by the petitioner against a well-defined contract and all the payment terms were covered with firm receipts. The rates of plots varied according to category, location at the time of booking. The petitioner duly completed all the formalities including payment of all instalments within the time period as specified in the contract." A photocopy of one such application along with payment receipt in favour of one Shri Pushpa Khanna has been appended as Annexure P/4 with the present petition.

4. It is further claimed by the petitioner-association that it has paid the entire price of the plots with a view to construct their houses but they were misled by the Colonizer-Company from time to time. It is further claimed that in the year 1967 the Colonizer-Company by their letter dated January 7, 1967 called upon all the plot holders to make an extra payment of Rs. 6/- per sq. yard for additional external development charges. The petitioner-association further claims that the plot holders duly complied with the new terms and conditions although it is stated that "it was not a part and parcel of the original contract as envisaged at the out-set. Till today despite making the entire payment to the Colonizer-Company, the petitioner has not received the possession of even a single plot of land for the last 30 years." A document showing the extent of

payment by some of the individual plot holders is annexed as Annexure P/5 with the petition.

5. In the year 1963 an enactment known as The Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter called the "1963 Act") came to be enacted. After the enactment of the aforesaid 1963 Act, the Colonizer-Company was required to seek permission and clearances as required under the enactment. The petitioner-association has averred that the Colonizer took steps under the aforesaid enactment for the grant of licences etc.

6. In the year 1971, another enactment, namely, Haryana Restriction on Development and Regulation of Colonies Act, 1971 (hereinafter referred as the "1971 Act") came to be enacted by the State of Haryana. After the enforcement of 1971 Act, the Colonizer-Company was required by the provisions of aforesaid Act to get the requisite clearance, permission and approval under the aforesaid enactment. The Colonizer-Company accordingly moved the competent authority under the 1971 Act for granting the requisite clearance and approval.

7. Ultimately, in the year 1975, the Haryana Development and Regulations of Urban Areas Act, 1975 (hereinafter referred to as the "Act") was enacted by the State of Haryana. it is the case of the petitioner-association that after the enforcement of 1971 Act the Colonizer-Company applied for exemption of the aforesaid colony under Sections 9 and 23 of the Act. Ultimately on August 30, 1985 the State Government of Haryana granted conditional exemption to the Colonizer for setting up a colony. The aforesaid exemption was granted to the Colonizer-Company upon certain terms and conditions mentioned therein. A copy of the aforesaid exemption order dated August 30, 1985 in favour of the Colonizer-Company issued by the State Government of Haryana u/s 23 of the Act has been appended as Annexure P/6 with the present petition.

8. The petitioner-association has complained that the terms and conditions of 1985 exemption letter were not complied with by the Colonizer-Company but on the contrary in the year 1987 the aforesaid company demanded a higher amount from the plot holders and issued a revised contract to be signed by them. The aforesaid revised payment and contract took the petitioner completely by surprise. Accordingly in the year 1991 the petitioner-association made a complaint against the Colonizer-Company.

9. On November 20, 1992 a further exemption to the Colonizer-Company for an additional area of 3.31 acres for the development of the Colony was granted. In this manner, the total exempted area came to be 51.81 acres. The aforesaid exemption in the year 1992 was also granted upon certain terms and conditions. The aforesaid order for additional exemption dated November 20, 1992 has been appended as Annexure P/9 with the present petition.

10. The petitioner-association has further averred that the Colonizer-Company has failed to comply with the conditions stated in the exemption letters of 1985

and 1992 and has acted in collusion with the authorities to deny the plots in the said colony to the petitioner-association.

11. The petitioner-association made complaints to various authorities including the Chief Minister of Haryana. On August 9, 1993 the petitioner-association made another complaints addressed to respondent No. 1, namely, Secretary Department of Town and Country Planning, Haryana. In the aforesaid complaint also it was stated by the petitioner-association that exemption u/s 23 of 1975 Act being a serious matter and there being a violation of the aforesaid terms and conditions, the authorities were bound in law to take action in the matter u/s 8 of the 1975 Act. Similar complaints to various authorities are stated to have been made by the petitioner-association or some of its office bearers.

12. Thereafter a Civil Writ Petition was filed before the Delhi High Court being C.W.P. No. 340 of 1999. However, the aforesaid writ petition came to be withdrawn by the petitioner-association on May 27, 1999 with a liberty to them to pursue the remedy in an appropriate forum in accordance with law. A copy of the order dated May 27, 1999 has been appended as Annexure P/20 to the present writ petition.

13. It is in these circumstances and with the background noticed above that the present writ petition has been filed by the petitioner-association with the prayers as noticed in the opening para of the judgment.

14. It may not be out of place to mention that when this writ petition was pending at the motion stage, the petitioner-association moved an application under Order 1 Rule 10 of the CPC for impleading such plot holders/owners who had subsequently acquired rights/plots in the Colony. Accordingly a list of 59 persons being new allottees was furnished by the petitioner-association and the aforesaid persons were ordered to be added as the respondents.

15. Upon a notice issued to the respondents (original as well as added), they have put in appearance. Separate written statements have been filed on behalf of each set of respondents. Whereas a joint written statement has been filed on behalf of respondents No. 1, 2 and 4 (official respondents), another joint written statement has been filed on behalf of respondents No. 5, 6 and 8 (the Colonizer-Company and Directors). Still further a separate written statement has been filed by the added respondents. All the respondents through the aforesaid separate written statements, respectively, have contested the claim made by the petitioner-association.

16. In the written statement filed on behalf of respondents No. 1, 2 and 4, the locus-standi of the petitioner-association to file and present writ petition has been questioned. It has been further stated by the aforesaid respondents that as per the record available in the office, the Colonizer-Company/respondent No. 5 had obtained a permission for developing a residential colony from Gram Panchayat under the provisions of Section 22 of the Gram Panchayat Act. Subsequently after the enactment of the Punjab Scheduled Roads and Controlled

Areas Restriction of Unregulated Development Act, 1963, the Colonizer-Company applied for permission to develop a residential colony for an area of 100 acres. An amount of Rs. 20,000/- at the rate of 5 paise per sq. yard was deposited as scrutiny fee and Rs. 30,000/- was deposited on account of external services for the said land. After examining the matter and after getting all the formalities completed, a layout plan of 62.2 acres was approved by respondent No. 2 subject to fulfilment of conditions as detailed in the letter dated April 11, 1969. The official respondents have stated that the aforesaid conditions were duly fulfilled by the Colonizer-Company. When the matter was under examination, a new enactment being 1971 Act came to be enforced. On the enforcement of 1971 Act, all the cases pertaining to licensing/exemption were covered under the aforesaid Act. Accordingly, the Colonizer-company was asked to apply under the provisions of the aforesaid act. The matter was again examined by the competent authority. The Colonizer-Company was granted a licence on November 6, 1973 in form LC-II. The aforesaid licence was further renewed upto December 31, 1974. However, when the case for the grant of necessary approval and sanction under the aforesaid 1971 Act was under consideration of the competent authority, then the aforesaid 1971 Act was declared as ultra vires by this court in the case of Jai Chand Bhagar v. State of Haryana (SWP 2419 and 3624 of 1973).

17. The official respondents have further maintained that after the aforesaid 1971 Act was declared ultra vires, the new legislation being the Haryana Development and Regulation of Urban Areas Act, 1975 came to be enacted. After the enactment of the aforesaid 1975 Act, the Colonizer-Company/respondent No. 5 was intimated vide office memo dated June 5, 1975 that the rules under the aforesaid enactment were being finalized and accordingly the Company could apply for exemption after the finalization of the rules. A formal application was received from respondent No. 5 by the competent authority on August 25, 1976 for exemption. However, it was felt that since the land sought to be developed by the Colonizer-Company was not in a compact block, therefore, vide a communication dated May 10, 1977, the exemption was declined to the Colonizer-Company.

18. Subsequently, a policy decision came to be taken at the State Government level that certain colonizers, who fulfilled the conditions as provided under the said policy decision, were eligible for the grant of exemption and, therefore after the policy decision, the matter for grant of exemption to the Colonizer-Company was re-examined that it was found that the company had a clear title for an area of 48 acres 3 kanals 4 marlas and, therefore, the Company was asked to submit certain additional documents. The Colonizer-Company duly complied with the aforesaid requirements. Ultimately on October 29, 1980 the Colonizer-Company was advised to furnish bank guarantee for Rs. 5,07,400/- which was duly furnished, by the Colonizer-Company.

19. However, in the year 1980 some acquisition was made by the department of Urban Estate for residential purposes. The aforesaid acquisition also included the

land of the Colonizer-Company. But subsequently, the matter was re-examined by the Government and it was decided to exempt the land measuring 48.4 acres owned by the Colonizer-Company. On the release of the land, respondent No. 5 (colonizer-company) was directed to submit the revised layout plan. After all the formalities were completed by the colonizer-company, ultimately an exemption order dated August 30, 1985 was issued by the State Government exempting 48.50 acres of land in exercise of the power u/s 23 of the Act, for setting up of a residential colony. The revised layout plan was submitted which was duly approved in the year 1987. Later another additional area being 3.31 acres was also exempted vide order dated November 20, 1992. Another revised layout plan was submitted by the Colonizer-Company. With regard to the external development charges, the official respondents have maintained that as per the terms and conditions of the exemption letter, the Colonizer-Company was required to deposit the external development charges at the rate of Rs. 1, 31, 300/- per gross acre being the tentative rate. Subsequently, the decision was taken at the State Government level to raise external development charges at the rate of Rs. 3.68 lacs per gross acre for Faridabad Town. All the Colonizers of Faridabad including respondent No. 5 i.e. Colonizer-Company were required to pay the aforesaid enhanced external development charges.

20. On these averments, the official respondents have maintained that they did not find any violation having ever been committed by the Colonizer Company and, therefore, the claim made by the petitioner-association with regard to the violation of the terms and conditions of the exemption letter was wholly without any basis. It is further stated by the aforesaid respondents that the Colonizer-Company had duly complied with all the terms and conditions of the aforesaid exemption orders.

21. In the separate detailed written statement filed on behalf of respondents No. 5, 6 and 8 i.e. on behalf of the Colonizer-Company and its Directors, the various pleas raised by the petitioner-association have been controverted. The claim of the petitioner-association has been vehemently contested. The Locus standi of the petitioner-association to file and maintain the present writ petition has again been questioned by these respondents. It has been maintained by these respondents that "there is no contract of booking with the association itself which was not even in existence when the said colony was sponsored or plots were booked. Therefore, There is no locus standi of the present petitioner-association to file the present writ petition"

22. Respondents No. 5, 6, and 8 (hereinafter called as the Colonizer-Company) have detailed out that initially the aforesaid respondents had planned for a Colony named as Indraprastha Colony over an area of approximately 100 acres in the year 1962. The only requirement at the time of floating the aforesaid scheme was to obtain a no objection certificate u/s 22(h) of the Punjab Gram Panchayat Act. The aforesaid necessary sanction was obtained by the Colonizer-Company from the Gram Panchayat of village Itmadpur on January 10, 1963.

23. The Colonizer-Company maintains that there were no rules or regulations framed for the development of the colony at the relevant time and, therefore, it was planned by the Company to provide for 75 percent covered area and 25 percent open area for roads, parks and other public utility services etc. The Colonizer-company was to provide only with regard to pucca internal roads, pucca storm water drains within the colony, electric poles and tube- wells etc. It was specifically stipulated that charges for internal sewerage, external development and other extra development works would be charged extra. A copy of the specimen application form issued in the year 1962-63 which was duly filled up by one applicant, namely, R.K. Sheopuri has been appended as Annexure R-5/1 with the written statement. The Colonizer-Company has claimed that it carried out all the development works in respect of the four amenities which it had promised to provide and the development of the same was at the finishing stages. However, when the aforesaid colony was almost completely laid out, the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963 came into force with effect from November 30, 1963. By the enforcement of aforesaid 1963 Act, there was a complete ban on carrying out development activities in the Colony.

24. The Colonizer-Company has further maintained that "on the enforcement of the Act, the further development works in the colony had to be suspended and the contracts already executed by the answering respondents with the intending purchasers stood frustrated by the operation of the new Law". The colonizer-Company has further stated that in pursuance to the new legislation introduced by the State Government, it had applied for the necessary permission to the State Government. Various queries and clarifications were sought by the official respondents which were duly replied.

25. On August 2, 1963, a part of the land planned for the aforesaid colony was acquired and was subsequently utilized by the State Government for the construction of the Gurgaon Canal Feeder.

26. The Colonizer-Company subsequently applied to the Senior town Planner(West), Department of Town and Country Planning, Punjab for the grant of necessary approvals. Since the rules with regard to necessary approvals etc. were still under consideration, therefore, it took quite some time for the Colonizer-Company to obtain necessary approvals from the competent authorities. Ultimately, the Company received a communication dated January 3, 1966 from the Director, Town and Country Planning, Punjab, informing them that the estimate for sewerage disposal etc. had been received from the Chief Engineer, Public Health, Patiala. The same was worked out at Rs. 5000/- per acre and Rs. 1200/- per acre for the facility of storm water drain outside the colony. Another communication dated May 16, 1966 was received by the Company from the Director, Town and Country Planning, Punjab asking the Colonizer-Company to furnish earnest money to meet the charges on account of scrutiny of plans and estimates in respect of the colony. The aforesaid communication has been

appended as Annexure R-5/5 with the written statement. The Company furnished a bank draft on June 17, 1966. Thereafter, various Colonizers reached to an agreement for the joint execution of the external development works through the State agency on a cost sharing basis. Upon this, the Director, Town and Country Planning, Haryana through a communication dated December 29, 1966 informed the Colonizer-Company that its share for the execution of the external development works came to Rs. 3, 09, 000/-. It was subsequently enhanced to Rs. 3,19,000/- Accordingly a demand at the rate of Rs. 6/- per square yard was raised in the year 1967 by the Colonizer-Company from the various persons who had booked the plot with it. The Company maintains that "those defaulters who were not interested in the purchase of the plots did not make the payment for the said demand and consequently their booking stood lapsed/terminated when they failed to make the payment inspite of repeated demands."

27. The matter remained still pending with the Government for approval of the Colony. On September 12, 1967, another notification was issued acquiring a part of the land forming part of the Colony. In this view of the matter, further consideration for the grant of approval by the Government was suspended.

28. On reconsideration of the matter by the Government, when the land forming part of the Colony came to be denotified by the State Government, the matter with regard to the grant of necessary sanctions/approvals came to be reviewed. The State Government required the Company to submit revised plans.

29. Ultimately on April 11, 1969 a permission letter was issued by the Director, Town and Country Planning, permitting the Colonizer-Company to set up the colony in the controlled area. The aforesaid permission letter dated April 11, 1969 has been appended as Annexure R-5/8 to the written statement of these respondents. The aforesaid approval/permission was granted by the Director, only to develop an area of 62.20 acres against the originally the proposed area of 100 acres. However, while granting the aforesaid permission, the total covered area was reduced to 58 percent while 42 percent open area was required to be left for roads, parks and other public utility services etc. The Colonizer-Company has maintained that on account of the reduced plotted area of the colony, a revision of the layout plan had to be resorted to since the plotted area was decreased and there was an increase in the area earmarked for the public utility services such as roads, footpaths, parks and community centre etc. Additionally the aforesaid permission letter dated April 11, 1969 also required the Colonizer-Company to furnish a bank guarantee equal to 25 percent of the estimated cost of any one of the development services, namely, roads, drainage, water supply, sewerage and electricity.

30. The aforesaid requirements were duly met by the said respondent through a communication dated August 1, 1969 and the requisite bank guarantee was duly submitted.

31. The Company has averred that on account of the said revision of the layout

plan of the Colony and the demand raised by the State Government for carrying out the development works, "an intimation was given by the answering respondent to all the intending purchasers who had booked the plots in the colony for selecting the alternative plots in the new layout and also to remit the extra charges claimed by the State Government. Some of the intending purchasers exercised their option and selected alternative plots while also agreeing to pay the extra demand of the Government. Those who were not interested to pursue their bookings, opted out of the scheme and thus, their bookings lapsed." It is further averred by the Company that some of the individuals who had exercised their option also ultimately failed to make the payment of the extra Government demand and thus, the booking of those defaulters also lapsed.

32. After the furnishing of the bank guarantee, the matter was under consideration of the competent authority for providing development works etc. It was at that stage that a new legislation known as "the Haryana Restrictions on Development and Regulations of Colonies Act, 1971" came to be enacted. On the promulgation of the aforesaid enactment, all the earlier steps, efforts and applications filled by the Company and approvals granted by the competent authority came to a standstill and the entire exercise for obtaining the necessary and requisite permissions had to be started de-novo by the Colonizer-Company under the 1971 Act. The Colonizer-Company again involved itself into the process of obtaining the requisite permission. The matter was still under consideration when the aforesaid 1971 Act was declared as ultra vires by this Court.

33. In the year 1975 a new legislation was introduced by the State Government of Haryana known as the Haryana Development and Regulation of Urban Areas Act of 1975. The Colonizer-Company again started pursuing the matter with the State Government for the grant of necessary exemption. The necessary applications were filed by the Company to the competent authorities. The colonizer-company received a memo dated May 10, 1977 through which it was informed that the necessary exemption had been declined to the Company. A representation was made by the Company for reconsideration of the matter. In the meanwhile the policy for the grant of exemption was revised and a policy decision was taken by the State Government to grant exemption to such colonizers which fell into the criteria formulated under the aforesaid policy. The official respondents required the colonizer-company to complete the necessary formalities. When the matter was under consideration then a part of the land again was sought to be acquired. The Colonizer-Company was advised by the official respondents not to proceed any further in the matter and not to furnish the bank guarantee, as originally asked for by them. However, subsequently the land came to be denotified.

34. After denotification of the land and finding a further progress in the grant of exemption, a fresh revised application form was circulated by the Colonizer-Company to the original intending plot purchasers wherein they were informed

with regard to the payment of external development charges as demanded by the Haryana Government. It was clearly intimated to all the original intending plot purchasers that those who were genuinely interested in the plots should submit the revised application form. A proforma of the revised application form circulated in the year 1982 and filled up by one R.K. Sheopuri dated February 24, 1982 has been appended as Annexure R-5/18 with the written statement.

35. After prolonged and persistent efforts made by the Company, finally the Colonizer-Company was granted the necessary exemption vide letter dated August 30, 1985. A copy of the aforesaid exemption order has been appended as Annexure R-5/19 with the written statement (same as Annexure P/6). Vide the aforesaid exemption order the necessary exemption u/s 23 of the Act was granted to the Colonizer-Company with regard to the area measuring 48.5 acres as against 62.20 acres originally granted under the 1963 Act. Certain other terms and conditions were imposed and a service charge at the rate of Rs. 1 per square yard of the total area of the Colony was levied. Additionally external development charges at the rate of Rs. 1,3,500 per gross acre were also required to be paid by the Company. A payment of cost of land to be transferred to the Irrigation Department was also required to be deposited.

36. Subsequently, an additional exemption order was passed on November 20, 1992 whereby an additional area measuring 3.31 acres was also exempted. In this matter the total exempted area came to be 51.81.81 acres.

37. In this view of the matter, the Colonizer Company maintains that a covered/plotted area of the colony which originally stood at 75 percent was reduced to 54.41 percent and the open area comprising of the road, footpaths and the parks and other common facilities was increased to 45.59 percent. It is the further case of the Colonizer-Company, that originally the area as proposed in the colony was 100 acres but the exemption was merely granted for 51.81 acre. In the addition thereof, the colonizer-company was further required to upgrade and make provision for such other additional facilities, which were not at all earlier provided in the original contracts. The details of such additional facilities have been enumerated in the written statement.

38. After receiving the aforesaid exemption u/s 23 of the Act, the Colonizer Company duly submitted the requisite demarcation plans/zoning plans which were finally approved by the official respondents on May 17, 1995.

39. On the basis of the aforesaid narration of facts, the Colonizer Company has maintained that after obtaining the approval/permission from the official respondents, originally in the year 1987, it had issued notices of demand dated August 26, 1987 to the persons who had made bookings of plots with it and all such persons who were really not keen or interested in the purchase of the plots in the Colony and had only blocked the bookings by payment of notional amounts, opted out of the said booking, choosing not to remit the extra payment demanded from them in the year 1987. A copy of the intimation letter/notice

dated August 26, 1987 issued by the Colonizer-Company to the intending purchasers has been appended as Annexure R-5/21 with the written statement. It is the case of these respondents that the aforesaid amount had been sought by them taking into consideration the demands raised by the Government and other incidental expenses thereto for extra development works.

40. It is further averred by the Colonizer-Company that the demand notice/intimation letter dated August 26, 1987 along with the revised application forms were sent to various applicants who had booked the plots with the Company but all the persons, who had been detailed out by the petitioner-association in the list Annexure P/5, opted "not to make payment and instead sent individual printed proforma replies" and a sample copy of the said reply by Shri R.K. Sheopuri dated October 6, 1987 has been appended as Annexure R-5/22 with the written statement. All the said persons refused to make the payment of the extra demand made by the Company on the basis of the demand raised by the State Government. Instead, the aforesaid persons demanded that the sale deeds be executed and vacant possession of the developed plots be delivered to them. The Colonizer-Company was clearly given a notice that on failing the aforesaid execution of the sale deeds and delivery of possession, they would be proceeded against in the court of law. The Company again replied to all such persons through a communication dated November 11, 1987. A copy of said letter dated November 11, 1987 has been appended as Annexure R-5/23 with the written statement. The Company reiterated its stand taken in the earlier demand notice Annexure-5/21.

41. It is further averred by the Colonizer-Company in the written statement that some of the intending purchasers who were not interested in the plots, demanded the refund of the amount which had been paid by them. The aforesaid amount was duly refunded. A copy of one refund receipt has been appended as Annexure R-5/24.

42. The Colonizer-Company has still further averred that vide communication dated December 18, 1991 (a copy whereof has been annexed as Annexure R-5/25) received from the Director, Town and Country Planning, Haryana, the external development charges were increased from Rs. 1,31,500 to Rs. 3,68,000/- per gross acre. It is stated that, still further, aforesaid external development charges were increased to Rs. 4,70,000/- per gross acre. It is maintained by the Colonizer-Company that they had already paid a sum of Rs. 323.17 lacs as external development charges to the State Government and since the aforesaid cost was to be shared by the intending purchasers and plot holders and therefore, the defaulters had actually forfeited their bookings and the Company was well within its rights to sell such plots whose bookings had lapsed or were cancelled.

43. Besides controverting the pleas raised by the petitioner-association on the merits of the controversy, the Colonizer-Company has also detailed out the various complaints filed by such persons individually who had booked the plots

with the Colonizer-company in the year 1962. Such complaints may be noticed as follows:

"(1) On a Complaint made by one of the defaulters in the year 1991 to the Director, Town and Country Planning, Haryana, a departmental inquiry is stated to have been conducted but no basis for taking any action was found.

(ii) One Agya Sehgal who is also a member of the petitioner-Association filed a complaint before the State Consumer Disputes Redressal Commission, Delhi which was dismissed vide order dated September 7, 1994. A copy of the aforesaid order passed by the State Commission has been appended as Annexure R-5/29 with the written statement.

(iii) In 1993 a complaint was made by the petitioner-association to the Registrar of Companies for misappropriation of funds. The said complaint was ultimately dismissed.

(iv) A departmental enquiry was held by the Director, Town and Country Planning, Haryana on complaints made in the year 1993. A specific finding was recorded in the aforesaid enquiry that the intending purchasers had to pay the internal as well as external development charges.

(v) Four complaints were filed before the District Consumer Dispute Redressal Forum, Delhi which were dismissed vide order dated September 15, 1995. The appeal was also dismissed by the State Consumer Disputes Redressal Commission, New Delhi vide order dated January 29, 1999. It was left open to the complainants to seek their remedies before the civil court. A copy of the orders passed by the District Forum as well as the State Commission are appended as Annexures R-5/30 and R-5/31 respectively

(vi) A complaint was also filed before the Monopolies and Restrictive Trade Practices Commission by some intending purchasers. The aforesaid complaint came to be adjourned sine die to await the decision of the National Commission in similar matters.

The respondents have maintained that since the National Commission has already refused to interfere in the matter, therefore, the said complaint was also likely to be dismissed.

(vii) An enquiry was made by the Sub Divisional Officer(C), Faridabad on a complaint made by some of the intending purchasers in the year 1998. A detailed enquiry report was submitted by the Sub Divisional Officer which has been appended by the petitioner-association itself as Annexure P-18.

44. On the basis of the aforesaid averments, the writ petition has been contested by the respondents/Colonizer-Company and its Directors.

45. A separate written statement has also been filled by the newly added respondents who are the allottees, who had been allotted/transferred the plot by the Colonizer-Company. The aforesaid allottees have, besides adopting various

pleas raised by the Colonizer-Company, maintained that they have already raised construction upon their plots by spending huge amounts and being bonafide purchasers of the aforesaid plots are protected under law. It is also maintained by the newly added respondents that the third party rights having been created in favour of such persons, who had no connection with the writ petitioner or the controversy in question, were protected under law and therefore, the writ petition against them for challenging the allotment/transfer in their favour was nor maintainable.

46. In the back-drop of the aforesaid detailed pleadings, as noticed above, I have heard Shri Rajiv Atma Ram, learned Senior counsel appearing for the petitioner-association, Shri Rajbir Sehrawat, the learned Deputy Advocate General, Haryana appearing for respondents No. 1 to 4, Shri Ashok Aggarwal, the learned senior counsel appearing for respondents No. 5, 6 and 8 and Shri M.L. Sarin, the learned Senior counsel appearing for the newly added respondents and with their assistance have also gone through the record of the case.

47. At the outset it has been pointed out by Shri Ashok Aggarwal, learned Senior counsel appearing for the Colonizer-Company/respondent No. 5 and Shri M. L. Sarin, the learned Senior counsel appearing for the newly added respondents that during the pendency of the present writ petition, vide an order dated February 13, 2001 a provisional completion certificate had been granted to the Colonizer-Company with regard to the Colony in question. It has been further pointed out that a copy of the aforesaid provisional completion certificate has been appended as Annexure AR/9 along with CM No. 29996 of 2002. This fact is not disputed by the learned counsel appearing for the petitioner-Association. Under these circumstances, it is apparent that prayer (d) made by the petitioner-association in the present petition with regard to restraining the respondents No. 1 to 4 from granting the completion certificate in respect of Indraprastha Colony has been rendered infructuous.

48. Shri Ashok Aggarwal, the learned senior counsel appearing for the colonizer-company has raised a few preliminary objections. Firstly, the locus-standi of the petitioner-association to file the present writ petition has been challenged. Another objection has been raised to the effect that although the relief as claimed in the present petition was framed against the official respondents No. 1 of 4 but in effect was a relief directly aimed at the colonizer-company/respondent No. 5 and, therefore, the writ petition against the colonizer-company, which was a Company incorporated under the Companies Act, was not maintainable. It has been further objected by Shri Ashok Aggarwal that the relief claimed in the present writ petition by the petitioner-association was actually a relief for specific performance of the contracts which had been originally entered into between some of the applicants/intending purchasers in the year 1963-64 and the colonizer-company/ respondent No. 5 and, therefore, the present writ petition claiming the aforesaid relief was not maintainable. Shri Ashok Aggarwal has further objected that the writ petition has been filed after a delay of more

than 30 years for the enforcement of the rights of the applicants/intending purchasers who had booked the plots in the year 1963-64 and was liable to be dismissed on account of delay and laches. It is maintained by him that in any case, a cause of action had arisen to such applicants in the year 1987 itself when the company had demanded enhanced external development charges vide communication Annexure R-5/21 and when all the applicants, who are now stated to be members of the petitioner-association, had refused to make the payment and demanded the sale deeds to be executed vide their communication dated October 6, 1987 (Annexure R-5/22). On that basis it is submitted that since the civil suit for specific performance itself had become barred by limitation, therefore, the present writ petition was liable to be dismissed on the basis of inordinate delay and laches.

49. Shri Rajiv Atma Ram, the learned senior counsel appearing for the petitioner-association has rebutted the aforesaid preliminary objections raised by the respondents and has submitted that the petitioner-association has a locus-standi to file the present writ petition and further that the writ petition was not filed claiming any relief directly against the Colonizer-Company but was actually for the issuance of directions to the official respondents No. 1 to 4 to perform their duties in accordance with law under the 1975 Act. It has been further submitted by Shri Rajiv Atma Ram, the learned senior counsel appearing for the petitioner-association, that under the 1975 Act, exemption had been granted to the Colonizer-Company/respondent No. 5 on certain terms and conditions and since there was a violation of the aforesaid terms and conditions, therefore, the aforesaid exemption was liable to be withdrawn and respondents No. 1 to 4 were required in law to take over the colony in question and proceed, thereafter, in accordance with law. It has also been submitted by Shri Atma Ram that some members of the petitioner-association had already purchased the plots from the colonizer-company and, therefore, the Colonizer-company was not authorised in law to redemarcate the aforesaid plots and revise the layout plan and thereafter offer the plots to the new buyers.

50. Dealing with the first objection with regard to the locus-standi of the petitioner-association to maintain the present writ petition on behalf of the original applicants/intending purchasers, Shri Atma Ram learned counsel appearing for the petitioner-association has argued that the present writ petition was in fact a petition for and on behalf of the individual members of The Association and it was only as a matter of convenience and expediency that the petitioner-association has filed the present petition on its behalf. It is further submitted by the learned counsel that the petitioner-association was not claiming any relief for itself and was in fact claiming directions only for and on behalf of its members and, therefore, the present petition filed by the petitioner-association could not be rejected on the question of locus-standi. Shri Atma Ram has placed reliance upon a decision of the Apex Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others, to contend that if the impugned action of the Government

affects a class of persons and if that group of persons is represented by the association then they have a right to be heard in the matter.

51. With regard to the objection raised by the respondents with regard to the maintainability of a civil writ petition against a company, Shri Atma Ram has submitted that in fact a perusal of the various prayers made in the petition would show that the petitioner-association was seeking issuance of directions to respondents No. 1 to 4 to take appropriate action against the Colonizer-company, in accordance with the 1975 Act. Another prayer has been made in the petition seeking a writ in the nature of certiorari for quashing the exemption order dated August 30, 1985 and November 20, 1992 and, therefore the writ petition claiming the aforesaid reliefs was fully maintainable and it was only incidentally, that the relief was directed against the Colonizer-company, which in fact was a defaulter under the Act.

52. On the other hand Shri Ashok Aggarwal the learned senior counsel appearing for the colonizer-company/ respondent No. 5 has submitted that the petitioner-association has absolutely no locus standi in the matter to maintain the present writ petition. According to Shri Aggarwal, the various applicants/intending purchasers who had entered into individual contracts with the colonizer-company had separate and distinct contracts to enforce against the company. For individual cause, if filed by the aforesaid applicants, the company was at liberty to take up various pleas which were individually available to the company in each case, such as readiness and willingness of each of the intending purchasers to perform their part of the agreement. According to Shri Aggarwal since the matter has been generalised by the present petitioner-association, thereof, the writ petition filed by the petitioner-association claiming the aforesaid relief, which was available to the individual member alone, was not available to the association. It has been further submitted by Shri Aggarwal that the petitioner-association has failed to place on record the memorandum of its association and, therefore, it cannot be suggested that any decision rendered in the present petition would bind all the members of the association individually as well. On that basis Shri Aggarwal has maintained that according to the law laid down by a full Bench of Allahabad High Court in the case Umesh Chand Vinod Kumar and others V. Krishi Utpadan Mandi Saimiti AIR 1984 Allahabad 46, the present petition filed by the association for the enforcement or protection of the rights of its member is not maintainable.

53. With regard to next preliminary objection raised by Shri Aggarwal regarding the maintainability of the present writ petition against the colonizer-company/ respondent No. 5, it is submitted by Shri Ashok Aggarwal, the learned senior counsel that a perusal of the entire writ petition would show that the petitioner association was merely seeking an enforcement of a contractual obligation arising out of some contracts between persons who had originally intended to buy the plots in the colony in the year 1963-64 and the colonizer-company. According to Shri Aggarwal the aforesaid obligation was merely contractual in

nature between the contracting parties, and was to be enforced only as per the ordinary law of the land by seeking specific performance of the aforesaid agreements. Since the aforesaid remedy has never been sought by the aforesaid persons, therefore, in the garb of seeking directions against the official respondents No. 1 to 4, the petitioner-association has merely filed the present writ petition. Shri Aggarwal maintains that in fact the writ petition was essentially directed against the company and since no writ petition was maintainable against the company, which was not instrumentality of the State, therefore, the writ petition was liable to be dismissed on this ground as well.

54. I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties.

55. Dealing with the objections with regard to locus-standi of the petitioner-association it may be relevant to notice that in para 2 of the writ petition, the petitioner association has averred as follows:

"The plot holders association (hereinafter referred to as the petitioner) jointly owns approximately 48 acres of land known as Indraprastha Colony in village Itmadpur in District Faridabad Haryana State. Mr. R. C. Khanna, President of the Association has been duly authorised by the petitioner Association vide authorisation letter dated 4.03.1997 in hi favour to institute the present writ petition. A copy of the said authorisation letter is annexed hereto and marked as Annexure-P/2."

56. In the corresponding para 2 of the written statement filed on behalf of respondents No. 5, 6 and 8, it has been averred as follows:

"That the contents of para-2 of the writ petition are entirely wrong and are hence denied. It is wrong and denied that the Petitioner owned, jointly or otherwise any land or 48 acres of and as falsely alleged. It is further wrong and denied that the colony is owned by the Petitioner as falsely represented in the para under reply. It is submitted that the answering respondent held the clear and undisputed title in respect of the land of the colony. It is further wrong and denied that Shri R. C. Khanna is duly authorized person to file the present petition on behalf of the Petitioner as falsely alleged. It is submitted that as a matter of fact different persons with the illegal and malafide motive to harass the Respondents have been filling false complaints and petitions. The petitions and complaints so filed have already met their fate as detailed in preliminary objections."

57. The petitioner-association has also attached the registration certificate dated September 20, 1971 issued by the Registrar of Societies, Delhi, whereby the petitioner-association was registered under the Societies Registration Act. A copy of the resolution dated march 4, 1977 has been appended as Annexure P/2 whereby the then President Shri R. C. Khanna of the petitioner-association was given an authority to file the legal proceedings for and on behalf of the petitioner-association.

58. Besides the aforesaid two document there is absolutely nothing on the record to show the details of membership of the petitioner-association, the number of original applicants/persons intending to buy the plots in the colony in the year 1963-64, the number and details of the persons who had constituted the petitioner-association and the memorandum of association which could show that any decision rendered in a cause taken by the petitioner-association would bind all its members.

59. Under these circumstances, it cannot be suggested that the petitioner-association had any cause or locus standi to file the writ petition.

60. I have already noticed above the averments made by the petitioner-association in para 2 of the writ petition which have been specifically denied in the corresponding para of the written statement filled by the colonizer-company/respondent No. 5. Nothing has been brought on the record to show and suggest that there was any privity of contract between the petitioner-association on the one hand and the Colonizer-Company on the other.

61. I have also taken into consideration the law laid down by the Hon'ble Supreme Court of India in the case of Scheduled Caste and Weaker Section Welfare Association(supra), relied upon by the learned counsel for the petitioner. In para 7 of the aforesaid judgment it was observed as follows;

"The first question that falls for consideration is whether the appellants can challenge the action of the government. This question need not detain us when the law is now settled that in such situation even a public interest litigation would lie. Appellant 1 - Association represents the interests of the slum dwellers and appellant 2 himself is one of the residents in the area. The action of the government on the averments made affects a class of persons and if that group of person is represented by the Association, they have a right to be heard in the matter. Where a member of the public acting bona fide moves the court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief, such member of the public may move the court even by just writing a letter as held by this Court in "Bandhua Mukti Morcha V. Union of India". We are, therefore, of the view of that the High Court was wrong in concluding that appellants were incompetent to invoke the jurisdiction of the court."

62. There is no quarrel with the proposition of law laid down by the Apex Court, but in my considered view, the aforesaid proposition does not arise in the present case. It is not the case of the petitioner-association that any one of its member was under any disability or was otherwise not in a position to approach the competent court of law for the cause of action which had individually arisen to any one of such member. It was only in a situation where the cause espoused by an association was in the nature of public interest or where any member of the association on account of poverty or his disability or disadvantageous

position could not approach for a relief, that the locus standi of the association was recognized by the Apex Court. No such position exists in the present case.

63. A full Bench of the Allahabad High Court in the case of Umesh Chand Vinod Kumar and others (supra) was also dealing with the question of locus-standi of an association of persons maintained under Article 226 of the Constitution of India for enforcement of the rights of its members, as distinguished from the enforcement of its own rights. The learned Judges of the Full Bench enumerated three situations where the association could maintain a petition on behalf of its member namely (i) in case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position (Little Indians); (ii) in cases of a public injury leading to public interest litigation provided the association has some concern deeper than that of a way-farer or a busybody i.e. It has special interest in the subject matter (iii) where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order which was passed by the court in such proceeding will be binding on the members. The Hon'ble judges held that in all other cases an association whether registered or unregistered cannot maintain a petition under Article 226 of the Constitution for the enforcement or protection of the rights of its members as distinguished from enforcement of its own rights.

64. As discussed above, there is nothing on the record of present petition to show that any of the members of the petitioner-association were unable to approach the court themselves by reasons of poverty or any disability or other disadvantageous position nor it has been shown that the case was of any public injury leading to a public interest litigation. Even the rules and regulations of the association have not been placed to show that any orders passed in the present petition would bind its members.

65. In such a situation when no personal interest of the petitioner-association has been disclosed, then following the law laid down by the full bench by the Allahabad High court in the case of Umesh Chand Vinod Kumar and others (supra), I have no hesitation in holding that the petitioner-association has no locus-standi to maintain the present petition.

66. Coming to the next preliminary objection raised by the learned counsel for the respondents, the petitioner has made averments in the petition with regard to the violation of the orders of exemption Annexure P/6 and P/9 respectively. On the basis of the aforesaid averments, the petitioner-association has claimed that official respondents No. 1 to 4 are bound in law to proceed against the colonizer-company under the terms of 1975 Act. Since the petitioner-association has claimed the issuance of direction to the official respondents to take the aforesaid action against the colonizer-company, therefore, in my considered view it cannot be suggested that the present petition filed by the petitioner-association is merely against the colonizer-company respondent No. 5 and as such not maintainable. May be the incidental relief, the warrants and brunt of the

directions sought by the petitioner-association may ultimately fall upon the colonizer-company but for this reason alone it cannot be suggested at all that the present petition filed by the petitioner-association was only directed against a limited company, incorporated under the Companies Act. In my considered view the second preliminary objection raised by the learned counsel for respondent No. 5 is without any merit and, is therefore rejected.

67. This brings me to the next objection raised by the respondents with regard to the enforcement of the contractual obligation through the present petition. Shri Rajiv Atma Ram, the learned senior counsel for the petitioner-association has submitted that the colonizer-company had sponsored a colony prior to the enforcement of 1963 Act and had advertised for the sale of the plots. When certain persons had made necessary payments, then the colonizer-company was bound in law to execute the conveyance deed and hand over the possession of the plots. According to the learned counsel it was only subsequently in the year 1963 and thereafter that certain enactments such as 1963 Act, 1971 Act and 1975 Act had come into operation and therefore the Colonizer-company was not authorised in law to change the complexion of the colony, revise the layout, redemarcate the plots and offer them for sale.

68. However, Shri Rajiv Atma Ram has fairly conceded that although some of the applicants/intending plot holders, who had entered into the original contract with the colonizer-company, had approached various Tribunals/Forums for the redressal of their grievances and even in a complaint filed by some of the applicants, Consumer Disputes Redressal forum had dismissed the aforesaid complaint as being barred by limitation vide order dated September 15, 1995 (Annexure R-5/30). It is further conceded by the learned counsel that even an appeal filed before the State Commission against the order Annexure R-5/30 had been disposed of vide order dated January 29, 1999 (Annexure R-5/31) granting a liberty the aforesaid applicants to approach the civil court, keeping in view the effect of the legislation which had intervened, but none of the applicants/complainants had approached the civil court because according to the learned counsel the jurisdiction of the civil court was barred u/s 15 of the Act.

69. On the other hand Shri Ashok Aggarwal learned senior counsel appearing for the colonizer-company has submitted that the questions raised by the petitioner-association were the disputed questions of facts and were questions with regard to enforcement of contractual obligations involving the title of immovable property and, therefore, the only remedy available to any aggrieved party was to approach the civil court in accordance with law for the enforcement of any such rights. According to Shri Aggarwal since none of the parties aggrieved against any action of the colonizer-company had ever approached the civil court, even inspite of the directions in this regard contained in the order dated January 29, 1999 (Annexure R-5/31) passed by the State Consumer Disputes Redressal Commission, New Delhi, therefore, the present petition for the enforcement of the aforesaid contractual obligation was not maintainable. According to Shri

Aggarwal, since the cause of action, if any, had arisen to the applicants/ including purchases in the year 1987 itself, therefore, even when the remedy of the Civil suit had become barred by limitation, the present petition under Article 226 itself was liable to be dismissed on the ground of delay and laches. Shri Aggarwal has relied upon certain observations made by a Division Bench of this court in the case of Chandra Tewatia V. State of Haryana and others 1998(1) P.L.J. 322, wherein it has been held as follows:

".....All the purchasers like the petitioners entered into an agreement with the licensees/colonizers. The relation between the licensees/colonizers and the Government may be governed by statute and the contract entered into between the Government and the licensee/colonizer may have statutory flavour but as far as the purchasers and the licensees/colonizers are concerned their relationship emanates from pure contract. The agreement to sell and the sale deed executed between the purchasers and the licensees do not have their source in the provisions of the Act and the Rules. Therefore, we find merit in the submission of Shri Hooda and Shri Mittal that after having agreed to pay the amount of external development charges to the licensees/colonizers, the petitioners cannot question the jurisdiction of respondents No. 2 and 3 to enhance the amount of external development charges. There is no privity of contract between the petitioners and the respondents No. 1 to 3. Therefore, they are not entitled to question the levy of enhanced external development charges by the respondent No. 2. In our opinion, the petitioners are not entitled to seek issuance of a writ under Article 226 to avoid their contractual obligation. If they felt aggrieved by the demand of enhanced external development charges by the licensees/colonizers, the petitioners should have availed the remedy of civil suit. The jurisdiction of the civil Court to adjudicate the dispute between the petitioners and the licensees/colonizers is not ousted by virtue of Section 15 of the Act. That section bars the jurisdiction of the civil Court only for resolution of the questions and the Rules framed thereunder. It has nothing to do with the private dispute between the purchasers and the licensees/colonizers."

70. After considering the rival contentions raised on this point by the learned counsel for the parties, I find myself in agreement with the contention raised by Shri Aggarwal, the learned counsel for the respondents. It is not in dispute that the colonizer-company issued the revised application form (Annexure R-5/18) in the year 1982, wherein the various applicants/intending plot holders were required to execute a revised contract with the colonizer-company. Clause 7 of the aforesaid revised agreement clearly provided for the payment of the extra development charges to be paid by the applicants, over and above the original booking rate. Clause 8 of the aforesaid application form provided that..... extra costs payment for developments shall be the essence of this contract between me and the colonizer falling which I shall have no lien on the plot and the amount already paid by me shall be deemed to have been forfeited by the Colonizer without any reference or notice to me." It is averred by the colonizer-company in the written statement that only those intending original purchasers

who were interested in the plots, submitted the revised application forms. It is apparent that such applications/original intending purchasers, who did not submit this revised application form, had disentitled themselves from claiming any interest in the colony, which was to be developed by the coloniser-company after the grant of necessary sanctions, in the year 1982 itself. In any case, such persons, who had not submitted the revised application forms, had a cause of action arisen to them at that point of time. If such persons, in whose favour an action had arisen in the year 1982, chose not to seek any redressal of their grievances in an appropriate court of law then they had no subsisting cause of action thereafter, when the present petition was sought to be filled by the petitioner-association.

71. Not only this, even subsequently the colonizer-company after obtaining the necessary exemptions in the year 1985, wrote a communication on September 10, 1987 to all the persons who had originally booked plots with the colonizer-company. The aforesaid communication has been appended as Annexure R-5/21 with the written statement of the colonizer-company. While communicating the necessary exemptions to the various original applicants, the company also detailed the various internal developments which it was required to undertake in pursuance to the exemption orders. It was also enumerated that in compliance of the aforesaid terms and conditions of the exemption orders, the plots had to be rearranged and renumbered according to the approved layout plan, with reduced plotted area, and with provision of access, services and linkage in the colony. On the basis thereof, the company made an offer to the aforesaid applicants to make a payment of Rs. 185/- per sq. yard for the actual size of the plot. It was made clear that "this offer is being extended to you for the reasons that you are our old customer and you have a priority in respect of allotment of plot....." It was further specifically informed that "the company is looking forward to receive your acceptance of this offer within 30 days of its letter along with the above said 25 percent amount of the total price and Rs.20 per sq. yard payable to the Government of Haryana in the absence of which it will be presumed by us that you are not interested to accept this offer. In that eventuality, the company will be obliged to cancel the allotment and its offer will stand automatically withdrawn."

72. It is apparent from the language emphasised by the company in the aforesaid annexure R-5/21 that the aforesaid offer was made to the applicants/original intending purchasers to make the payment and it was also made clear that in case of not accepting the aforesaid offer, the company would cancel the allotment and offer would stand automatically withdrawn.

73. In this view of the matter, it is apparent that the main relief sought by the petitioner-association is in sum and substance a relief for execution of the conveyance deeds and for possession of the respective plots to the applicants/intending purchasers who had booked the plots with the colonizer-company in the year 1963-64. The aforesaid relief necessarily emanates from the contractual

obligations between the parties. In this view of the matter and in view of the law laid by the Division Bench of this court in Chandra Tewatia's case (supra), I have no hesitation in holding that the present petition under Articles 226/227 of the Constitution of India qua the enforcement of the aforesaid contractual rights of the petitioner-association or any of its members and seeking performance of the contractual obligations by the colonizer-company is not maintainable. The only remedy available to any aggrieved person was to pursue the ordinary remedy of a civil suit.

74. At this stage, it may also be pertinent to notice that the provisions of Section 15 of the Act which oust the jurisdiction of the civil court would not be attracted to the controversy in question inasmuch as, firstly as held by the Division Bench in Chandra Tewatia's case (supra), the jurisdiction of the civil court was barred for resolution of the questions covered under the provisions of the Act and the rules framed thereunder and has no bearing upon any private dispute between a purchaser and the licensee-colonizer. In any case since the exemption orders Annexure P/6 and P/9, respectively, had been issued by the State Government under the provisions of Section 23 of the Act whereby the Colonizer-company was exempted from the operation of the provisions of the Act, therefore, by such exemption even the operation of the provisions of Section 15 would be exempted.

75. This brings me to the next question of delay and laches raised by Shri Ashok Aggarwal with regard to the present petition.

76. It is the admitted case between the parties that the offer made by the colonizer-company vide Annexure R5/21, dated September 10, 1987 was not accepted by a very large number of persons and such persons chose to reply back to the company through a communication dated October 6, 1987, making it clear that the demand raised by the colonizer -company was totally against the contractual obligation and was unauthorised and in violation of the agreement. It was stated in the aforesaid reply informing the company that "since you have not complied with the contractual obligation you have no authority to cancel the plot/ agreement. Any arbitrary action on your part will be contested at your costs and risk." The said reply further went on to inform the company that "you have threatened to cancel the agreement which you cannot do unilaterally.. The agreement relates to immovable property and has to be enforced specifically and we further hold you liable for causing damages to us during all this period." From the joint reading of communication Annexure R-5/21 and reply thereto (Annexure R-5/22) It is apparent that a dispute had arisen between the parties with regard to the enforcement of the contract, originally entered into between the company and the applicants, in the year 1987 itself. At that stage, the company had specifically demanded the additional charges and the new rates. The aforesaid demand was resisted and objected to by the applicants. In such a situation the cause of action had definitely arisen to the applicants. Thus, the aforesaid aggrieved applicants/intending purchasers had to seek a remedy on the basis of the aforesaid cause of action, within the statutory period of limitation in

accordance with law. Admittedly no such remedy was ever sought by the applicants or any of the members of the petitioner-association. Only some of the applicants merely chose to approach the various Tribunals/Forums but never chose to enforce their rights under the agreement in the civil court of competent jurisdiction. In this view of the matter, besides the fact that the enforcement of the aforesaid contract is not available to the applicants/intending purchasers and the members of the petitioner-association through the present writ petition, the same has also become barred by limitation.

77. It has been held in the case of *State of Madhya Pradesh and another V. Bhai Lal Bhai and others* AIR 1964 S C 1006 that:

".....Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

78. In this view of the matter, the present writ petition having been filed in the year 1999 is, thus, clearly hit by the law laid down by the Apex Court in the *Bhallal Bhai's* case(supra) and, therefore, having been filled beyond the period of limitation provided for a civil suit for the enforcement of the agreement is liable to be dismissed on the ground of delay and laches.

79. It has been further argued by Shri Ashok Aggarwal, the learned Senior counsel appearing for the respondents, that there have been serious concealments, and mis-statements made in the petition, thereby disintitling the petitioner-association to seek any relief in the extra ordinary jurisdiction of this court. It has been pointed out that along with the petition Annexure P/5 has been appended which shows the details of payments made by 58 persons. Subsequently at the time of the hearing of the present petition, through a CM No. 4254 of 2003, 77 affidavits have been filed purporting to be on behalf of the members of the petitioner-association. Shri Aggarwal points out that it is apparent that although originally at the time of filing of the petition there were 58 persons only, who were such persons who claimed themselves to be original

applicants, but subsequently 77 persons had filed affidavits. Out of the aforesaid 77 persons 21 persons were such persons who were either dead or shown to be not the original applicants with the company. The affidavits had been filed on their behalf on a mere stated authorisation by the original applicants. Some persons, out of the aforesaid 77 persons had already taken the refund of the amount from the company. A few persons out of the aforesaid 77 persons had already approached various Consumer courts and had lost their cause. In this view of the matter Shri Aggarwal maintains that the petitioner-association was merely trying to harass and pressurise the colonizer-company to concede their unjustified and time barred demands.

80. The claim of the petitioner company for the allotment of the plots and the handing over the possession has also been contested on the ground that in fact the scheme as originally floated by the company in the year 1963-64 stood completely abrogated by the enforcement of the 1963 Act. When the necessary sanction was granted by the competent authority in the year 1963 then the scheme was revised and the area of the Colony was considerably reduced. Again on the enforcement of the 1971 Act, the company was required to revise the layout and conform to the conditions laid in the 1971 Act. But the matter was still under process when 1971 Act was declared as ultra vires by this court. Ultimately 1975 Act came to be enforced. The approval dated August 13, 1985 (Annexure P/6) was granted only for an area of 48.5 acres. Subsequently in the year 1992 an additional area of 3.31 acres was exempted. In this manner the total exempted area with the company came to be 51.41 acres. In this view of the matter, Shri Aggarwal has submitted that originally the colony had been planned for an area of 100 acres by the colonizer-company. Out of the aforesaid 100 acres, 75 percent was to be covered area whereas 25 percent was to remain open. Whereas under the exemption orders Annexures P/6 and P/9 respectively, the covered area was reduced to 54.41 percent of the total area whereas the open area was to constitute 49.59 percent. On that basis Shri Aggarwal has argued that the nature and character of the layout of the colony having gone a complete sea-change, the original contract between the applicants/intending plot holders and the Colonizer-Company stood frustrated and therefore, could not be relied upon by the applicants, any more at this stage.

81. This factual position is not disputed by Shri Rajiv Atma Ram, the learned senior counsel appearing for the petitioner-association. It is not disputed by the petitioner-association at all that the company had been put to various strict terms and conditions as per the exemption orders issued by the competent authority and the original colony, which was planned for 100 acres had been confined to an area of 58.81 acre only. However the covered area and the open area ratio had also been changed by the competent authority while granting the exemption. On the basis of the terms and conditions of the aforesaid exemption orders, the Company had to revise the layout and redemarcate the plots by reducing their area considerably. Open parks, roads, community center and school were required to be provided. The Colony as such could not even be

termed to be the same colony, as was sought to be floated by the Colonizer-Company, in the year 1962-63, except in name.

82. Shri Rajiv Atma Ram, the learned Senior counsel appearing for the petitioner-association then submitted that since the colonizer-company had violated the terms and conditions of the exemption orders Annexures P/6 and P/9, therefore, in terms of clause IX of the aforesaid exemption order, the said exemption was liable to be withdrawn and thereafter the official respondents were bound in law to take over the colony. On the other hand, Shri Ashok Aggarwal, the learned Senior counsel appearing for the colonizer-company has submitted that the aforesaid plea raised by the petitioner-association was totally vague inasmuch as nothing has been pointed out in the petition nor shown during the course of arguments as to in what manner the colonizer-company violated any of the terms of the exemption orders. Shri Aggarwal has further maintained that in fact the entire efforts made by the petitioner-association were to put pressure upon the colonizer-company, to allot plots in the now developed colony, to the members of the petitioner-association.

83. At this stage, it may be relevant to notice the provisions of Section 23 of the Act which reads as follows:

"Power to exempt: If the government is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by a general or special order exempt any class of persons or areas from all or any of the provisions of this Act"

84. From a perusal of the aforesaid provisions, it is apparent that the power to exempt u/s 23 vests in the State Government and is to be exercised when the State Government is of the opinion that the operation of any of the provisions of the Act causes undue hardship or circumstances exist which render it expedient so to do to exempt any class of persons or area from all or any of the provisions of the Act on such terms and conditions as may be imposed by a general or special order.

85. It is the admitted case between the parties that at the stage of the initial inception of the colony neither 1963 Act nor 1971 Act nor the present 1975 Act were in operation. Subsequently 1963 Act came into operation which imposed certain conditions and liabilities upon the colonizer. The Colonizer-company in the present case was in the process of completing the aforesaid formalities when 1971 Act was enacted. Again the process of approvals/sanctions were started denovo by the Company when the aforesaid Act was declared to be ultra vires by this court. Then 1975 Act was enacted. Through a very lengthy process the colonizer -Company completed all the formalities and completed all the other requirements, as directed by the official- respondents from time to time. It was only thereafter that exemption orders Annexures P/6 and P/9 were issued by the State Government. Certain conditions were imposed upon the colonizer-company

while granting the aforesaid exemptions. Nothing has been shown by the petitioner-association that any one of the terms or conditions of the exemption orders had ever been violated by the colonizer-Company.

86. A faint attempt has been made by Shri Rajiv Atma Ram, the learned senior counsel for the petitioner-association by pointing out certain terms and conditions of the exemption orders Annexure P/6 and P/9, respectively, to show that there was violation of the aforesaid terms and conditions and on that basis it was sought to be argued by the learned counsel that since there was a violation therefore, on the basis of the terms and conditions of the exemption order itself, the said exemption orders are liable to be withdrawn by the official respondents and in any case were liable to be quashed by this court, on the basis of the said violation. It has been pointed out by Shri Atma Ram that while granting the exemption orders on August 30, 1985 (Annexure P/6), the State Government had imposed certain conditions and required the colonizer-company to adhere to those conditions. My pointed attention has been drawn to Clauses (iv) and (v) of the exemption order dated August 30, 1985 (Annexure P/6) as follows:

iv) That you shall be responsible for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of 5 years from the date of issue of completion certificate to be issued by the Director, Town and Country Planning in accordance with condition No. ix below unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Govt., Haryana Urban Development Authority or the local authority etc. as the case may be.

v) That you shall construct at your own cost or get constructed by any other institution or individual at your cost, school and play grounds, hospital, community centres and other community buildings on the land set apart for this purpose or undertake to transfer to the Government free of cost the land set apart for schools and play grounds, 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 deem fit.

87. A similar clause exists in the exemption order dated November 22, 1992 (Annexure P-9) as follows:-

vii) That the owner shall 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 land set apart for this purpose or undertake to transfer to the government as any time, if so desired by the government, free of cost, the land set apart for schools, hospitals, community centres and other community buildings, in which case the government shall be at liberty to transfer such land to any person or institution including local authority on such terms and conditions as it may lay down.

No third party rights will be created without obtaining the prior permission of the

Director, Town and country planning, Haryana. All the community buildings will be get constructed by the coloniser within time period so specific by the Director.

88. On the basis of the aforesaid clauses, Shri Atma Ram submits that the colonizer-company has neither completed the aforesaid development works etc. and had even created third party interest when it had allotted/transferred the plots to the new allottees (newly added respondents) and therefore, their being a violation of the aforesaid terms and conditions, action in accordance with the law was required to be taken against the colonizer company and in any case the exemption orders issued in favour of the colonizer-company were liable to be withdrawn or set aside.

89. I have given my thoughtful consideration to the argument raised by Shri Rajiv Atma Ram the learned senior counsel for the petitioner-association. However, I find myself unable to agree with the same. The aforesaid terms and conditions are such terms and conditions which are in the nature of development works which are liable to be completed by a colonizer prior to the issuance of the completion certificate. As regard the prohibition to create third party interest is concerned, it is apparent that the said prohibition related only to the land, school, hospital, community center etc. mentioned in the said clause. Obviously it could not be suggested by the petitioner-association that even after the development of the colony, the colonizer company was under any prohibition not to allot/transfer the plots developed by it in the colony. The said clause is apparently being misread and misinterpreted by the petitioner association.

90. It is apparent from the perusal of the exemption orders Annexures P/6 and P/9 and from a reading of the Section 23 of the Act that on the aforesaid exemption having been granted to the Colonizer-company, the colonizer-company was exempted from the operation of the various provisions of the Act. In this view of the matter the prayer made by the petitioner-association that the official-respondents were required to proceed in terms of Section 8 of the Act to take over the colony in question was wholly misplaced and contrary to the exemption orders Annexures P/6 and P/9. As has been noticed by me in the above portion of the judgment, the provisional completion certification has already been issued by the competent authority to the colonizer-company on February 13, 2001. The issuance of the aforesaid completion certificate necessarily postulates that the competent authority was fully satisfied with regard to the compliance of the various terms and conditions imposed in the exemption orders.

91. It is apparent that the petitioner-association taking the shelter of the original booking agreements, in the year 1963-64, is trying to revive the old issues, which have since become time barred and is trying to enforce contractual obligations which cannot be enforced by the aforesaid intending purchasers now before the Civil court after the lapse of more than 30 years.

92. It might be relevant to notice here, again, that if any of the members of the

petitioner-association or original applicants/intending purchasers had any grievance with regard to non-performance of the contract by the colonizer-company then the only remedy available to him to enforce the aforesaid agreement was by seeking the civil remedy of filing a civil suit for specific performance. None of the aforesaid applicants ever sought the aforesaid remedy. The same has since become bared by limitation now. Once the aforesaid remedy has become barred by limitation, then as observed by the Supreme Court in the case of Bhailal Bhai (supra), the said remedy cannot be enforced by the petitioner-association or any one of the members through this petition filed under Article 226 of the Constitution of India.

93. In view of the aforesaid discussion. I do not find any merit in this petition and the same is hereby dismissed. However, there shall be order as to costs.