

(2006) 05 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 3596, 5036, 5551 and 15748 of 1997 and 2795 and 15748 and 2795 of 1998

Trishul Industries

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 26-05-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13(5), 16(6), 28(1), 34(2)
Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules, 1979 — Rule 9, 9(1)
Constitution of India, 1950 — Article 12, 14, 16, 162, 19
Contract Act, 1872 — Section 23
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 2, 24, 3
Haryana Development and Regulation of Urban Areas Rules, 1976 — Rule 11
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 2(8), 25, 4, 4(1), 5
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 — Rule 26A, 26B, 26C, 26D, 26E

Citation : (2006) 144 PLR 222 : (2006) 4 RCR(Civil) 367

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : M.L. Sarin and R.K. Chopra, Hemant Sarin, Amit Chopra and D.S. Patwalia, for the Appellant; Hawa Singh Hooda, General and Palika Monga, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This Judgment will dispose of the aforesaid five writ petitions (C.W.P. Nos. 5036 of 1997, 3596 of 1997, 5551 of 1997, 15748 of 1998 and 2795 of 1998) as common questions of law are involved in all the aforesaid writ petitions. The basic issues raised in all the aforesaid writ petitions are identical. We have, therefore, made reference to the detailed pleadings as contained in the case of M/s Trishul Industries (C.W.P. No. 5036 of 1997). Reference to additional facts from other writ petitions have been made whilst noticing the submissions of the learned Counsel.

2. The petitioner is a partnership firm having its registered office in New Delhi. Inspired by the declaration and open policy of the Government of Haryana to develop tourism in the State, its progressive economic policy and liberalization, the petitioner-firm conceived a project of establishing a restaurant and resort hotel, in the area forming part of revenue estate of village Shekhopur, District Gurgaon. The Resort hotel and the restaurant would cover an area of 47,841 sq. yards, after excluding the area that falls within 50 meters of the restricted belt along the National Highway No. 8. The land on which the Hotel and the Restaurant were to be constructed, is owned and possessed by the petitioner-firm. The land being agricultural in nature, the petitioner approached the Director, Town and Country Planning (hereinafter referred to as "the Director") for grant of permission regarding change of land user. The permission is necessary under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as "the 1963 Act") and the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (hereinafter referred to as "the 1965 Rules"). By letter dated 8.3.1995 (Annexure P-1), the petitioners-firm was requested to fulfill certain conditions before granting permission for change of land use. The petitioner had to pay a sum of Rs. 9,56,820/- as conversion charges. The petitioner also supplied the other information as desired by the Director in the letter dated 8.3.1995. The petitioner claims that there is no provision in the 1963 Act or in the 1965 Rules under which the petitioner could be asked to pay conversion charges. The petitioner was further compelled to give an affidavit to the effect that it shall pay additional amount of conversion charges on revised rates and for variation of area at the site. The petitioner was also compelled to execute an agreement containing a similar clause. The agreement is to be executed as provided in Form CLU-II. The agreement had to be executed under Rule 26-D of the 1965 Rules which does not provide imposition of conversion charges while granting permission regarding the change of land use. The petitioner being at the receiving end had no choice but to pay the demand amount of Rs. 9,56,820/- and to accept the clauses regarding the payment of additional conversion charges as well as to give the affidavit. The petitioner claims that the acceptance of an illegal clause was obtained under misrepresentation, undue influence and coercion by taking advantage of the dominant position of the respondents. Subsequently, the petitioner was granted No Objection Certificate/Licence for Construction of the approach road to the Hotel and the Restaurant. Permission for change of land use for the establishment of the Restaurant and the Resort Motel was granted to the petitioner by the Director by letter dated 13.9.1995 (Annexure P-5). The project of the petitioner was also approved by the State Tourism Promotion Board, Haryana by letter dated 7.12.1995. Zoning plan for the project was approved on 18.12.1995. The petitioner furnished a bank guarantee in the amount of Rs. 25% of the cost of the development works. The building plans submitted by the petitioner were also approved by the Building Plan committee for controlled area, Gurgaon on 27.12.1995. The Project sought to be developed by the petitioner is

aimed at attracting foreigners and the executives of the multi-national companies in and around Gurgaon District. The project is also aimed at achieving planned development in Gurgaon so as to make it an important place of attraction for the foreigners. The petitioner claims that the Project is a kind of attraction for the foreigners. The petitioner claims that the Project is a kind of eco-friendly project. The permission granted for change of land user as per Rule 26F of the 1965 Rules remains valid for a period of two years from the date of the order. During this period the development of the project had to be completed. However, the Director has the power to extend the period for another year. Final project plans have been approved by the competent authority on 29.7.1996. As per the approved project, Rs. 3.13 crores has to be spent in the first phase within one year. The petitioner has commenced construction from July, 1996; To the utter surprise, dismay and shock of the petitioner, the Director has issued Memo No. 2739 dated 17.3.1997 (Annexure P-8) in which the petitioner has been directed to pay a further sum of Rs. 4,68,84,180/- towards additional conversion charges. The demand of conversion charges at a rate of Rs. 1000/- per square yard is 50 times the original rate of Rs. 20/- per square yard which was fixed and demanded at the time of granting permission to the petitioner regarding change of land user. The amount of additional conversion charges now demanded is much more than the price of the land. The estimated price of the land in the area as fixed by the Government of Haryana is approximately Rs. 7.00 lacs per acre. But the respondents are demanding at the rate of Rs. 48 lacs per acre in the grab of additional conversion charges. Under the 1963 Act and the 1965 Rules, there was no provision for levying of conversion charges. However, w.e.f. 13.12.1996, Section 7 of the 1963 Act has been amended by the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Developments (Haryana Second Amendment) Act, 1996 (hereinafter referred to as "the Amended Act"). Section 7 of the Amended Act provides for the levy of conversion charges as prescribed by the Government from time to time. Even then, no notification prescribing the rate by the Government has been published in the Government Gazette and in fact no amendment in the 1965 Rules has been made incorporating any rates for conversion of land use. The petitioner, therefore, filed unmended writ petition challenging the Notice (Annexure P-8) under Article 226/227 of the Constitution of India. The aforesaid writ petition was disposed of, by order dated 2.11.2000, on the basis of a statement made by the Advocate General that the impugned notice will not be given effect to as the issue related to conversion charges is being considered by the State Government. This was stated in the context of deliberations made in 1997 by a special committee constituted by the Government for determining the rates of additional conversion charges. By letter dated 9.1.2002, the petitioner was informed by the Director that on reconsideration, the Government has taken a decision that the rates of conversion charges earlier fixed by the government are justified and there is no need to reduce the same. Thereafter, the petitioner was further informed that the permission of land use granted on 13.9.1995 had already expired. Therefore, the extension of validity period was also being

examined. The petitioner, therefore, filed CM No. 9213 of 2002 praying for appropriate directions/clarifications and for stay of Memo dated 9.1.2002. By order dated 22.4.2002, the Division Bench of this Court restrained the respondents from taking any coercive action against the petitioner. It was made clear that the stated Government shall be free to pass appropriate orders in compliance with the directions contained in the order dated 22.11.2000. The petitioner was also granted liberty to file an application for recall of the order dated 22.11.2000 on the ground that the State Government had failed to comply with the directions contained therein. In July, 2002, the petitioner filed application for recall of the order dated 22.11.2000 and for hearing of the writ petition on merits. Thereafter, by letter dated 18.11.2002, the Director withdrew the earlier Memo dated 9.1.2002. The petitioner has been informed that the Government has reconsidered the entire matter and has taken the following decision:

a) It has been observed that out of the seven projects on which the Hon'ble High Court has pronounced its decision, four projects namely Trishul Industry Ltd. R.P. Estate Ltd. Suraj E Chandani and Green View Industries are exclusively commercial projects involving setting up of hotels and a petrol pump. In all such exclusive commercial projects, the department has recovered/is recovering conversion charges at the revised commercial rate since 6.9.1996. Therefore, no relaxation to these exclusive commercial projects in terms of charging for additional conversion charges can be given to avoid any discrimination with similar projects. Regarding the three Golf Course Projects, it has been observed that the commercial components of these projects are a part of major Golf course and these are mostly to be utilised by the Golfers. Therefore, it has been decided that the additional conversion charges on the commercial component of the three Golf Course and Hotel projects will be imposed by reducing 30% of the notified rates of charges of such use.

b) since the conversion charges have been reconsidered and are now proposed to be revised, therefore, no interest will be charged for the period elapsed.

c) The period during which the matter remained under litigation will be treated as zero period.

Sd/- District Town Planner (HQ) For Director Town and Country

Planning Haryana, Chandigarh.

By order dated 22.11.202, the Division Bench recalled the order dated 22.11.2000 and listed the petition for hearing. In May, 2003, the petitioner filed C.M. No. 24270 of 2003 seeking amendment of the writ petition. The application was allowed by order dated 20.2.2004. The petitioner has now amended the writ petition and challenged the orders dated 17.3.1997 and 18.11.2002 (Annexures P-8 and P-10).

3. The respondents have filed Amended common reply to the amended writ

petition. On the legal issue as to whether the State Government had the power to levy conversion charges, it is submitted that Section 8(2) of the 1963 Act empowers the Director to grant permission for change of land use only on such condition as may be specified in the order. This provision exists under the 1963 Act. Therefore, the contention of the petitioner that there was no statutory basis for levy of conversion charges prior to Amended Act 16 of 1996 is denied being baseless. The State of Haryana has been levying conversion charges since the year 1974 for change of land user. The intent of the Amended Act was to further clarify the existing accepted practice which was never challenged earlier. The levy of conversion charges was justified earlier as well as now. It is justified by the respondents on the ground that any individual/firm that desires to change the use of its land in the "Controlled Area" is required to seek permission of respondent No. 2 u/s 7 and 8 of the 1963 Act". After permission for change of land use is granted to any individual his land becomes part and parcel of the envisaged sectorial plan to be provided with all essential facilities and services as would be ultimately enjoyed by the perspective allottee of that particular Sector on its development by the Government or its development agency. A permission granted by the Government for conversion of land from agriculture use to other usage like residential, commercial and industrial gives considerable benefits to the land owner in terms of its market value. The conversion charges are levied to share a part of unearned income of the land owner in a reasonable and justified manner. The respondents further claim that when permission for change of land user is granted for residential, commercial/industrial activities, a lot of development takes place in the area, thus causing additional liability on the State Government. The State Government has to augment its resources to provide facilities/infrastructure in the area like maintaining law and order, civic amenities, provision of transport etc. Civic staff has to be employed for managing and maintenance of various services which are to be provided in the developing towns due to increase in population. Therefore, to discharge the different types of obligations by the State Government the levy of conversion charges for granting permission for change of land user from agricultural to other projects is legally justified and rational. The State Government also takes some percentage of the unearned income from the beneficiary whose land value has increased due to the decision of the State Government in granting permission for change of land use. This is necessary for providing additional facilities. Keeping these facts in view, a policy was framed for levying of conversion charges in the year 1974. Rates of conversion charges were specified depending upon the potentiality of the area and location of the site. Therefore, before the permission for change of land user is granted to the individuals, an offer is made to the applicant in writing for payment of conversion charges. The applicant is required to furnish an undertaking for the payment of conversion charges at revised rates as and when determined by the Director in addition to the conditions mentioned in the letter of intent. This practice has been in vogue since 1987. The terms of the contract are based on mutual rights and liabilities of the parties. With regard to the rates of conversion charges, it is stated that initially the conversion charges were fixed

way back in the year 1974. Since then the market forces have pushed prices of land as also for other development activities on phenomenal scales. Study of sale deeds executed in Gurgaon during the year 1969-1970 reveals that the rates of land were Rs. 23 per square yards whereas the same have increased to Rs. 800-825/- per square yard in the year 1996, an increase by 40 times in the land value. Similarly, the price of residential/industrial/commercial plots has shown phenomenal increase. The respondents rely on the following table:

1974 per square mtr. 1996 per sq. mtr. Approx.increase Residential Rs. 35/- Rs. 3250/- 100 times. Industrial Rs. 10.45/- Rs. 1600/- 150 times. Commercial Rs. 300/- Rs. 14,000/- 45 times (in 1978)

From the aforesaid table, the respondents have justified the necessity for the government to commensurately increase charges for development activities. It is also stated that the matter for revision of conversion charges was under consideration of the department/State Government since 1987. Therefore, it was decided to take an undertaking from the applicants that as and when the rates of conversion charges revised, they would pay the same. On 6.9.1996, the Council of Ministers in its meeting approved the Schedule of rates of conversion charges per square yard in rupees. The petitioners were, therefore, asked to pay the rates approved by the Government. On this understanding, the petitioner had entered into agreements with the State and executed the necessary undertakings and the affidavits. The petitioners have voluntarily undertaken to pay the additional amount of conversion charges as and when determined and demanded by the department. The respondents have denied that the market price of land in Gurgaon is Rs. 7 lacs per acre. In the year 1996, the land prices in Gurgaon were more than Rs. 38 lacs per acre. With the increasing development of Gurgaon and its proximity to the national Capital, the land prices have sky-rocketed. Consequently, on the grant of permission for the change of land user, the unearned income of the owner also increases. The sites of the petitioners are situated in high potential zone of Gurgaon where the land prices are even higher than the other areas. A perusal of the table approved by the Council of Ministers dated 6.9.1996 (Annexure C/R-1) would reveal that different rates of conversion charges have been specified for different areas of the State, keeping in view the development potential, location of the site, nature of the land, use and to ensure balanced development of the State. Higher rates have been specified in the high potential zones, being near to Delhi commensurate with the market prices and to serve as a deterrent against convergence of facilities at a single location, whereas lesser rates have been specified in the areas, which are not so potential to attract investments in such areas for a balanced overall growth. While specifying the rates, consideration was also given to the location of the sites i.e. on National Highways, Scheduled Roads and other Roads and to maintain a balanced development of the State. Therefore, the rates have been specified logically in a reasonable and justified manner. There is rational classification of conversion charges depending on the factors which have been set out above. Higher rates of conversion charges have been specified in

the controlled area of Gurgaon which is a very high potential zone, being near to Delhi.

4. It is further stated that the respondents and the petitioners have entered into voluntary contracts. Therefore, the petitioners cannot now be permitted to resile from the same. Furthermore, the government had adopted a wholly considerate view towards the petitioners. On the representation submitted by the petitioners, a host of concessions have been granted to them. The conversion charges have been reduced by 30% for the non-commercial component of the project. The petitioners have already benefited to the tune of Rs. 17.20 crores. The government has also granted exemption to the petitioners for payment of interest at the rate of 18% per annum on the balance amount of conversion charges for the entire period. The Government is also treating the entire period during which the matter remained under litigation as zero period. These concessions have been granted to the petitioners, despite the fact that they are engaged in highly profit making ventures. One of the reports published in India Today on 2.9.2002 indicates that a single villa constructed in some of the Golf Courses-cum-Resorts is selling at a price upwards of Rs. 1.00 crore. There is no ban imposed on construction development of the individual sites of the petitioners. They have been granted unlimited opportunity to clear the dues and complete the project. In normal course, a firm is granted a maximum three years period as per Rule 26-D of the 1965 Rules to complete its project and obtain an occupation certificate. But during the pendency of the petitions, the Government has taken a conscious decision to treat the entire period as Zero period. Thus, the petitioners in all these writ petitions have already availed of an unprecedented eight years period to complete the project which is a major bonus to them. The respondents deny exercising any coercion or undue influence on the petitioners for entering into a contract with the respondents. The petitioners entered into the agreements knowing, fully well, the consequences. It was open to the petitioners to decline the offer of intent when it was initially granted.

5. The petitioners have filed replication and reiterated the pleas taken in the writ petitions. It is further stated that the demand towards conversion charges for the change of land user is per se illegal, arbitrary and unconstitutional.

6. We have heard the learned Counsel for the parties at length and perused the paper-book.

7. Learned Counsel for the petitioners submit that at the time when they applied for change of land user in the year 1995, Section 7 of the 1963 Act had not been amended. Under the unamended provisions, there was no requirement of payment of any conversion charges. Therefore, the Director has no jurisdiction and could not legally insert in the agreement as also in the affidavit/undertaking the Clause regarding the undertaking to pay additional conversion charges. Even if the Director had the power to lay down the conditions for the grant of permission for change of and user, the same had to be as per the conditions prescribed under Rule 26-D of the 1965 Rules. Under this Rule, there is no

provision for conversion charges or additional conversion charges. The Clauses inserted by the Director in the agreement as well as in the affidavit have been added, without any authority of law and only on the basis of unequal bargaining power between the parties. Even if the petitioners have entered into an agreement to pay additional conversion charges, the Clause is liable to be declared void. In support of the submissions, the learned Counsel have relied on the Judgments of the Supreme Court rendered in the cases of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Hindustan Times and Others Vs. State of U.P. and Another, , Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, and ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .

8. Learned Counsel for the petitioners further argued that even the amendment of the 1963 Act on 13.12.1996 would be of no consequence. Even after the amendment, this Section provides for payment of such conversion charges as may be prescribed by the Government from time to time. The term "prescribed" has been defined in Section 2(8) of the 1963 Act to mean "prescribed by rules made under the Act". However, till date, no rates have been prescribed. Learned Counsel further argued that Part IV-A of the 1965 Rules deals with the method and manner of granting permission for change of land use in controlled areas. Rule 26E(2) provides that the order passed by the Director u/s 8(2) shall be in Form CLU-II. According to the learned Counsel, a perusal of the Form CLU-III would show that no conversion charges much less additional conversion charges could be charged. The learned Counsel thereafter argued that in any event the amendment in the 1963 Act would be prospective in nature. Since the petitioners had already been granted the permission to change the land use, the Amended Act would not be applicable. Learned Counsel further argued that even if the Director could prescribe the rates, in view of Rule 26-D, the rates could only be as specified therein. Learned Counsel rely on the Judgment of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , in support of the submission that rules validly framed become part of the statute. Since no rates have been prescribed under the Rules, the Director had no authority in law to levy the additional conversion charges. Learned Counsel further submitted that the matter is squarely covered by a Division Bench Judgment of this Court in the case of Mahavir Singh v. State of Haryana and Ors. (C.W.P. No. 15 of 2004, decided on 12.4.2005). Learned Counsel further argued that the object of the 1963 Act is to prevent haphazard and substandard development along the Scheduled Roads and in the Controlled Areas. The Act does not provide for any fiscal matters. Therefore, levying of conversion charges is wholly without authority of law. The respondents cannot be permitted to levy tax disguised as conversion charges. While allowing permission regarding change of land user, the Government is not permitted to impose charges for augmenting its resources on the ground that applicants on being granted the permission, would earn unprecedented income or profits. At best, the petitioners could be

asked to pay external development charges for the development work done in the area on actual basis. That eventuality is provided for in the agreement signed between the petitioners and the respondents. The increase in the charges from Rs. 20/- per square yard to Rs. 1000/- per square yard is wholly arbitrary. The increase cannot be justified on any rational criteria. Even the Cabinet Committee which had been constituted to go into the rates during the pendency of the writ petitions, had come to the conclusion that conversion charges at the rate of Rs. 160/- per square yard for the land abutting the National Highway and at Rs. 80/- per square yard for other land were reasonable. The petitioners had conceived the project by taking into consideration that no amount was required to be spent on account of conversion charges at the rate of Rs. 20/- per square yard at the initial stage. Now the Government is demanding an exorbitant amount calculated at the rate of Rs. 1000/- per square yard. The effect of this huge expense would be to render the whole exercise of the petitioner in filling up the project as meaningless. The action of the Government is even otherwise discriminatory in as much as additional conversion charges have been waived where the project is stated to have been completed. Notwithstanding the fact that the completion certificate has not been obtained in these projects.

9. In amended C.W.P. No. 15748 of 1998, Mr. M.L. Sarin, learned Sr. Advocate has reiterated most of the arguments noticed above. The additional argument of the learned Sr. Counsel was that the land of the petitioner did not fall in Controlled Area. Mr. Sarin submitted that the petitioners are the owners of agricultural land. They have developed a Golf Course on their own land. However, Notification dated 22.1.1991 had been issued by the respondents purporting to declare the area around Primary School at village Kothandelwa, District Gurgaon to be Controlled Area. The land of the petitioner is said to fall within the aforesaid Controlled Area. According to the learned Sr. Counsel since the land of the petitioners falls beyond the 2 kms of the School, it would not fall within the Controlled Area. According to the learned Counsel, the very issuance of the Notification is colourable exercise of power. Notification u/s 4(b) of the Act can be issued for declaring a Controlled Area adjacent to housing sites, public institutions or ancient and historical monuments. In the present case, the Notification of Controlled Area is justified on the ground that there is a Primary School in Village Khandelwa. Mr. Sarin submitted that for a School to fall within the definition of public institution, it would have to be an old and established school having the characteristics analogous to ancient/historical monuments. The Government cannot be permitted to set up a primary school to justify declaration of a particular area as controlled area. This apart, learned Sr. Counsel submitted that the Notification itself is liable to be declared as inoperative as no notification has been issued u/s 5 of the Act within three months of the Notification u/s 4 of the Act. In support of his submission, learned Sr. counsel relies on Judgments on the Supreme Court rendered in the cases of *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*, *Hindustan Steel Ltd. Vs. State of Orissa*, and *State of W.B. and Ors. v. Keroram Industries Ltd. and Ors.* (2004) 10 S.C. 201. It is

further submitted by Mr. Sarin that the undertaking contained in Annexure P-2 is void because it is beyond Rule 26-D. Additional charges are not even provided for in the prescribed Form CLU-II. Similar undertaking has been declared void in the case of Mahavir Singh (supra). Mr. Sarin adds that the petitioners had paid the conversion charges under mistake, they are, therefore, entitled to refund of the same. In support of this submission, learned Sr. Counsel relies on the decision rendered by the Supreme Court in the case of Hindustan Times (supra). In support of the submission that the activities of the State even in the matter of contracts have to be fair and every executive action which operates to the prejudice of a person, must have sanction of law, learned Sr. counsel relied on the decision rendered in the case of Hindustan Times (supra). Learned Counsel reiterated that the conversion charges as well as the additional conversion charges cannot be levied as a tax nor can they be justified as a fee. In support of his submissions, learned Sr. counsel relied on the decision of the Supreme Court in the cases of Nagar Mahapalika Varanasi v. Durga Dass Bhattacharya and Ors. AIR 1968 S.C. 119; Kewal Krishan Puri and Others Vs. State of Punjab and Another, and Bhagwan Dass Sood Vs. State of Himachal Pradesh and others, . On the point that amendment cannot be retrospective, learned Sr. Counsel relied on the decision rendered in the cases of Shyam Sunder and Another Vs. Ram Kumar and Another, , and R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), .

10. In C.W.P. No. 2795 of 1998, Mr. Patwalia, learned Counsel has reiterated the submissions made by Mr. Chopra and Mr. Sarin, learned Counsel has further submitted that by order dated 25.8.1994 the respondents had levied conversion charges at the rate of Rs. 20 per square yard. According to the learned Counsel, even this was illegal as the Hotel is only on 34 acres of the land. Golf Course is spread over 249 acres. It has taken the petitioner-firm a number of years to develop an international standard Golf Course. The entire amount as demanded has been paid. The conditions laid down in the letter of intends dated 27.12.1993 have also been complied with. Final agreement was entered into between the parties on 1.5.1996 (Annexure P-16). One of the terms in the agreement was that the petitioner would be liable to pay additional conversion charges as and when demanded. Final letter of approval was issued to the petitioner on 2.5.1996. On the same date, the petitioner had submitted the zoning plan. Since the respondents did not respond to the application, the petitioner filed. C.W.P. No. 19357 of 1996 on 16.12.1996. The writ petition was disposed of on the first date of hearing i.e. 18.12.1996 with the direction to the respondents to decide regarding the zoning plan within 60 days. The petitioner thereafter received letter dated 13.2.1997 asking the petitioner to make certain corrections in the zoning plan which the petitioner did. The Director, however, issued a letter dated 14.2.1997 asking for additional conversion charges of Rs. 14,53,80,532/-. The petitioner field the objections. The objections were rejected on 13.3.1997. On 14.3.1997, the petitioner was asked to deposit the amount within 24 hours. The

petitioner, therefore, challenged the aforesaid orders by filling the present writ petition which was disposed of by order dated 22.11.2000 alongwith the other connected matters. The petitioner has filed the present amended writ petition on the recall of the order dated 22.11.2000. Mr. Patwalia has reiterated the submissions made by the other counsel. Learned Counsel further submitted that additional conversion charges claimed by the respondents on the basis of agreement dated 1.5.1996 have no nexus to the original payment of change of land user. Additional conversion charges cannot be many times more than the original conversion charges. Definition of "addition" as per Oxford Dictionary means "extra or supplementary". Learned Counsel submitted that in the case of the present petitioner, the whole action of the respondents is vitiated by the vice of arbitrariness. The land of the petitioner falls within the Controlled Area covered by the Notification dated 22.1.1991. The land is situated in village Skatpur and Gairat-pur in District Gurgaon. The purpose of issuing the aforesaid notification was that the Government wanted to create an amusement park of international standard on the lines of Disney land stretching over several acres of land near a Damdama Lake in District Gurgaon. The area which was to fall near the amusement park, was declared as a Controlled Area. The Notification contained a list of Controlled Areas around the amusement park (Annexure P-5). The land of the petitioner is included in the aforesaid list. Subsequently, the Government gave up the idea and decided not to create the amusement park. The area was denotified and was not acquired by the Government. Since the very purpose in the declaration of the controlled area has ceased to exist, no conversion charges could be charged from the petitioner either under the 1963 Act or the 1965 Rules. During the pendency of the writ petition, the petitioner has completely developed the Golf Course which is fully functioning. The decision taken by the Cabinet Committee in approving the conversion charges on 6.12.1996 does not have any legal sanction and the respondents cannot levy the conversion charges, on the basis of the aforesaid decision.

11. Mr. Hawa Singh Hooda, learned Advocate General, Haryana submitted that the additional conversion charges are being demanded from the petitioners, in accordance with the enabling provisions of Section 8(2)(a) of the 1963 Act, on the basis of the agreements/undertakings and the conditions imposed in the permission letter for grant of change of land user. The government has the power to declare any specified area in the State of Haryana as Controlled Area u/s 4(1). The Government may, by Notification, declare any area as Controlled Area within 8 kms on the outer side of the boundary of any town or 2 kms on the outer side of the boundary of any industrial or Housing Estate, Public Institutions or an ancient or historical monument. The land of the petitioners in all the cases falls within the controlled areas. Section 7 provides that the land within the Controlled Areas cannot be used for purposes other than those for which it was used on the date of the publication of Notification under Sub-section (1) of Section 4. The application for permission for change of land user has to be made to the Director u/s 8(1) of the Act. Section 8(2) of the Act empowers the Director to grant or to

refuse the permission. Section 8(2)(a) does not specify or limit the conditions, subject to which the Director can grant permission. Section 8(2)(a) is an enabling provision. Change of land user in Controlled Areas is not a right vested in the land owner. At best, it is a concession. The owners of the land cannot claim the right to change the user of agricultural land to non-agricultural land either as a Fundamental Right or as a Statutory right. The change of land user is permitted only to ensure controlled and regulated development within the area. Learned Advocate General further submitted that the reliance of the petitioners on the Division Bench Judgment in the case of Mahavir Singh (*supra*) is misconceived as the aforesaid Judgment was considering the scope and ambit of Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as "the 1975 Act"). u/s 3 of the aforesaid 1975 Act, any owner desiring to convert his land into a colony has to make an application to the Director for the grant of licence to develop a colony. The applicant has to pay for the licence such fee and conversion charges as may be prescribed. Section 2(n) of the aforesaid Act defines the term "Prescribed" to mean "prescribed by rules made under this Act". There is no such embargo u/s 8 of the 1963 Act. The power u/s 8(2) of the 1963 Act is much wider than the power u/s 3 of the 1975 Act. u/s 8(2), the Director has the power to grant permission subject to such conditions as may be specified in the order. On the other hand, u/s 3 of the 1975 Act, the Director only has the power to grant licence to develop a colony on payment of fee and conversion charges as may be prescribed. Learned Advocate General further argued that the person to whom permission has been granted for change of land user is required to enter into an agreement in Form CLU-II in accordance with the provisions of Rule 26(D) of the 1965 Rules. CLU-II form as provided "under Rule 26-D(a) binds the applicant to fulfil the conditions contained therein and in accordance with the permission finally granted. The Division Bench in Mahavir Singh's case (*supra*) was dealing with the situation which is distinguishable from the present case. The Judgment, therefore, is not applicable in the facts and circumstances of the present case. Giving the background to the levying of conversion charges, learned Advocate General submitted that the respondents realised the need to check the haphazard and unplanned development taking place in close vicinity of Gurgaon town. In order to serve larger public interest and to regulate the land use in these areas, the Government identified public institutions and declared large number of specified areas as controlled areas in the years 1991-1994. The petitioners being aware of all the statutory provisions submitted applications for grant of permission for change of land user from the existing agricultural to recreational/commercial land use like Golf Courses, Hotels, Restaurant, Club, Tourist/Visitors huts etc. Strictly speaking these users were not permitted in the agricultural zones in the normal course. The applications of the petitioners were considered by the government in relaxation of zoning Regulation applicable for agricultural areas/zone. The decisions for grant of change of land user permission were conveyed to the petitioners in the form of letters of intent. The petitioners were required to fulfil the terms and conditions contained in the aforesaid letters. They were also

required to sign an agreement on Form "CLU-II. They were required to make payment of applicable conversion charges. They were to submit an undertaking for payment of additional conversion charges. These undertakings and affidavits were submitted by the petitioners, without raising any objection or protest. No coercive methods were used to obtain these undertakings. Mr. Hooda, learned Advocate General emphasised that the petitioners are all seasoned businessmen. They have entered into the agreements with the Government as purely commercial transactions. The undertakings given by the petitioners clearly state that they will pay additional amount of conversion charges. They were aware that the charges were only provisional. The determined amount was to be paid when finalised. When the demand was made by Annexure P-8, it was only a final determination. This is obvious according to the learned Advocate General from the notice which indicates that the rates have been revised and finalised. The revised rates of conversion charges were finally decided in the year 1996. Mr. Hooda then referred to the Chart (Annexure R1) to demonstrate that the revised charges have been levied on the basis of the classification for different kinds of lands in different areas. Controverting the arguments of the petitioners that there was no provision in the 1963 Act to levy conversion charges in the year 1995-96, the learned Advocate General submitted that the Director derives powers to impose any condition as may be specified in the order at the time of grant of permission u/s 8(2)(a) of the 1963 Act. The petitioners were first issued a letter of intent asking them to pay conversion charges and to submit the agreement including a clause for payment of conversion charges at revised rate. They were also asked to submit an undertaking for payment of conversion charges at revised rates. The permission was granted after fulfilment of the conditions. It was open to the petitioners at that stage, to refuse to accept the terms and conditions offered by the Director. Now having enjoyed the benefit of change of land user permission, the petitioners cannot be allowed to resile from the terms and conditions of the agreement executed by them with the answering respondents. In support of this submission, the learned Advocate General has relied on the Judgment of the Supreme Court in the case of Panna Lal and Ors. v. State of Rajasthan : [1976]1SCR219 and Defense Enclave Residents Society Vs. State of U.P. and Others, . In this case, the Supreme Court held that contractual disputes were sought to be agitated in Court under the camouflage of an infringement of fundamental right.

Learned Advocate General further relied on a Division Bench Judgment of this Court in the case of Gulmohar Estates Limited and Others Vs. State of Haryana and Another, . In this case, the Division Bench held that the petitioners cannot challenge the terms and conditions of the contract which it had entered with HUDA on the basis of which it amassed wealth by developing a colony and allotting flats and other residential apartments to private individuals. Learned Advocate General submits that in the present case, the petitioners have developed Golf Courses, constructed Hotels, Commercial Buildings, Restaurants, Golf Huts. These enterprises cater to the national and international businessmen.

Therefore, they cannot succeed on the plea that they are weaker party or that the contract has been foisted on them. The terms of the contract being clear and unambiguous are binding on the petitioner. In support of this proposition, learned Advocate General relied on the Judgments of the Supreme Court in the cases of Bihar State Electricity Board, Patna and Ors. v. Green Rubber Industries and Ors. 1990 Supreme Court Cases 1699 and Bareilly Development Authority Vs. Vrinda Gujarati and Others, . Having voluntarily entered into the contract, the petitioners cannot be permitted to claim that there was no provision under the 1963 Act for levying conversion charges prior to the amendment in Section 7 of the Act. Learned Advocate General further submitted that the powers of the Director to impose conditions are not limited to the conditions mentioned in Rule 26-D. Any condition can be imposed by the Director which is necessary for the development of the Controlled Area, under the 1963 Act. Learned Advocate General further submitted that the petitioners cannot avoid the liability to pay the conversion charges on the ground that earlier conversion charges had been paid by mistake. In answer to the argument of the petitioners that the conversion charges are being used to raise revenue for the State, the learned Advocate General submitted that the levy of conversion charges is being used as a regulatory tool. The non-levy of fees and conversion charges will result into a "free for all" situation leading to overcrowding of the facilities and robbing the State of its vital agricultural land resources. The conversion charges are neither a tax nor a fee. These are charges imposed by the Government in consideration for permitting the petitioners to divert the user of scarce agricultural land for non-agricultural purposes. The petitioner were not granted change of land user permission as a matter of right in the agricultural area/zone. These permissions were granted in relaxation of the applicable zoning Regulations in public interest. Controverting the argument on additional conversion charges, the learned Advocate General submitted that the term "additional" in the phrase additional conversion charges as par revised rates" is the difference in the conversion charges i.e. revised minus already paid. The letter of intent issued to the petitioners clearly stated that the rates for conversion charges are being revised. The rates charged at the time of permission were abysmally low and these had not been revised for 20 years. At the time of revision, the rates were found to have increased manifold. Ever since the revision of these charges, the applicants are paying without any protest or question. The petitioners have raised this issue only because they have already been granted the permission and they have nothing to lose. Rebutting the additional argument of Mr. Sarin, learned Sr. Counsel that the Primary School mentioned in the Controlled Area is not a public institution, the learned Advocate General relied on the Division Bench Judgment of this Court in the case of United Riceland Ltd. v. State of Haryana and Ors. 2003 H.R.R. 452 and submitted that in the aforesaid Judgment, the School has been recognised as a public institution. Learned Advocate General further submitted that the declaration of the Controlled Area comes into force on the date of publication of the Notification u/s 4(l)(a)(b) of the Act, The preparation of the development plan is a subsequent exercise to prepare land use and to

impose restrictions in accordance with the prescribed land use. The regulatory requirement in a controlled area starts from the day, it is notified in the Gazette. According to the learned Advocate General, the issue has already been settled by a Division Bench Judgment of this Court in the case of Ahuja Vaishno Dhaba No. 1 v. State of Haryana and Ors. (2003) 134 P.L.R. 5. According to the learned Advocate General, even Section 7 of the Act makes it clear that restrictions take place from the date of Notification u/s 4 is published.

12. We have considered the submissions made by the learned Counsel for the parties at length.

13. We may first notice certain undisputed facts: (a) The land of all the petitioners falls within the designated controlled areas; (b) The conversion of agricultural land for non-agricultural purposes is subject to Regulation under the 1963 Act and the 1965 Rules. (c) All the petitioners have executed agreements as provided under Rule 26-D of the 1965 Rules. (d) All the petitioners have given affidavits in support of the agreement (e) All the petitioners have furnished bank guarantee as demanded. (f) All the petitioners had paid the conversion charges demanded from them. (g) All the petitioners have fully developed the commercial enterprises and are successfully running the same but they have not been issued the completion certificates.

14. Before advertng to the common arguments, we would firstly deal with the additional arguments of Mr. Sarin and Mr. Patwalia. Both the learned Counsel had argued that their land had been illegally declared to be within the controlled area. We are unable to accept the arguments of the learned Counsel. The Notification declaring the land of the petitioners within the Controlled Area was issued on 22.1.1991. The petitioners did not care to challenge the aforesaid Notification till the unamended writ petition was filed. Therefore, the arguments now submitted by the learned Counsel are clearly an after-thought and, in our opinion, have been added only to support the submissions made under the 1963 Act and the 1965 Rules with regard to conversion charges.

15. On merits, we are unable to accept the submission of Mr. Sarin that a Government Primary School would not fall within the definition of a "public institution". The learned Counsel submitted that an established school having the characteristic of an ancient and historical monument would be within the definition of a public institution. In other words, an old established "public school" would fall within the definition. We are unable to subscribe to such a view. There would not be many such schools in the area that have been declared as Controlled Areas. By no stretch of imagination can it be said that a Government Primary School would not be a public institution. Even on precedent, the matter is conclusively concluded against the petitioners by a Division Bench Judgment of this Court in the case of United Riceland Ltd. (supra). In this case, the Division Bench considered the rationale for declaring the certain specified areas as Controlled Areas. And held as under:

32...The object of declaring a particular area to be controlled area u/s 4 of the Act is not only to act, control and regulate the development of industrial and residential areas but to prevent construction of buildings in and around public institutions like schools etc., ancient and historical monument....

16. We are also unable to accept the submission of Mr. Sarin and Mr. Patwalia that the notification issued u/s 4(1) of the 1963 Act would not be final from the date of its publication. Accepting such an argument will destroy the underlying reasons for granting the power to the State to declare certain defined areas as "Controlled Areas". This issue has also been settled by a Division of this Court in the case of Ahuja Vaishno Dhaba No. 1 (Supra). In this case, the Division Bench considered the identical submissions and held as follows:

21... The restraint envisaged u/s 6 of the Restriction of Unregulated Development Act, 1963, are effective from the date on which the area in question is declared as "controlled area" by a notification issued u/s 4 of the Restriction of Unregulated Development Act, 1963. Development plans u/s 5 can be prepared only after the declaration of an area as "controlled area". It is, therefore, clear that the Legislature did not intend to stall the restrictions envisaged in respect of erection or re-erection of buildings in a "controlled area" till the finalization of development plans. Section 7 which deals with prohibition of change of land use in "controlled area". The restraint expressed therein takes effect from "...the date of publication of the notification under Sub-section (1) of Section 4...." The mandate of Section 7, therefore, also clearly enforces the restrictions envisaged therein from the date of notification of an area as "controlled area". Development plans u/s 5, as noticed above, are prepared only after the notification of an area as "controlled area". It is, therefore, not possible for us to accept from the clear legislative intent of the provisions of Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963, that the restrictions envisaged therein are only enforceable from the date of publication of the development plan u/s 5 of the said Act. Even on a harmonious construction of Sections 3 to 7 of the Restriction of Unregulated Development Act, 1963, it is not possible for us to hold that the scheme of legislation in question presupposed the finalisation of the development plans u/s 5 of the Restriction of Unregulated Development Act, 1963, as a pre-requisite to the restrictions expressed through Sections 3, 6 and 7 of the Restriction of Unregulated Development Act, 1963. It has further been held as under: 23...The converse is, however, not acceptable. It is not possible for us to accept that till development plans are finalized under the provisions of the Restriction of Unregulated Development Act, 1963, it is open to individuals to create access to scheduled roads or to effect erection or re-erection of buildings within the "controlled areas", or to change land use within a "controlled area" till the finalisation of development plans envisaged u/s 5 of the Restriction of Unregulated Development Act, 1963. Section 3 to 7 of the Restriction of Unregulated Development Act, 1963, in our view, impose restrictions in respect of erection or re-erection of buildings in the vicinity of

scheduled road and/or in respect of access to a scheduled road, with effect from the date of enforcement of the Restriction of Unregulated Development Act, 1963, itself. Whereas, the restrictions imposed under Sections 6 and 7 of the Restriction of Unregulated Development Act, 1963, in respect of erection or re-erection of buildings in "controlled area", as well as the change of land use, are enforceable with effect from the date of an area is notified as a "controlled area" u/s 4(1) of the Restriction of Unregulated Development Act, 1963. Any other interpretation, in our view, would defeat the very object and purpose of the Act.

17. We are in respectful agreement with the aforesaid observations of the Division Bench.

18. Now we take up the main issue strenuously canvassed by all the learned Counsel for the parties that before the amendment of Section 7 of the 1963 Act, there was no requirement of payment of any conversion charges much less any additional conversion charges. Even after the amendment, no Notification has been issued prescribing the conversion rates. Charges have not been prescribed under the 1965 Rules. Therefore, levying of conversion charges is wholly without authority of law. The respondents cannot be permitted to levy tax disguised as conversion charges. Even if the Director had the authority to levy conversion charges, the amounts claimed are unconscionable, and therefore, arbitrary.

19. A careful perusal of the provisions of the 1963 Act and the 1965 Rules shows that provisions have been made therein to regulate the development within the controlled areas. Some of these provisions have been interpreted by the two Division Benches of this Court in the cases of United Riceland Ltd. (supra) and Ahuja Vaishno Dhaba No. 1 (supra). Section 4 of the Act empowers the Government to declare the whole or any part of any area adjacent to within a distance of 8 kms on the outer side of the boundary of any town or within two kilo-meters on the outer side of the boundary of any industrial or housing estate, public institution or an ancient and historical monument to be a controlled area. Once a defined area is declared as a "controlled area", use of any land therein for the purposes other than those for which it was used on the date of the publication of the Notification u/s 4 of the 1963 Act, cannot be made except with the permission of the Director. Even the owner of agricultural land who wishes to divert the agricultural land for a non-agricultural purpose would, therefore, have to seek the permission of the Director. We may notice here that control and Regulation by the government within the controlled area does not divest the owner from the title of the land. He continues to be the owner. Restrictions are, however, placed for conversion of change of land use from its use as on the date of the Notification u/s 4(1) of the 1963 Act. For the purposes of change of land use, the Notification becomes effective from the date it is notified u/s 4(1) of the Act. Thereafter change in the land user within the Controlled Area can be permitted by the Director in exercise of the powers u/s 7 of the Act which is as under:

7. Prohibition on use of land in controlled areas.- (1) No land within the

controlled area shall, except with the permission of the Director [and on payment of such conversion charges as may be prescribed by the Government from time to time] (inserted by Haryana Act No. 16 of 1996 dated 13.12.1996), be used for purposes other than those for which it was used on the date of publication of the notification under Sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln pottery kiln, lime-kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed. (1A) Local authorities, firms and undertakings of Government, colonizers and persons exempted from obtaining a licence under the Haryana Development Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempted from making an application u/s 8 of this Act.

XXX XXX XXX

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

A perusal of the aforesaid section would clearly show that it is in two parts. The first part of the Section provides for payment of conversion charges as may be prescribed by the Government from time to time, if an application is made for change of land user for the purposes other than those for which it was used on the date of publication of the Notification under Sub-section (1) of Section 4 of the Act i.e. in case permission is sought to change the user of agricultural land to commercial leisure or industrial purposes. In such a case there is no requirement of a licence; only permission is to be granted by the Director on payment of conversion charges as may be prescribed by the Government from time to time. On the other hand, the second part of the Section deals with grant of licenses for change of land user for the purposes of charcoal-kiln, pottery kiln, lime-kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation. Licence can be granted by the Director on payment of such fees and under such conditions as may be prescribed. In these cases, the applicant would be liable to pay the licence fee as may be prescribed. Therefore, there is a clear distinction between the power of the Director to grant licences on payment of such fees as may be prescribed. Furthermore, if the term "as may be prescribed" is read alongwith the definition contained in Section 2(8) where term "prescribed" is defined to mean "prescribed by the rules under this Act", it becomes clear that for the grant of a licence, the Director shall charge the fees prescribed under the Rules. This limitation cannot be superimposed, as canvassed by the learned Counsel for the petitioners, on the power of the Government to levy conversion charges which may be prescribed by the Government from time to time as envisaged u/s 7 of the 1963 Act. The term "prescribed" in the Rules is limited in its application only to the fee which is to be charged for obtaining a licence. It cannot be confused with

permission which is sought by an applicant under Rule 26(d) and granted by the Director under Rule 26(e), A bare perusal of the rules contained in Part IVA of the 1965 Rules makes it clear that the Rules 26A to 26F deal with application for permission u/s 7 in case of a person other than a colonizer. These rules lay down a detailed procedure enabling the Director to satisfy himself about the bonafides of the applicant of his intention to convert the user of land. Rules 26A and 26B enable the Director to gather the necessary information about the applicant. This information is to be supplied by the applicant in the Form CLU-I. Having prima facie satisfied himself about the bona fides, the Director is then empowered under Rule 26-C to call upon the applicant to fulfil certain conditions as laid down in Rule 26-D. Rule 26-D stipulates some of the uniform conditions which are required to be fulfilled by all the applicants. But the Rule is not exhaustive, it is only inclusive. This intention of the Legislature is evident from Rule 26-E. This Rule provides that the Director shall grant the permission if: (a) the applicant has fulfilled all the conditions laid down in Rule 26-D; (b) to the satisfaction of the Director. The term "satisfaction of the Director" clearly postulates that hands of the Director are not tied to the conditions enumerated in Rule 26-D whilst granting permission under Rule 26-E. In fact, even at a preliminary stage, under Rule 26-C, it provides that if the Director may deem fit and he is satisfied that the application is fit for the grant of permission, shall call upon the applicant to fulfil the conditions laid down in Rule 26-D. The satisfaction of the Director cannot be sacrificed at the altar of the straight-jacket of the conditions contained in Rule 26-D. The intention of the Legislature becomes further clear from the provision contained in Section 8(2) of the Act, which is as under:

8. Application for permission etc. and the grant or refusal thereof- (1) Every person desiring to obtain the permission referred to in Section 3 or Section 6 or Section 7 or licence u/s 7 shall make an application in writing to the Director in such form and containing such information in respect of the land, building, excavation or means of access to a road to which the application relates as may be prescribed.

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

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

(b) refuse to grant such permission or licence.

20. A perusal of the aforesaid provisions clearly shows that the application for permission or licence is to be made u/s 8(1). u/s 8(2), the Director has the power to grant the permission or licence, subject to the conditions, "as may be specified in the order". This clearly is an enabling provision, the exercise of which is not limited to the conditions contained in Rule 26-D. The provision with regard to conversion charges is contained in Section 7 of the Act. Therefore, any agreement/undertaking to pay the conversion charges cannot be said to be

without authority of law, merely because conversion charges are not mentioned in Rule 26-D. Conditions prescribed in Rule 26-D are in addition to the provision contained in Section 7 of the Act. It is settled proposition of law, that Rules would be subordinate to the statute, While construing Rule 26-D, the main provision contained in Section 7, cannot be treated as a surplusage. Nor can it be said to be subject to the provision contained in Rule 26-D. Section 7 is wholly independent provision from Rule 26-D and has to be interpreted as such. This view of ours will also find support from the observations of the Supreme Court in the case of State of Tamil Nadu (supra) and National Insurance Company Ltd. (supra). In the case of State of Tamil Nadu (supra), it was observed by the Supreme Court as under:

A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. "Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation" The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, ; (see also Maxell: Interpretation of Statutes, 11th Edn. PP 49-5df). So, statutory rules made pursuant to the power entrusted by Parliament are law made by Parliament within the meaning of Article 302 of the Constitution. To hold otherwise would be to ignore the complex demands made upon modern legislation which necessitate the plenary legislating body to discharge its legislative function by laying down broad guide-lines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules and to amend the rules from time to time to meet foreseen and unpredictable situation, all within the frame work of the power entrusted to it by the plenary legislating body.

In the case of National Insurance Company Limited (supra), the Supreme Court has observed as under:

It is now a well settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.

21. As noticed earlier, Section 7 clearly provides for grant of permission for change of land user on payment of such conversion charges as "may be prescribed by the Government" from time to time. The Government has duly prescribed the rates in the meeting of the Council of Ministers held on 6.9.1996. The levy of conversion charges being directly referable to Section 7 of the 1963 Act, cannot be said to be without authority of law.

22. On the other hand, the relevant provisions for processing applications for licence u/s 8 for setting up brick-kiln or bricks field are contained in Rules 32 to

37 (Part VI of the 1965 Rules). Rule 37 prescribes the fee for the issuance of various licences, which is as under:

37. Fees for licence [Section 7 and (2)(d)].- Fees for every issue or renewal of a licence under Rule 35 shall be one thousand five hundred rupees." These rules do not over-lap the area covered by rules contained in Part IV-A i.e. 26-A to 26-F which deal with the processing of applications for permission under Sections 7 and 8 in case of a person other than a coloniser. Rule 37 specifically prescribes for fees for licences issued under Rule 35 to be Rs. 1500/-. Rule 35 provides that the Director shall on receipt of information and accompanying documents as mentioned in Rule 32, after making such enquiry as may be considered necessary to grant a licence in Form BK.-II or refuse to grant licence. The documents required under Rule 32 are enumerated which are relevant for the decision of excavation of the land hitherto put to agricultural use. A provision similar to Rule 37 does not exist in the scheme of the rules for permission under Sections 7 and 8 in case of a person other than colonizer i.e. Rules 26-A and 26-F. As noticed earlier, Section 7 refers to "such fees and under such conditions as may be prescribed" and "payment of such fees as may be prescribed" in relation to excavation licences. Section 2(8) defines the term "prescribed" to mean as prescribed by rules made in this Act. Therefore, a fee of Rs. 1500/- has been prescribed under Rule 37 to obtain a licence of Brick kiln within controlled areas. There can be no deviation from the "fee prescribed" for obtaining the licences for brick-kilns etc. Any demand over and above the prescribed fee would be without authority of law.

23. The petitioners have also argued that conversion charges had been levied arbitrarily as the rates are unreasonably high, and not co-related to any known criteria. We are unable to accept this submission, also. In the written statement filed by the respondents, the reasons for conversion charges have been clearly set out. Mr. Hooda, Learned Advocate General has made a detailed reference to the factual position as contained in the written statement. We have noticed the relevant portion of the written statement. There are discernible reasons for the levy of conversion charges which become apparent on a careful perusal of written statement as well as the record produced before us. When permission is granted for change of user from agricultural to non-agricultural, immediately, there is a spurt in developmental activity in the surrounding areas. Therefore, the Government has to bear additional liability for infrastructure and for provisions of civic amenities. There is a phenomenal increase in the market value of the property. According to the respondents, study of the sale-deeds executed in Gurgaon during the year 1969-70 to 1996 shows that there is an increase by 40 times in the land value. The respondents have relied on a table which has been reproduced in the earlier part of the Judgment. Conversion charges had been charged in the State of Haryana since the year 1974. Keeping in view the phenomenal rise in prices in the areas surrounding Gurgaon and other towns in the State of Haryana, the conversion rates were revised. The matter with regard to revision of conversion charges was under the consideration of the State

Government since 1987. Therefore, undertakings were taken from all the applicants seeking a change of user that they would pay the revised conversion charges and when the same are finalised. On 6.9.1996, the Council of Ministers in its meeting approved the Scheduled rates of conversion charges per square yard in rupees. The table of conversion charges approved by the Council of Ministers on 6.9.1996 have been attached with the written statement filed to the amended writ petition (Annexure CR/1). A perusal of Chart (Annexure CR/1) shows that the Council of Ministers have laid down a complete criteria for levy of conversion charges. No material has been placed before this Court by the petitioners to show that the criteria adopted by the Council of Ministers is either arbitrary or whimsical. A perusal of these Charts clearly shows that the conversion charges have been tabulated on the basis of known criteria of evaluation. Conversion charges of residential/industrial/commercial properties have been tabulated on the basis of their locations on National Highways/ Scheduled Roads/other roads. The applicants were further divided on the basis of the Institutions i.e. Public, Semi-Public or institutions. Applications for recreational activities have been placed in a separate category. Further, different conversion rates have been provided for Controlled Areas around and adjacent to Gurgaon upto Manesar and around Sohana. Thereafter, the conversion charges have been given for periphery area of Panchkula and then Controlled areas around Damdama Lake, Faridabad, Ballabhgarh, Complex and Controlled Areas around Panipat, Sonapat and Bahadurgarh Towns and thereafter separate rates have been given for the rest of the estates (Annexure CR/1). Chart (Annexure CR/2) contains a similar table issued on 7.1.1998. Annexure CR/3 gives the rates have been given for the rest of the estates (Annexure CR/1). Chart (Annexure CR/2) contains a similar table issued on 7.1.1998. Annexure CR/3 gives the rates of conversion charges in rupees per square yard for industrial use. Here whole of the State of Haryana has been divided into zones, viz. High Potential, Medium Potential, Low Potential towns such as Gurgaon Block, except Manesar, Faridabad-Ballabhgarh Blocks have been placed in high potential zones. Even here different rates have been specified for development by Haryana State Industrial Development Corporation/Haryana Urban Development Authority and private Developers. Different rates have been given for individual applicants. The second part of the Chart shows rates of conversion charges in rupees per square yard (for other uses). In this category also, State of Haryana has been divided into high potential zones, minimum potential zones and low potential zones. Again Controlled Areas and Additional Controlled Areas around and adjacent to Gurgaon and Sonhana, Faridabad, Ballabhgarh Complex have been placed in the High Potential Zone. Periphery of Panchkula controlled area of Damdama Lake, Faridabad complex Panipat, Sonapat and Bahadurgarh towns have been placed in minimum potential zones. Rest of the state is in low potential zone. The applicants have been subdivided into residential, commercial, industrial and recreational. In our considered opinion, the aforesaid criteria cannot be said to be either irrational or arbitrary.

24. The scope of judicial review in such matters has been considered and settled by the Supreme Court in a catena of landmark Judgments. In the case of *Tata Cellular v. Union of India*, 22 J.T. 1994 (4) S.C. 532 the Supreme Court approved the observations of Lord Brightman in the case of *Chief Constable of the North Wales, Police v. Evans*, 23 (1982) 3 All.E.R. 141 at P. 154. In paragraph 91 of the aforesaid Judgment, the Supreme Court observed as follows:

91. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

The Supreme Court made the ratio even further clear in paragraph 95 of the Judgment as under:

95. Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review and can be classified as under: (i) **Illegality**: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **irrationality**, namely, *Wednesbury Unreasonableness*.

(iii) **Procedural impropriety**.

25. Applying the aforesaid test, we are unable to hold that the State of Haryana is in any manner re-miss in asking the petitioners to pay the conversion charges, as claimed. for the aforesaid reasons, we find no merit in the submission of the learned Counsel for the petitioners that the respondents have levied the conversion charges or additional conversion charges, without any justification, arbitrarily or without any authority of law.

26. Now, we must deal with the foremost argument of the counsel for the petitioners that the agreements and the affidavits given to the petitioners while seeking permission for change of user is unenforceable, as the petitioners executed these documents under duress. In support of their submission, learned Counsel for the petitioners placed heavy reliance on the Division Bench Judgment of this Court in the case of *Mohavir Singh (supra)* decided on 12.4.2005. The Division Bench in the aforesaid Judgment was considering the relevant provisions contained in the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as "the 1975 Act"). The State of Haryana in order to carry out the objects of the 1975 Act has, in exercise of the powers vested in it by Section 24 of the 1975 Act, framed rules called the Haryana Development and Regulation of Urban Area Rules, 1976 (hereinafter referred to as "the 1976 Rules"). As noticed by the Division Bench, the petitioner was interested in developing his land into a commercial properly. He wanted to set up a

commercial colony. For that purpose, he was required to obtain a licence on payment of licence fee, as prescribed under the 1975 Act and also depicted in the Schedule appended to the 1976 Rules. This Schedule was amended through a Notification published in the Haryana Government Gazette (Extraordinary) dated 1.9.2003. Under the aforesaid Notification, the licence fee prescribed for commercial/office complexes in residential sectors of Gurgaon was hiked upto Rs. 50.00 lacs (for 175 floor area ratio), and Rs. 25 lacs (for 100 and 150 floor area ratio). The petitioner was granted a licence to develop a commercial colony/office complex on 26.4.2004. A Memorandum dated 5.7.2004 was issued to the petitioner by the Administrator, Haryana Urban Development Authority (hereinafter referred to as "the HUDA"), calling upon the petitioner to execute an agreement with the HUDA so as to enable the HUDA to release the petitioner's land from acquisition. By Memorandum dated 6.7.2004, the Director, Town and Country Planning, Haryana required the petitioner to fulfill the requirements/conditions laid down in Rule 11 of the 1976 Rules, and also required him to pay a further amount of Rs. 3,04,02,30/- on account of deficiency in licence fee. The petitioner claimed that there was no deficiency in licence fee already deposited, and as such no further payment should have been demanded on that account. The respondents had subsequently revised the licence fee. However, in order to avoid any confrontation, the petitioner deposited the deficiency in licence fee. He even submitted all the undertakings that were required from him. Even thereafter, the petitioner was informed that the licence fee had been further enhanced to Rs. 2.06 crores per acre, for 150 floor area ratio and Rs. 3 crores per acre for 175 floor area ratio. He was again asked to make good the deficiency in the licence fee. He, therefore, made a representation to the respondents stating that demand for licence fee at rates higher than the rates prescribed in the Schedule appended to 1976 Rules for the licence sought by him was not only illegal, but also unjustified. Solitary issue canvassed during the course of the arguments on behalf of the petitioner related to the rate at which the licence fee is chargeable from an applicant like the petitioner who seeks change of user of land under the provisions of 1975 Act. It was contended by the learned Counsel for the petitioners that an owner who desires to convert his land into a commercial colony, like the petitioners, can only be required to pay such licence fee, as is prescribed. Reliance was placed on Section 2(n) of the 1975 Act which is as under:

2(n) "Prescribed" means prescribed by rules made under the Act.

The Division Bench considered the provisions of the 1975 Act and the 1976 Rules. Relying on a Judgment of the Supreme Court in the case of State of Tamil Nadu v. Hind Stone etc. AIR S C 711 and the Judgment of the Supreme Court in the case of National Insurance Company Limited (supra), learned Counsel for the petitioner had submitted that since the 1976 Rules had been framed in exercise of the powers u/s 24 of the 1975 Act, the same must be treated as part of the Act and the State could not deviate from the fee prescribed under the Rules. The Division Bench accepted the aforesaid submission in the following words:

7). There is no scope for escape from the proposition canvassed by the learned Counsel for the petitioner. An application for grant of licence under the 1975 Act is to be made in terms of the provisions of Section 3 of the said Act. Section 3 of the 1975 Act expressly envisages the requirement of paying licence fee as may be "prescribed". Section 2(n) of the 1976 Act (sic. Rules) mandates that the term "prescribed" used in the 1975 Act would mean prescribed by Rules framed under the 1975 Act. The only rules framed u/s 24 of the 1975 Act undisputedly are the 1976 Rules, wherein Rule 3 leaves no manner of doubt that licence fee chargeable for grant of licences u/s 3 of the 1975 Act, is to be at the rates expressed in the Schedule appended to the 1976 rules. For obtaining a licence so as to cover the user of land into a commercial/office complex at Gurgaon, the Schedule appended to the 1976 Rules (amended as on 1.9.2003), prescribes a sum of Rs. 50 lacs per acre for 175 floor area ratio, and Rs. 25 lacs per acre for 100 and 150 floor area ratio. The aforesaid rates of licence fee depicted in the Schedule, in our view, has the force of law in view of the law laid down by the Supreme Court in State of Tamil Nadu's case (supra) and National Insurance Company Limited's case (supra). Licence fee to be charged from the petitioner in furtherance of the application preferred by him u/s 3 of the 1975 Act, therefore, in our view, cannot be at variance with the rates of licence "prescribed" in the Schedule appended to the 1976 Rules. Since the decisions of the Council of Ministers to alter licence fee prescribed in the Schedule appended to the 1976 Rules, are not referable to, any authority vested in them, either under the 1976 Rules or the 1975 Act, we are of the view that the Council of Ministers do not have any authority (for reasons detailed in the following paragraphs) to amend/modify/revise the rates of licence fee depicted in the Schedule appended to the 1976 Rules, and as such, the decisions of the Council of Ministers, referred to by the learned Counsel for the respondents do not have the force of law.

10. In order to evaluate the submissions of the learned Counsel for the respondents, and the effect thereof to the controversy in hand, the first question which needs to be answered is, whether the decision of Council of Ministers in fixing the rates of licence fee (as have been noticed above) can over-ride the licence fee "prescribed" by the 1976 Rules, framed u/s 24 of the 1975 Act?) The answer to the instant query has already been rendered by us while dealing with the submissions of the learned Counsel for the petitioner, in the negative. It has been concluded that the rates of licence fee depicted in the Schedule appended to the 1976 rules have the force and authority of law, and no executive authority can over-ride the same. Irrespective of its statute or authority. The licence fee "prescribed" in the Schedule appended to the 1976 Rules (by following the prescribed procedure), can only be claimed from applicants like the petitioner. In sum and substance, therefore, to amend/modify/revise the licence fee "prescribed" in the Schedule appended to the 1976 Rules, it would be imperative to follow the procedure prescribed by Section 24 of the 1975 Act and unless the said procedure is followed, the "prescribed" fee cannot be altered, not even by the Council of Ministers....

27. We are in respectfully agreement with the aforesaid observations. The observations of the Division Bench reproduced above, make it abundantly clear that the controversy raised in the aforesaid case was fundamentally different from the controversy raised in the present case. Therein the Division Bench considered the impact of a decision of Council of Ministers upon a fee prescribed under the 1976 Rules which have been made u/s 24 for the 1975 Act. It was held that the decision of the Council of Ministers was not referable, to any authority vested in them, either under the 1976 Rules or under the 1975 Act. It was further held that the Council of Ministers did not have any authority to amend/modify/review the rates of licence fee depicted in the Schedule appended to the 1976 Rules. Therefore, the decision of the Council of Ministers, did not have the force of law. In the present case, no fee has been prescribed under the 1965 Rules framed u/s 25 of the 1963 Act, for seeking permission for change of land user. Further, Section 7 of the Act itself provides that the conversion charges may be prescribed by the Government from time to time. The Government has prescribed the conversion charges as is evident from the decision of the Council of Ministers dated 6.9.1996. The decision of the Council of Ministers is directly referable to Section 7 of the Act. Therefore, it cannot be said that the decision of the Council of Ministers is without the authority of law.

28. The petitioners have also relied on the observations of the Division Bench in paragraph 11 of the Judgment in Mahavir Singh's case (supra), in support the submission that the respondents had left the petitioners with no option, but to execute the agreements and the affidavits containing Clauses which were contrary to the conditions laid down in Rule 26-D of the 1976 Rules read with Form CLU-II, as contained in the Schedule appended to the Rules. In our opinion, the aforesaid observations in Mahavir Singh's case (supra) would not be applicable in the facts and circumstances of the present case, as the petitioners have not signed any documents which would violate the norms statutorily prescribed. The observations of the Division Bench are as follows:

11) The second contention advanced by the learned Counsel for the respondents, namely, that the petitioner cannot be permitted to raise a challenge to the licence fee demanded from him, in view of the undertaking given by him, that he would pay the enhanced licence fee and when the same is finalised, is also not acceptable in law. While adjudicating upon the instant contention of the learned Counsel for the respondents, what needs to be determined is, whether or not the undertaking under reference is enforceable in law? It is now well settled that a contract which is unconscionable, unfair, unreasonable and against the principle of distributive justice and public policy is violative of Article 14 of the Constitution of India. It has been held by the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , that under the doctrine of distributive justice, a court must strike down every unconscionable, unfair and unreasonable contract (or a clause in a contract), entered upon between parties who are not equal in bargaining power. Dwelling upon the concept, it was observed in Central Inland Water Transport

Corporation's case (supra) that there could be myriad situations which would result in unfair and unreasonable bargaining power between parties. These cases, according to the Supreme Court, can neither be enumerated exhaustively nor fully illustrated, and that, Courts must judge each case on its own facts and circumstances. It is clear that the principle of distributive justice can apply only where there is unequal bargaining power between the parties, be it for reasons of circumstance (whether of the creation of the parties or not), be it where the weaker party is in a position in which it can obtain goods or service or means of livelihood only upon the terms imposed by the stronger party (or go without them), be it where the weaker party has no choice or rather no meaningful choice but to give his assent to a contract (or to sign a dotted line in a prescribed or standard form as part of the contract). However, unfair or unreasonable a clause in a contract may be, the principle of distributive justice will not apply where the bargaining power of the contracting parties is equal or almost equal. So far as the present case is concerned, there can be no doubt that the first requirement for the applicability of the principle of distributive justice, namely, that there is a large disparity in the bargaining power between the contracting parties is fully made out, in as much as, the petitioner has no choice but to give his consent to the terms and conditions expressed by the respondents, he has also no choice but to sign the dotted lines if he wishes to obtain a licence, to use his property as a commercial/office complex, or else to accept denial of the licence. The principle of distributive justice would, however, apply to the case in hand, only if it can be further established by the petitioner, that the undertaking executed by the petitioner (that he would pay the enhanced licence fee as and when the same is finalised), is shown to be unconscionable, unfair, unreasonable, illegal and against public policy. It is clear from the conclusions drawn in the foregoing paragraphs, that the respondents are forcing the petitioner to agree to a condition which violates the provisions of the 1975 Act and the 1976 Rules, namely, to pay licence fee in excess of the licence fee which has been statutorily "prescribed". It is, therefore, obvious that the respondents have unconscionably, unfairly, unreasonably and illegally compelled the petitioner to execute the undertaking under reference. The action of the respondents, therefore, is not only illegal but must be deemed to be unconscionable, unfair, unreasonable and against public policy because it violates norms statutorily "prescribed". On the basis of the instant conclusion, it is natural to assume that the undertaking under reference was executed under the pressure of circumstances. The instant plea of the respondents i.e. to enforce the undertaking given by the petitioner is, therefore, obviously not acceptable in law, in view of the law laid down by the Supreme Court in Central Inland Water Transport Corporation's case (supra). The same principle which was enunciated by the Supreme Court in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , wherein the Apex Court while approving the principle, recorded that the scope of Articles 14 and 16 of the Constitution of India had been widened by a process of judicial interpretation so that the right of equality not only means the right not to be discriminated against, but also protection against any arbitrariness or

irrational act of the State. It has also been asserted therein that Courts ought to curb arbitrary exercise of power against individuals by the centers of power. The Apex Court in *Hindustan Times v. State of U.P.* (2001) 1 S C C 591 held that any unjust condition imposed on a private citizen by the State would attract the wrath of Article 14 of the Constitution of India. It was also observed in the aforesaid Judgment, that every action of the State which operates to the prejudice of any person must have the sanction of law, and further that, the executing cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in a court of law. Yet again, in *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, while accepting a challenge to an arbitrary award under the provisions of the Arbitration and Conciliation Act, 1976 the Supreme Court laid down the circumstances in which an arbitral award can be set aside by a court of law; the conclusion drawn read as under: (1) for the reasons mentioned in Section 34(2)(a)(i) to (v)

(2) for the reasons stated in Section 28(1)(a);

(3) for the reasons stated in Section 34(2)(b)(ii) on ground of conflict with public policy of India i.e. to say, it is contrary to:

(a) fundamental policy of India law; or

(b) Interest of India; or

(c) Justice or morality; or

(d) if it is patently illegal.

(4) for the reasons stated in Section 13(5) and 16(6) (para 74(A)

It is, therefore, apparent that even an award announced under the provisions of Arbitration and Conciliation Act, 1996, can be adjudged void, if it is contrary to law or is contrary to justice or morality, or if it is patently illegal. It has already been concluded herein above that the action of the respondents to enforce licence fee determined by the Council of Ministers is in violation of the provisions of the 1975 Act and 1976 Rules. It is, therefore, imperative to conclude that the undertaking given by the petitioner to pay licence fee determined by the Council of Ministers is an act of a weaker party committed in submission of the dictates of a stronger party. Examined on the touch-stone of the Judgments referred to above, the contention of the respondents that the petitioner be bound to the undertaking given by him is clearly unacceptable in law. The instant action of the Government is clearly contrary to the sanction of law as it violates the mandatory provisions of 1975 Act and 1976 Rules and is, therefore, liable to be set aside. The undertaking is, accordingly, declared as void and as such not enforceable against the petitioner.

A perusal of the aforesaid observations makes it clear that the undertaking given by the petitioner was held to be unconscionable in as much as the petitioner therein had no choice, but to give his consent to the terms and conditions

expressed by the respondents. He also had no choice, but to sign the dotted lines if he wished to obtain a licence, to use his property as a commercial/office complex, or else to accept denial of the licence. It has been further observed that the respondents were forcing the petitioner to agree to a condition which violates the provisions of the 1975 Act and 1976 Rules, namely, to pay licence fee in excess of the licence fee which has been statutorily prescribed. The Division Bench observed that it is, therefore, obvious that the respondents have unconscionably, unfairly, unreasonably and illegally compelled the petitioner to execute the undertaking under reference. The Division Bench held that the action of the respondents was, not only illegal, but must be deemed to be unconscionable, unfair, unreasonable and against public policy because it violates norms statutorily "prescribed". In our opinion, the situation in the present case is entirely different. The provisions contained under the 1963 Act and in the 1965 Rules in the present case have not been violated. The petitioners have not been compelled to enter into an unconscionable agreement. The petitioners were all along aware that they are liable to pay conversion charges. They were also aware that the rate of conversion charges had not yet been finalised. They were aware that under the 1965 Rules, no conversion charges are required to be prescribed. Section 7 of the 1963 Act specifically empowers the State government to prescribe the conversion charges. The revised rates of conversion charges were finalised by the Council of Ministers on 6.9.1996. We are, therefore, unable to hold, in the facts and circumstances of the present case, that the petitioners were compelled to enter into an unconscionable agreement. In our opinion, when an entrepreneur enters into a contract with the State Government, it cannot be presumed that the State would always have the upper hand. It will depend in the facts and circumstances of each case. The petitioners are not some small time or fly-by-night operators. They are seasoned businessmen they have exploited the resources available to them to their maximum advantage. It is the pleaded case of all the petitioners that they are providing luxury accommodation, to the extremely rich, in the luxury hotels constructed by them. It is also the pleaded case of the petitioners that the golf courses are to cater to the rich, business travellers/tourists to this country. They will come from foreign countries where playing Golf has become a luxury, beyond the reach of even the affluent. They, therefore, come to take advantage of international standard sporting facilities which are available in India at very competitive rates. These companies have carefully planned on capturing this growing future market. We would find it a little difficult to hold that any of these firms can be described as helpless. We are, therefore, of the opinion that the observations in Mahavir Singh's case, (supra), would not be applicable, in the facts of the

29. In our opinion, the observations made by the Supreme Court in the case of Central Inland Water Transport Corporation's case,² (supra), have to be understood in the context in which they are made. This view of ours will find support from the Judgment of the Supreme Court in the case of Inderpreet Singh

Kahlon and Others Vs. State of Punjab and Others, in which it has been observed as follows:

It is now well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. (See: P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, ; M.P. Gopalakrishnan Nair v. State of Kerala (2005)11 S.C.C. 672 and Haryana State Coop. Land Development Bank Vs. Neelam, .

The opening paragraph of the Judgment in Central Inland Water Transport Corporation's case (supra), makes it abundantly clear that the Supreme Court was dealing with the right of a Government of India Company to terminate the services of an employee, on the basis of a Clause contained in the contract of employment entered into between the employee and the Government Company. The services of the respondents-employees had been terminated under Rule 9 of the Central Inland Water Transport Corporation Ltd. (Service, Discipline and Appeal) Rules, 1979 framed by the Corporation which was as under:

9. Termination of employment for Acts other than misdemeanor.

(i) the employment of a permanent employee shall be subject to termination on three months' notice on either side. The Notice shall be in writing on either side. The Company may pay the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice or may deduct a like amount when the employee has failed to give due notice.

(ii) The services of a permanent employee can be terminated on the grounds of "services" no longer required in the interest of the Company without assigning any reason. A permanent employee whose services are terminated under this clause shall be paid 15 days' basic pay and dearness allowance for each completed year of continuous service in the Company as compensation. In addition, he will be entitled to encashment of leave to his credit.

30. The Supreme Court was concerned in the appeals with the validity of Clause (i) of Rule 9 only. The two employees, namely Brojo Nath Ganguly and Tarun Kanti Sen-gupta were working as General Manager (Financial) and General Manager (River Services), respectively. Their services were terminated under Rule 9(i). They filed writ petition in the Calcutta High Court under Article 226 of the Constitution of India challenging the termination of their services as also the validity of Rule 9(i). The Division Bench of Calcutta High Court held that Rule 9(i) is ultra vires Article 14 of the Constitution of India. The Corporation was before the Supreme court by way of appeals. It was in this scenario, that the Supreme Court made the observations which have been relied upon by the Division Bench in Mahavir Singh's case (supra). A question was posed by the Supreme Court in paragraph 68 of the Judgment which was as under:

68. We now turn to the second question which falls for determination in these

appeals, namely, whether an unconscionable term in a contract of employment entered into with the Corporation, which the "the State" within the meaning of the expression in Article 12, is void as being violative of Article 14. What is challenged under this head is Clause (i) of Rule 9 of the said rules. This challenge levelled by the respondent in each of these two appeals succeeded in the High Court.

The submissions of the parties were noticed by the Supreme Court in paragraphs 71 and 72 as under:

71. It was submitted on behalf of the appellants that there was nothing unconscionable about Rule 9(i), that Rule 9(i) was not a nudum pactum for it was supported by mutuality inasmuch as it conferred an equal right upon both parties to terminate the contract of employment, that the grounds which render an agreement void and unenforceable are set out in the Indian Contract Act, 1872 (Act 9 of 1872), that unconscionability was not mentioned in the Indian Contract Act as one of the grounds which invalidates an agreement, that the power conferred by Rule 9(i) was necessary for the proper functioning of the administration of the Corporation, that in the case of the respondents this was exercised by the Chairman-cum-Managing Director of the Corporation, and that a person holding the highest office in the Corporation was not likely to abuse the power conferred by Rule 9(i).

72. The submissions of the contesting respondents, on the other hand, were that the parties did not stand on an equal footing and did not enjoy the same bargaining power, that the contract contained in the service rules was one imposed upon these respondents, that the power conferred by Rule 9(i) was arbitrary and uncanalized as it did not set out any guidelines for the exercise of that power and that even assuming it may not be void as a contract, in any event it offended Article 14 as it conferred an absolute and arbitrary power upon the Corporation.

31. Before considering these submissions of the parties, in paragraph 82 of the Judgment, the Supreme Court observed as under:

82. Another jurisprudential concept of comparatively modern origin which has affected the law of contracts is the theory of "distributive justice". According to this doctrine, distributive fairness and justice in the possession of wealth and property can be achieved not only by taxation but also by regulatory control of private and contractual transactions even though this might involve some sacrifice of individual liberty. In *Lingappa Pochanna Appelwar v. State of Maharashtra*, this Court, while upholding the constitutionality of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, said (at SCC p. 491 para 16):

The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence know it. Legislators, judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed "distributive

justice". The concept of distributive justice in the sphere of law-making, connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: "From each according to his capacity, to each according to his needs". Distributive justice comprehends more than achieving lessening of inequalities by deferential taxation giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct Regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.

(emphasis supplied)

When our Constitution states that it is being enacted in order to give to all the citizens of India "JUSTICE, social, economic and political". When Clause (1) of Article 38 of the Constitution directs the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life, when Clause (2) of Article 38 directs the State, in particular, to minimize the inequalities in income, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, and when Article 39 directs the State that it shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment and that there should be equal pay for equal work for both men and women, it is the doctrine of distributive justice which is speaking through these words of the Constitution.

32. Considering the circumstances in which the two employees had accepted Rule 9(1), it was observed in paragraph 96 as follows:

96. The said Rules as also the earlier rules of 1970 were accepted by the contesting respondents without demur. Here again they had no real choice before them. They had risen higher in the hierarchy of the Corporation. If they had refused to accept the said Rules, it would have resulted in termination of their service and the consequent anxiety, harassment and uncertainty of finding alternative employment.

In paragraph 98, it was held as follows:

98. No apt description of Rule 9(i) can be given than to call it "the Henry VIII Clause". It confers absolute and arbitrary power upon the Corporation.

Rule 9 (i) thus confers an absolute, arbitrary and unguided power upon the Corporation.

The disparity between the contracting parties is set out by the Supreme Court in paragraphs 101 and 102 of the Judgment as under:

101. It was, however, submitted on behalf of the appellants that this was a contract entered into by the Corporation like any other contract entered into by it in the course of its trading activities and the court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

102. It was also submitted on behalf of the appellants that Rule 9(i) was supported by mutuality inasmuch as it conferred an equal right upon both the parties, for under it just as the employer could terminate the employee's service by giving him three months' notice or by paying him three months' basic and dearness allowance in lieu thereof, the employee could leave the service by giving three months' notice and when he failed to give such notice, the Corporation could deduct an equivalent amount from whatever may be payable to him. It is true that there is mutuality in Rule 9(1) the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable.

33. In View of the above, it was held as follows:

112. In the result, both these appeals fail and are dismissed but the order passed by the Calcutta High Court is modified by substituting for the declaration given by it in a declaration that Clause (i) of Rule 9 of the "Service, Discipline and Appeal Rules, 1979" of the Central Inland Water "Transport Corporation Limited is void u/s 23 of the Indian Contract Act, 1872, as being opposed to public policy and is also ultra vires Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice.

34. A perusal of the aforesaid extract of the Judgment would show that the Supreme Court was considering the contract of employment and its drastic consequences on the employees. It has been specifically noticed that the employees virtually had no choice, but to accept the unreasonable clause otherwise, it would have resulted in termination of their service. It has also been held that Rule 9(i) is violative of Article 14 of the Constitution of India as it confers absolute and arbitrary power on the Corporation to terminate the

services of even a confirmed employee. Therefore, the Supreme Court rejected the argument that it was a purely contractual matter and that the Court ought not to interfere with it. It was specifically held that it is not possible to equate employees with goods which can be bought and sold. It was further held that it is not possible to equate a contract of employment with a mercantile transaction between two businessmen. Rejecting the argument that the clause conferred an equal right upon both the parties, it was observed that it is true that there is mutuality in Rule 9(i). This was held to be same mutuality as in a contract between the lion and the lamb. Considering the unequal position of the Corporation and its employees, the argument of mutuality was held to be laughable. In our considered opinion, the aforesaid observations would not be applicable in the facts and circumstances of the present case. The observations made by the Supreme Court related to a contract of employment as distinguished from a mercantile contract between two consenting parties.

35. We are unable to read into the term "distributive justice" as enunciated by the Supreme Court, any indication that a contract entered into between two willing parties, shall be declared unconscionable as one of the parties subsequently comes to a conclusion that the terms and conditions of the contract are onerous. In the present case, we are not dealing with the case of a helpless party, pitted helplessly against a stronger, ruthless party. All the petitioners in this case are highly successful firms who have entered into highly profitable ventures. They are merely grumbling that by payment of the conversion charges, their astronomical profits have been somewhat dented. It would not be possible for this Court to hold that in the facts and circumstances of the present case, the agreement signed by the petitioners is unconscionable. It is also not against the provisions of the Act and the Rules as Section 7 of the Act specifically empowers the State Government to levy conversion charges.

36. In the case of *Hindustan Times* (2001) 1 S.C.C. 591 (supra), the Supreme Court considered the legality of the impugned executive instructions issued under Article 162 of the Constitution of India dealing with the matters which were covered under the provisions of the Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955. It was also argued that all provisions with regard to the welfare of the working journalists have been provided for under the aforesaid Act and the Litter Pradesh State had no legislative competence to issue the instructions under Article 162 of the Constitution of India or otherwise. The Government of U.P. had issued directions to deduct 5% of the amount due to the Government at the time of payment of bills for publication of government advertisements in all newspapers having a circulation of more than 25,000 copies. The amount so calculated was to form part of the fund for the purpose of granting pension to the working journalists. In these circumstances, the Supreme Court had observed that the respondents being a State cannot, in view of the equality doctrine contained in Article 14 of the Constitution of India, resort to the theory of "take it or leave it". In our opinion these observations would be of no assistance to the case projected by the

petitioners.

37. In the case of Pardeep Kumar Biswas (supra), the Supreme Court considered only the question of: as to whether Council of Scientific and Industrial Research (CSIR) is a "state" within the meaning of Article 12 of the Constitution of India? In the case of ABL International (supra), it has been observed by the Supreme Court that even the existence of an arbitration Clause would not preclude the High Court from entertaining a writ under Article 226 of the Constitution of India, if the Arbitration Clause itself is found to be unconscionable. The writ cannot be dismissed simply because some disputed questions of facts are involved. We are of the opinion that the learned Advocate General, Haryana, Mr. Hooda is correct in his submission that none of these Judgments are of any assistance to the petitioners in the facts and circumstances of the present case.

38. We may now consider the remaining common arguments of the learned Counsel.

39. Learned Counsel for the petitioners have argued that they had willingly paid Rs. 20/- per square yard as development charges. But they have now challenged the increase because it is arbitrary and without authority of law. In our opinion, the plea that the levy of conversion charges is without authority of law loses much of its efficacy, in view of the earlier conduct of the petitioners. They are really only objecting to the new rate of the conversion charges. They had accepted the rate of Rs. 20/- per square yard. Had there been only a marginal increase, they would have accepted it. The petitioners as well as the other applicants are paying, without demur, the conversion charges as levied after the Amendment Act of 1996 came into operation. Had it been a case of levy of conversion charges without authority of law, then there would be no justification to make the payment. We are, therefore, of the opinion that there is substance in the submission of the learned Advocate General that the petitioners are only taking advantage of the situation that they had commenced their projects before the 1996 Amendment Act came into force. Therefore, they have nothing to lose, as their projects are already functioning. In our opinion there is no equity in favour of the petitioners.

40. Much was argued by the learned Counsel for the petitioners on the issue of additional charges being many times more than the conversion charges. We have earlier held that the rates of conversion charges were finally determined only after the Cabinet passed the Resolution on 6.9.1996. Therefore, the term "additional conversion charges" is a misnomer and not much can be read into it. We are also of the opinion that the levy of conversion charges cannot be declared void on the ground that the Amendment Act has been given retrospective effect. Admittedly, the final clearances, in one form or the other had not yet been granted to the projects of the petitioners. The petitioners would, therefore, have to pay the conversion charges as finally determined, before the completion of their projects. The Act could be said to be made retrospective, in case the respondents had re-opened even the closed cases. They have not done so. In

fact, Mr. Chopra has argued that the action of the respondents is discriminatory, as the additional charges have not been levied on the applicants whose projects were completed before the Amendment.

41. We are also unable to accept the submission of Mr. Sarin that the petitioners had paid under mistake of law, and are, therefore, entitled to refund. The petitioners cannot be said to have made a mistake as it is their pleaded case that all applicants had paid at the earlier but much lower stipulated rate. The whole tenor of their arguments is that the increase in the additional conversion charges is, unconscionable. They have rather tried to justify the "reasonableness" of the earlier rate. Mr. Ashwani Chopra has laid stress on the rates specified by the Cabinet Committee that had been constituted during the pendency of the writ petitions. Even Mr. Sarin has argued that the additional charges cannot be more than the initial charges. Mr Patwalia had cited the dictionary meaning of the term "additional" to mean "supplemental". Therefore, it cannot be said that the payment of conversion charges was under a mistake; or without the authority of law.

42. We also do not find much substance in the submission of Mr. Sarin that the additional conversion charges are in the nature of tax or a fee. The conversion charge have been levied to permit the petitioners to convert the natural and the user of purely agricultural land into purely urban, land and/or for running commercial, leisure and hospitality enterprises. As explained by the respondents, the levy of conversion charges is part of the distributive justice process, as underlined by the Supreme Court in the case of Central Inland Water Transport Corporation Limited,²⁴ (supra). The Supreme Court has clearly held that Regulation in addition to taxation is a legitimate means of ensuring distributive justice. Thus, there is merit in the submission of the learned Advocate General that conversion charges are neither tax nor fee. These charges are levied by the State as a balancing factor for losing vital agricultural resources. The money recovered as conversion charges, will ultimately be used for the development projects undertaken by the Government. The change of land user is not granted to the petitioners as a matter of right. It has been granted in relaxation of the zoning Regulations. In case of non-levy or notional levy of conversion charges, the very purpose of declaring any area as a controlled area, would be defeated. In our opinion, since the conversion charges are neither tax nor fee, the Judgments cited by Mr. Sarin are not relevant.

43. Even otherwise, the respondents have given valid justification in the written statement for imposition of the conversion charges. Mr. Hooda, in our opinion, has rightly pointed out that once a defined area is declared as a "Controlled Area", the development therein has to strictly regulated to prevent haphazard growth. Change of land user in Controlled Area is not a right vested in the land owner. At best, it is a concession. The owner of the land cannot claim the right to change the user of agricultural land to non-agricultural either as a Fundamental Right or as a Statutory Right. The change of land user is permitted only to

unsure Controlled or regulated development within the area. This in fact is the view expressed by the two Division Benches of this Court in the cases of United Riceland Ltd. (supra) and Ahuja Vaishno Dhaba No. 1 (supra). The petitioners having entered into a contract with open eyes and having sworn affidavits, have to honour the covenants contained therein. In our opinion, Mr. Hooda has correctly relied on the Judgments of the Supreme Court in the case of Panna Lal (supra) and in the case of Defence Enclave Residents Society (supra). In the case of Panna Lal (supra), licences for the sale of country liquor were given to contractors for the years 1962-63, and 1963-64 under the guaranteed system. There was a total guaranteed amount where contracts failed to fulfil the guaranteed amount and there was a demand for a shortfall. Demand notices were issued for the total short-fall. Similarly, for the years 1967-68, 1968-69, 1969-70, where the contractors failed to pay the guaranteed amount, demand notices were issued for the shortfall. These notices were challenged by the Liquor Contractors on the ground that the short-fall amounted to levy of excise duty. The State, on the hand, contended that what was being recovered from the Liquor Contractors, were guaranteed amount in the licences for the exclusive privilege of selling country liquor. In paragraph 21, the Supreme Court observed as under:

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

44. Those, observations, in our opinion, are fully applicable to the facts and circumstances of the present case.

45. In the case of Defence Enclave Residents Society (supra), four writ petitions were filed before the Supreme Court under Article 32 of the Constitution of India. Although the facts were somewhat different, but the issue of law raised was identical and the matters were decided together. The petitioner's case was summed up in paragraphs 6 and 7 of the Judgment as under:

6. Although, originally, the "Defence Enclave" scheme formulated by second respondent contemplated allotment of plots at fixed rate of Rs. 600/- per sq. meter, on which basis the petitioner and others had taken possession during the period March, 1995 to December, 1995, pursuant to the order of this Court dated 30.4.1997, second respondent decided that the plot holder, would have to pay an additional amount of Rs. 694/- per sq. meter. Accordingly, the second respondent addressed a letter to the Secretary of the petitioner Society on 9.7.1997, calling upon the petitioner-Society to collect the additional amounts from its members, who had been allotted the plots, and remit the same on or before 31.7.1997,

failing which interest @ 15% per annum would have to be paid by the petitioner-Society upto the date of actual payment.

7. The petitioner-society has impugned the action of second respondent by the present writ petition under Article 32 of the Constitution on the following, amongst other, grounds:

(iii) That the MDA now has record out of the concluded contract between the petitioner-Society and the MDA and the demand, therefore, is not sustainable.

(v) That the impugned demand of Rs. 694/- per sq. meter over and above Rs. 600/-per sq. meter as per the terms of allotment is tantamount to violation of the contract between the petitioner and the MDA and is, therefore, not sustainable.

(vi) That all acts of the public authority must be public oriented as this sovereignty ultimately lies in the people. The demand clearly infringes the fundamental right to property of the members of the petitioner Society.

46. The respondents had pleaded that the writ petition is an abuse of the process of law. According to the respondents, the brochure published by them had clearly stated that "the site, size and price of the proposed property under this scheme is provisional. Vice-Chairman, MDA has right to make any alteration. In case of any dispute, the decision of Vice-Chairman, MDA shall be final and binding on the applicants/allottees." After considering the matter, the Supreme Court has observed as follows:

11. In our view, this writ petition is entirely misconceived. A perusal of the grounds on which relief is sought makes it clear that what is really a contractual dispute is sought to be masqueraded as breach of fundamental rights under Articles 14 19 and 21 of the Constitution.

12. In the first place, a fundamental right to property no longer exists by reason of the deletion of Clause (f) from Article 19(1) of the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978, Section 2, (w.e.f. 20.6.1979).

13. Secondly, it is not possible to accept the contention that Article 21 has been infringed or that there is a violation of Article 21 by reason of a dispute which has arisen between the two parties to a contract with regard to price payable for land allotted to the members of one of the parties.

In our opinion, these observations are also squarely applicable to the case of the petitioners. The contractual/statutory obligations have been camouflaged as unconscionable acts of the State of Haryana.

In the case of Gulmohar Estates Limited (supra), G.S. Singhvi, J. speaking for the Division Bench, observed as follows:

23... We are further of the opinion that the petitioner cannot challenge the terms and conditions of contract which it had entered with the Haryana Urban

Development Authority and on the basis of which it amassed wealth by developing a colony and allotting flats and other residential apartments to private individuals. No doubt, the licence was issued to the petitioner under the provisions of "1975 Act" and the rules framed thereunder, but only on that account the petitioner cannot invoke the provisions of Article 14 of the Constitution of India for the purpose of being relieved of its burden to pay the amount due to the public authority in terms of the agreement and in any case the writ jurisdiction under Article 226 of the Constitution of India cannot be allowed to be invoked in such like matters.

47. We would be further fortified in our conclusion by the observations of the Supreme Court in the case of Bihar State Electricity Board, Patna (*supra*). In paragraph 21 of the aforesaid Judgment, the Supreme has observed as under:

21... it is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. In view of Clause 4 having formed one of the stipulations alongwith others, it cannot be said to be nudum pactum and the maxim nudum pactum ex quo non oritur actio does not apply. Considered by the test of reasonableness, it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed by then until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly, the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. In cases where such agreements are made the terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made, as was held in Northern Ontario Power Co. Ltd. v. La Roche Mines Ltd. (1938) 3 A11.E.R. 755.

In view of the observations, of the Supreme Court quoted above, we are of the opinion that even if the petitioners had entered into a contract, the same cannot be held to be unconscionable. In the present case, however, the respondents have fixed the conversion charges on the basis of the statutory provisions. Therefore, the agreement cannot be held to be unconscionable on the ground that it is contrary to the provisions of the 1963 Act and 1965 Rules. For the aforesaid reasons, we are of the opinion that the writ petitions are devoid of any

merit.

In view of the above, the writ petitions are dismissed. No costs.