



JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. “Let this be a new town, symbolic of freedom of India unfettered by the traditions of the past...an expressions of the nation’s faith in the future”.

These were the words of Pandit Jawaharlal Nehru, India’s First Prime Minister, while laying down the founding principles of a new city for Capital of the State of Punjab.

I. BACKGROUND:

3. After India attained independence in the year 1947, the Government of Punjab in consultation with the Government of India approved the site for the new Capital of the State in March 1948. The new city was designed by French Architect Le Corbusier in association with other architects, namely, Pierre Jeanneret, Jane B. Drew and Maxwell Fry. The city was planned as a living example of urban design, landscaping and architecture. It was a city to be created with the use of ordinary construction materials and embellished with integral works of art. Chandigarh’s monumental architecture as enunciated by Le Corbusier is based on the principles of town planning concept of Sun, Space, and Verdure. Le Corbusier incorporated principles of light, space and greenery in the plan and used the human body as a metaphor – the ‘head’ contained the Capital Complex, the ‘heart’ being the Commercial Centre, i.e., Sector 17, lungs (the leisure valley, innumerable open spaces and sector greens), the intellect (the cultural and educational institutions), the viscera (the industrial area), and the ‘arms’ having academic and leisure facilities like open courtyards etc. The circulation system was conceived as having seven types of roads known as 7Vs.

4. Chandigarh has been envisaged as an administrative city with hierarchical distribution of population being such, that the population density in the northern sectors is low, which increases towards the southern sectors. Chandigarh has been planned as a low-rise city, and has been so developed that even after sixty years of its inception, it retains the original concept to a large extent. This is how the concept of this “beautiful city” was born.

5. On division of the State of Punjab into States of Punjab and Haryana, the city was made a Union Territory (UT), and became the Capital for both the States. The city of Chandigarh was developed into two phases, Phase-I having Sectors 1 to 30 and Phase-II having Sectors 31 to 47. Phase-I was designed for low-rise plotted development for a total population of 1,50,000. Phase-II Sectors were to have a much higher density as compared to Phase-I Sectors.

6. In the year 1952, the Union of India, in order to regulate development in the city of Chandigarh, enacted the Capital of Punjab (Development and Regulations) Act, 1952 (hereinafter referred to as “the 1952 Act”). In the year 1960, the Government of Punjab, in exercise of the powers conferred by

Sections 5 and 22 of the 1952 Act, made the Chandigarh (Sale of Sites and Building) Rules, 1960 (hereinafter referred to as “the 1960 Rules”). Rule 14 of the 1960 Rules prohibits fragmentation or amalgamation of any site or building. The validity of Rule 14 of the 1960 Rules was challenged before the High Court of Punjab & Haryana (for short, “High Court”) in the case of Chander Parkash Malhotra v. Ved Parkash Malhotra and Others<sup>1</sup>. Vide its judgment in the said case, the High Court held the said Rule 14 to be ultra vires to the Constitution of India. However, this Court, in the case of Chandigarh Administration v. Chander Parkash Malhotra and Others<sup>2</sup>, reversed the said judgment of the High Court to the extent it declared Rule 14 of the 1960 Rules to be ultra vires.

7. In the year 2001, the Administrator, UT of Chandigarh, in exercise of powers conferred under Sections 5 and 22 of the 1952 Act, framed the Chandigarh Apartment Rules, 2001 (hereinafter referred to as “the 2001 Rules”). By virtue of the 2001 Rules, even in case of single residential units, it was permissible to subdivide it into more than one apartment. The citizens of UT of Chandigarh vehemently opposed the construction of apartments, which according to them, had the effect of destroying the character of the city. In view of the public outcry, the 2001 Rules were repealed by 1991 SCC OnLine P&H 245 2 Civil Appeal No. 4974 of 1992 dated 24th November 1992 notification dated 1st October 2007. In the same year, i.e., 2007, the 1960 Rules were also repealed. The Administrator, UT of Chandigarh, in exercise of powers conferred under Section 22 of the 1952 Act, framed the Chandigarh Estate Rules, 2007 (hereinafter referred to as “the 2007 Rules”) on 7th November 2007. Rule 16 of the 2007 Rules again prohibited fragmentation/amalgamation of any site or building.

8. In the year 2009, a Committee for Chandigarh Master Plan, 2031 (for short, “CMP-2031”) came to be constituted. In the year 2010, a Committee of Experts (for short, “Expert Committee”) came to be constituted to look at both the original concept of the city of Chandigarh as well as the maintenance of important heritage buildings in the UT of Chandigarh.

9. In the Draft CMP-2031, the 2001 Rules were re-introduced. Prior to the finalization of the CMP-2031, objections were invited. A Board of “Inquiry and Hearing” (hereinafter referred to as, “the said Board”) was constituted to look at the grievances of the public at large. One of the major objections raised to the draft CMP-2031 was with regard to re-introduction of the 2001 Rules. The said Board, after considering objections, recommended that the re-introduction of the 2001 Rules should be deleted, and re-densification of any government residential/institutional pocket in Phase-I sectors should only be done with the prior approval of the Chandigarh Heritage Conservation Committee (for short, “Heritage Committee”).

10. The aforesaid recommendations were accepted by the Central Government and all references to the apartments in the Draft CMP-2031 were deleted from the Final CMP-2031, which was notified under Section 4(1)(f) of the 1952 Act and Sections 3, 4, 5 and 11 of the Punjab New Capital (Periphery) Control Act, 1952 and under Article 239 of the Constitution of India.

11. Noticing that in spite of the repeal of the 2001 Rules and the fact that further fragmentation of the property was prohibited as per Rule 16 of the 2007 Rules, a large number of single dwelling units were being surreptitiously converted into apartments, the appellants’ Association filed a

Public Interest Litigation being CWP No. 18559 of 2016 before the High Court. It was the grievance of the appellants that certain developers were purchasing the plots, constructing three apartments thereon and thereafter selling them to three different persons. It was sought to be contended that though the 2001 Rules were repealed, thereby prohibiting the construction of apartments on plots meant for single dwelling, and though the 1960 Rules and the 2007 Rules prohibited the fragmentation/amalgamation, some unscrupulous elements were attempting to construct and sell the apartments by indulging into illegal practices. The prayer sought in the petition before the High Court was for restraining the respondents from permitting residential plots in the UT of Chandigarh which were allotted as single dwelling units to be constructed or utilized as apartments. A prayer was also sought directing the respondent Chandigarh Administration to take appropriate action against the offending owners for violation of the undertakings submitted by them while applying for occupation certificate.

12. The High Court, vide order dated 15th September 2016, issued notice in the said writ petition. In the said proceedings, an application bearing No. 16263 of 2016 came to be filed praying for stay of conversion of single dwelling units into apartments. A reply came to be filed in the said writ petition by the UT of Chandigarh, stating therein that the Chandigarh Administration does not permit a residential house to be converted into an apartment on account of the fact that the 2001 Rules now stand repealed. II. PROCEEDINGS BEFORE THE HIGH COURT:

13. Since, in spite of its specific stand, Chandigarh Administration was not taking any steps to prevent fragmentation/apartmentalisation of single dwelling units, a Special Leave Petition (Civil) being No. 15789 of 2017 came to be filed before this Court. This Court, vide order dated 24 th May 2017, allowed to withdraw the said petition.

14. The appellants Association thereafter filed another application being C.M. No. 1580 of 2018 in CWP No. 18559 of 2016 seeking appropriate directions to be issued to the Chandigarh Administration to restrain percentage sale or part of share sale of freehold residential houses. In the said application, notice came to be issued by the High Court on 5th February 2018. Since no orders were passed in the said application, another application being C.M. No.19649 of 2019 came to be filed on 16th December 2019, praying for interim directions to the Chandigarh Administration to identify the residential plots which were fragmented into apartments. On 18th February 2020, notice came to be issued in the said application. The appellants Association again filed SLP(Civil) No. 6642 of 2021 before this Court. This Court, vide order dated 7 th May 2021, disposed of the said SLP by requesting the High Court to decide the said writ petition within a period of four months.

15. In the meantime, the High Court had appointed an amicus curiae to assist the court. On 27 th July 2021, the High Court passed an interim order directing the Chandigarh Administration to carry out an exercise whereby the properties/buildings were to be identified wherein, shares be it to the extent of 50%, 30% or 20% has been sold/transferred to a person outside the family of the original owner/shareholder. This was to be done on the basis of the record maintained in the office of the Estate Officer. The second step was to carry out a physical inspection of such identified buildings/dwelling units, to find out as to whether the sale of shares has actually translated into the buyer occupying an independent floor in the otherwise composite dwelling unit, or to find out as to

whether independent floors are in the process of being constructed.

16. The said order came to be challenged before this Court in SLP(Civil) Nos. 13120 and 12562 of 2021. The survey which was directed to be conducted by the High Court vide its order dated 27th July 2021, came to be stayed by this Court vide order dated 9th August 2021. This Court, on being informed that the survey had already been completed, vide order dated 6th September 2021, clarified that the High Court can proceed with the hearing of the writ petition pending before it after taking into consideration the report.

17. At the stage of hearing, the High Court considered the following issues raised by the learned amicus: "Issue No.1 □What is the meaning to be assigned to the term "Fragmentation" under the 1952 Act and the Rules framed thereunder?

Issue No.2 □Is sale of share(s) by owner or co-owner of a residential building prohibited under the 1952 Act or Rules made thereunder?

Issue No.3 □Does sale of share(s) by owner or co-owner in a residential building amount to 'fragmentation'?

Issue No.4 □What is the status of a co-owner by virtue of purchase of share(s) in a residential building?

Issue No.5 □Can occupation/possession of a specific portion of the joint property be termed as apartmentalization?

Issue No.6 □Whether the residential building constructed on a residential plot in UT Chandigarh meant for single family use and to be treated as a Single Dwelling Unit?"

18. Vide the impugned judgment dated 23rd November 2021, the High Court dismissed the writ petition. The High Court held that there was no provision under the 1952 Act or the Rules framed thereunder governing transfer of shares in relation to a site or building whether owned singly or under joint ownership. However, the High Court held that the sale of share(s) out of a building/site by the allottee(s)/transferee(s) was not barred, and rather was permissible under the general civil law. It further held that the status of such building/site, however, even after the sale of share(s) continues to be under joint ownership. It further held that for constituting a fragmentation, there has to be an element of permanent severance. Mere construction of three floors on a private plot and utilization of the same as independent units would not amount to fragmentation. It held that unless there has been a sub-division of the building duly recognized by the Estate Officer along with proportionate share in common areas and common facilities, the same would not amount to apartmentalization.

19. The High Court, however, found that the real estate agent/developer/seller, in order to extract maximum premium, would tend to paint a picture to the prospective buyer that by virtue of purchase of a share in the building, he would not only be entitled to have exclusive possession but

also ownership rights. The High Court observed that the same was not permissible and the purchaser, by purchase of share(s), only became a co-owner/co-sharer in the entire building to the extent of shareholding. In the eventuality of the dispute arising between the co-sharers/co-owners, the only remedy would be to put the property to auction and they would be only entitled to the sale proceeds as per the share(s). It therefore issued certain directions to the UT of Chandigarh in order to protect the interests of such innocent purchasers. Being aggrieved by the impugned judgment, the appellants/original writ petitioners are before this Court. III. SUBMISSIONS OF APPELLANTS:

20. We have heard Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the appellants in the main matter, Shri Ranjit Kumar, learned Senior Counsel appearing on behalf of the appellants in appeal arising out of SLP(C) No. 5489 of 2022, Shri K.M. Natraj, learned Additional Solicitor General (ASG) appearing on behalf of respondent No.1 in both the appeals, Shri Kapil Sibal, learned Senior Counsel appearing on behalf of respondent No.6 in the main matter and for respondent Nos. 7, 8 and 9 in appeal arising out of SLP(C) No. 5489 of 2022 and Shri Gaurav Chopra and Shri Ajay Tewari, learned Senior Counsel appearing on behalf of the applicant(s)/caveator(s) in both the appeals.

21. Shri Patwalia submitted that, Phase I Sectors, which constitute “Corbusian Chandigarh”, have now derived a modern heritage value. He submitted that, if any apartment is permitted to be constructed on single dwelling unit, it will jeopardize the original character of the city. He further submitted that a perusal of the report of the said Board itself would reveal that, though the Draft CMPD-2031 provided for the re-introduction of the apartments, the said Board had recommended against it, and the said recommendation was accepted.

22. Shri Patwalia submitted that, though the 2001 Rules permitted apartmentalization, on account of hue and cry of public at large, the same were repealed in the year 2007. He further submitted that the 1960 Rules as well as the 2007 Rules specifically prohibited fragmentation or amalgamation of any site or building. However, through a certain modus operandi, the builders/developers were constructing three apartments on three floors, thereafter selling the said apartments to three persons, who would enter into a Memorandum of Understanding (MoU). Under the MoU, the person occupying the ground floor and basement would get 50% share in the plot, the person occupying the first floor would get 30%, and the person occupying the second or third floor would get 20%. He submitted that therefore, what is directly prohibited by law, is being indirectly done by the builders/developers. He submitted that, though a specific undertaking is given not to convert the site/building into apartments, the builders/developers were violating the said undertaking openly. He further submitted that though the Chandigarh Administration has clearly admitted that it was not permitting the construction of such apartments, and that under the law, such apartments were prohibited, it was sanctioning the building plans which ex-facie showed that they were for the construction of three apartments. He submitted that the High Court itself has observed that the Chandigarh Administration has not been alive to such illegalities being committed by the unscrupulous builders/developers.

23. Shri Patwalia submitted that through such modus operandi of the developers/builders, and inaction on the part of Chandigarh Administration, what is prohibited in law, is being permitted

indirectly.

24. Shri Patwalia further submitted that the CMP 2031 prohibits construction of apartments. He submits that though CMP 2031 is binding on the respondents under which apartmentalization is not permissible, the apartments are being indirectly permitted to be constructed and sold, giving rise to illegal transactions. It is submitted that on one hand, the Chandigarh Administration in its affidavit states that it does not permit construction of apartments, on the other hand, it is permitting the same indirectly.

25. Shri Patwalia submitted that when Chandigarh was conceptualized, it was decided that Phase I will have bungalows in the residential areas having a green area in the frontyard and backyard of the houses. However, on account of apartmentalisation, the green areas now have been converted into concrete areas, and the very concept of having a green city is being defeated.

26. Shri Ranjit Kumar also submitted that the learned Judges of the Division Bench of the High Court have erred in holding that mere construction of three floors on a private plot and utilization of the same as independent units would not amount to fragmentation. He submitted that, the finding of the High Court that fragmentation will take place only if there is a division of the site or division of the building with an element of exclusive ownership, is patently erroneous. He submitted that the Chandigarh Administration is taking a totally contradictory stand. It is submitted that, on one hand it is admitted by the Chandigarh Administration that it is not permissible to build apartments on a plot allotted to a single dwelling unit and on the other hand, it is admitting documents for registration which, in effect, permit a single plot to be fragmented into three apartments.

27. Shri Ranjit Kumar submitted that Chandigarh has been included in the Tentative United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List due to its outstanding universal value, and the same needs to be maintained by prohibiting haphazard developments which will take away its distinct character.

28. Shri Kapil Sibal also supported the contention as raised on behalf of the appellants. He submitted that rampant developments are being permitted while expanding urban areas without taking into consideration its impact on environment. He submitted that when such developments are permitted, no studies are conducted to find out as to whether the necessary infrastructure like water, sewage, roads etc. exists. He submitted that even in the CMP 2031, it has been recommended that an Effective Environment Management Plan has to be devised for the entire region including Chandigarh, which includes the environmental strategy, monitoring regulation, institutional capacity building and economic incentives. It is submitted that though such a recommendation is made in the CMP 2031, the Chandigarh Administration is permitting construction of single dwelling units into apartments. He submitted that this is a fit case wherein this Court should exercise its powers under Article 142 of the Constitution of India, and direct that Environmental Impact Assessment (for short, "EIA") is to be mandatorily carried out before permitting expansion of urban areas.

29. All the learned counsel therefore submitted that the impugned judgment of the High Court needs to be set aside and a mandamus needs to be issued to the respondents restraining them from permitting construction of apartments on single dwelling units. They further submitted that a direction also needs to be issued to the Chandigarh Administration to take action against the persons, who, in contravention of the Rules, are constructing apartments on single dwelling units.

#### IV. SUBMISSIONS OF RESPONDENTS:

30. Shri Ajay Tewari, on the contrary, submitted that the apprehension as raised by the appellants are totally unwarranted. It is submitted that the CMP<sup>2031</sup> duly takes care of the environmental aspects so as to ensure that the present character of the city on its greenness is not compromised. He submitted that the CMP<sup>2031</sup> would reveal that the growth of population in Chandigarh as per the 2011 Census is less than the predicted growth. He submitted that the growth rate of merely 17.10% from the years 2001 to 2011 is the slowest since its inception. It is submitted that the population in the year 2011 is 10,54,686 with an addition of 1,54,051 during the last decade. He further submitted that, as a matter of fact, the forest coverage in Chandigarh has doubled in the last 20 years.

31. Shri Tewari submitted that a 'transferee' has been defined in the 1952 Act to mean "a person (including a firm or, other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns". He therefore submitted that the 1952 Act itself permits a transfer to be made to more than one individual and as such, the contention that, there cannot be more than one apartment in a single dwelling unit, is without substance.

32. Shri Tewari further submitted that Rule 4 of the Chandigarh Lease<sup>Hold</sup> of Sites and Building Rules, 1973 (hereinafter referred to as "the 1973 Rules") provides that the Chandigarh Administration may demise sites and buildings at Chandigarh on lease for 99 years. It further provides that the lease may be given by allotment or by auction in accordance with these Rules. He submitted that Rule 17 of the 1973 Rules permits the lease to be taken jointly by more than one person. It is submitted that when the lease itself is permitted to be taken jointly by more than one person, then there is no merit in the stand that a building cannot be constructed on a site having more than one apartment. Shri Tewari further submitted that Rule 13 of the 2007 Rules also permits an allotment to be taken jointly by more than one person. The only requirement in such a case is that the liability to pay premium as well as the rent or any penalty under these Rules shall be joint and several.

33. Shri Tewari further submitted that a perusal of Chandigarh Building Rules (Urban), 2017 (for short, "the 2017 Rules") which were enacted in exercise of the powers conferred by the 1952 Act, would also show that more than one apartment is permitted to be constructed on A single dwelling unit. He submitted that under sub<sup>Clause</sup> (a) of Clause (22) of Rule 3 of the 2017 Rules, a 'residential building' is defined to be "a building used or constructed or adapted to be used wholly or principally for human habitation and includes all garages, or other out<sup>buildings</sup> appurtenant thereto". Under Clause (32) thereof, 'dwelling unit' has been defined to be "a building or a part thereof which is used or is intended to be used by a person or family for habitation comprising of



kitchen, toilet and room”. Clause (82) thereof defines ‘storey’ as “any horizontal division of a building so constructed as to be capable of use as a living apartment, although such horizontal division may not extend over the whole depth or width of the building but shall not include mezzanine floor”. He submitted that Rule 4 thereof talks about ‘residential use’, which exhaustively deals with the entire details with regard to the maximum height of the building, maximum area, minimum area and the courtyards.

34. Shri Tewari submitted that the High Court has rightly held that an apartment can be construed to be such only if it was an apartment as per the meaning of apartment given in the 2001 Rules. He submitted that the provisions of the 2001 Rules are similar to the provisions of the Haryana Apartment Ownership Act, 1983. He submitted that under the 2001 Rules, each apartment owner is entitled to the exclusive ownership and possession of the apartment in accordance with the declaration. However, when more than one person jointly construct a building on a plot and occupy one floor each, they are not entitled to exclusive ownership of the apartment but have shares in the joint property. The learned Senior Counsel relies on the judgment of this Court in the case of Kochkunju Nair v. Koshy Alexander and Others<sup>3</sup> in support of the proposition that all co-owners have equal rights and coordinate interest in the property, though 3 (1999) 3 SCC 482 their shares may be either fixed or indeterminate. He submitted that this Court has held that each co-owner has, in theory, an interest in every infinitesimal portion of the subject matter, and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with others. It is submitted that as such, the modus operandi adopted is wholly permissible, whereby, each of the co-sharers would be entitled to be in possession of the part assigned to them jointly with others. He relies on the judgment of the Privy Council in the case of Hardit Singh and Others v. Gurmukh Singh and Others<sup>4</sup> in support of the proposition.

35. Shri Tewari relies on the judgment of the Division Bench of the High Court in the case of Sant Ram v. Daya Ram and Others<sup>5</sup> in support of the proposition that though the Mitakshara School of Hindu Law recognized ownership of each co-parcener over the whole of joint property and over each part thereof, which bears some similarity to joint tenancy of English law; the Dayabhaga School adhered to the 4 1918 SCC OnLine PC 2 5 AIR 1961 P&H 528 doctrine of ownership in specified shares in the undivided property having similar features as in tenancy in common. It is therefore submitted that the co-sharers are entitled to jointly construct a building as per their own shares. It is submitted that this Court in the case of Jai Singh and Others v. Gurmej Singh<sup>6</sup> has approved this legal position. Shri Tewari further relies on the judgment of this Court in the case of Tilak Raj Bakshi v. Avinash Chand Sharma (Dead) Through Legal Representatives and Others<sup>7</sup> in support of the proposition that assignment in favour of a party would not amount to fragmentation.

36. Shri Tewari, in a nutshell, submitted that the dwelling units cannot be construed to be the same as apartments under the 2001 Rules, and therefore it is permissible for more than one person to construct a building jointly and occupy the shares of building as per their respective shares. It is submitted that, when the Rules and Provisions permitting three storeys are not challenged, it would not be permissible for the appellants to contend that 6 (2009) 15 SCC 747 7 (2020) 15 SCC 605 the construction of three storeys, wherein three different persons reside, is not permissible in law. It is submitted that the CMP<sup>2031</sup> has considered everything and further that the said CMP<sup>2031</sup> has

also not been challenged.

37. Shri Tewari submitted that if the contention as raised on behalf of the appellants is accepted, then an anomalous situation would arise inasmuch as co-owners who are part of one family would be entitled to construct three apartments whereas others could not. This would lead to a situation where some co-owners are superior to others.

38. Shri Gaurav Chopra submitted that there is nothing in law which prohibits three strangers to purchase a plot from one person and then develop the said plot by constructing a building having three different floors and occupy the said floors. He submitted that there is no bar for the same either under Rule 14 of the 1960 Rules or Rule 16 of the 2007 Rules. He submitted that if the contention of the appellants is accepted, it would lead to an anomalous situation wherein a person, who has in a bona fide manner purchased a share of a building and consequently occupied a floor of such a building, would be deprived of selling the same. He submitted that such an inference would put unreasonable restrictions on the rights of the person to deal with the property. Shri Chopra submitted that a perusal of the CMP-2031 itself would reveal that the original concept itself included re-densification of Phase-I in order to accommodate the growing population of the city. The learned Senior Counsel submitted that the Expert Committee constituted for preparation of CMP-2031 has considered all these aspects. He submitted that the CMP-2031 itself would show that Phase-I (Sectors 1 to 30) had a holding capacity of 34 persons per acre whereas the present density is only 26 persons per acre. It is therefore submitted that the CMP-2031 itself would reveal that there was a scope for additional units in Phase-I. He submitted that when the CMP-2031, which is a result of an elaborate exercise by the experts in the field, permits such a development, there is nothing which would prohibit such development.

39. Shri Chopra further submitted that Section 5 of the Transfer of Property Act, 1882 (for short, "the TP Act") itself permits transfer of property to one or more living persons. He submitted that Section 7 of the TP Act further permits a person to transfer such property either wholly or in part. It is contended that Section 10 of the TP Act provides that any condition or limitation absolutely restraining the transferee or any other person claiming under him from parting with or disposing of his interest in the property is void. It is further submitted that Section 44 of the TP Act also permits one of two or more co-owners of immoveable property to transfer his share of such property or any interest therein. It is submitted that if the contention of the appellants is accepted, it would be contrary to the provisions of the TP Act.

40. Shri K.M. Natraj submitted that ownership of a building is different from ownership of a land. He therefore submitted that it is not necessary that a person who owns a building, would also own the land. He submitted that there is nothing in law which prohibits a building to be constructed and owned by three different persons. He relies on the judgments of this Court in the cases of Dr. K.A. Dhairyawan and Others v. J.R. Thakur and Others<sup>8</sup> and 8 [1959] SCR 799 Rev. FR. K.C. Alexander v. State of Kerala<sup>9</sup>. He also relies on the judgment of the Karnataka High Court, Bombay High Court and Rajasthan High Court in the cases of R.G. Hiremath and Another v. T. Krishnappa<sup>10</sup>, Laxmipat Singhania v. Larsen and Toubro, Ltd.<sup>11</sup> and Saiffuddin v. The Commissioner of Income Tax (129)<sup>12</sup>. The learned ASG also submitted that when the building regulations permit construction of three

floors, the relief as sought by the appellants cannot be granted.

#### V. STATUTORY PROVISIONS:

41. For appreciating the rival contentions, it will be necessary to refer to certain statutory provisions.

42. The 1952 Act came to be enacted for facilitating the construction of the New Capital of Punjab at Chandigarh. The Statement of Objects and Reasons of the 1952 Act would reveal that the said Act was enacted for vesting legal authority with the State Government to regulate the sale of building sites and to promulgate building rules on the lines 9 (1973) 2 SCC 737 10 1977 SCC OnLine Kar 96 11 1949 SCC OnLine Bom 11 12 1985 SCC OnLine Raj 97 of Municipal Bye-laws so long as a properly constituted local body does not take over the administration of the city. Clause (k) of Section 2 of the 1952 Act defines 'transferee', which reads thus:

“2. Definitions.□.....

(k) “transferee” means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns.”

43. It is sought to be urged on behalf of the respondents that 'transferee' as defined under the 1952 Act means a person including a firm or other body of individuals, whether incorporated or not, to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns. It is also submitted that under the 1973 Rules, a lease could be jointly granted to more than one person. It is therefore submitted that there could be no impediment in the construction of three apartments on three floors which could be occupied by three different persons. On the contrary, it is sought to be urged on behalf of the appellants that the term 'person' has to be used applying the principle of ejusdem generis. It is submitted that the words “other body of individuals, whether incorporated or not” are preceded by a word 'firm' and as such, it should be construed that the said term would be applicable only to a company, corporation, society etc.

44. Section 3 of the 1952 Act empowers the Central Government to sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government of Chandigarh on such terms and conditions as it may subject to any rules that may be made under this Act, think fit to impose.

45. Section 4 of the 1952 Act empowers the Central Government or the Chief Administrator to issue such directions for the purpose of proper planning or development of Chandigarh as may be considered necessary with regard to matters mentioned in Clauses (a) to (f) thereto. Sub-section (2) of Section 4 thereof provides that every transferee is liable to comply with the said directions.

46. Section 5 of the 1952 Act provides that no person can erect or occupy any building at Chandigarh in contravention of any building rules made under sub-section (2) thereof. Under sub-section (2) of Section 5 thereof, the Central Government is empowered to make rules to regulate the erection of

buildings for the purpose of matters mentioned in Clauses (a) to (i) thereto.

47. Section 22 of the 1952 Act also enables the Central Government to make rules for carrying out the purposes of the said Act.

48. The 1960 Rules came to be notified on 8 th March 1960. Rule 14 of the 1960 Rules reads thus:

“14. Fragmentation □[Section 3 and 22 (2)(a)] □No fragmentation or amalgamation of any site or building shall be permitted:

Provided that amalgamation of two or more adjoining sites shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto.

Provided further that fragmentation of sites shall be permitted only in case of the persons applying for conversion under the “Chandigarh Conversion of Land Use of Industrial Sites into Commercial Activity/Services in Industrial Area, Phase□ and II, Chandigarh Scheme, 2005, notified vide No.28/8/51□UTFI(3)□2005/6658□6662, dated 19.09.2005.”

49. Subsequently, the 2001 Rules came to be notified on 20th December 2001. It will be relevant to refer to certain provisions of the said Rules, which read thus:

“2. Definitions:

(a) "Apartment" means each sub□division of a building dully recognized by the Estate Officer, alongwith the proportionate share in common areas and common facilities, as well as any other property rights appurtenant thereto, shall constitute an Apartment.

(b) "Building" means any construction or part of construction or proposed construction in Chandigarh as defined in Clause (x) of Rule 2 of the Punjab Capital (Development and Regulation) Building Rules, 1952.

3. Sub□division of Building:

(1) Every building subject to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the separate and independent units in accordance with these rules. Each such sub□division of a building shall be recognized as a distinct, identifiable property to which the owner lessee shall have title along with proportionate rights in the declared common areas and common facilities. Each sub□division along with common areas, common facilities, rights of access easements and other ownership rights shall constitute a single, distinct identified, property which may be used transferred or disposed by the owner/lessees in accordance with the applicable law and rules.

(2) A building may be subdivided through a declaration made by the owners/lessees to the Estate Officer in the prescribed form (Form D). The Estate Officer shall, if he is satisfied with the completeness and correctness of information provided with the declaration and after, having the building inspected, if necessary, recognize the subdivisions of the building and the owners/lessees thereof, upon payment of such fee as may be notified by the Administration from time to time. The recognition of each subdivision as an apartment by the Estate Officer under these rules shall be accorded by way of a fresh letter of allotment or a fresh conveyance deed, as the case may be, in suppression of the previous letter of allotment or conveyance deed. Such letter of deed shall recognize the owners/lessees of the apartment as the owners/lessees thereof, who shall be liable to comply with all the provisions of the Capital of Punjab (Development and Regulation) Act, 1952, and rules and regulations and orders framed thereunder. All the covenant and liabilities contained in the original allotment letter and in the conveyance deed pertaining to the building or site, shall be construed to be contained in the subsequent letter or deed, as the case may be, even though no specific mention may have been made therein.

(3) Each subdivision, after it has been recognized as an apartment by the Estate Officer, consequent upon the filing of prescribed declaration, shall be the sole and exclusive property of the declared owners/lessees. Such owners/lessees shall be fully and exclusively responsible and liable for complying with all provisions of the Capital of Punjab (Development and Regulation) Act, 1952, rules and orders framed thereunder, and covenants of the allotment letter and conveyance deed pertaining to the site or the building. All these provisions of rules, orders and covenants shall apply, *pari passu*, to the apartment and to the owners/lessees thereof, as they did and would have, to the site or building and the owners/lessees thereof.

(4) Each apartment shall be entitled to separate utility connections such as water supply, sewerage and electricity, subject to building regulations. (5) Where subdivisions of a building with more than one storey have been allotted, sold or leased by the Estate Officer, the Estate Officer may after giving notice to the owners/lessees of such subdivisions, declare such subdivisions as apartments, to which the provisions of these rules shall apply.

4. Subdivision of Residential Buildings: (1) Any residential building situated on a plot size of less than 1400 square yards may be subdivided into separate dwelling units with not more than one dwelling unit on each floor of the building. Each such dwelling unit shall constitute a subdivision. (2) The basement, if any, allowed in a residential building shall not constitute a separate subdivision. The basement shall form a part of the subdivisions on the ground floor. In case more than one subdivision is allowed on the ground, each such subdivision may have a separate basement if building regulations so permit. Except in the case where the basement provides for facilities such as parking area at the end or other plant and equipment required for apartments in the building, the basement or portions therein may constitute a part of the subdivision on floors, other, ground floor.

(3) The garage, servant quarters, outhouse, mali hut, store, open spaces etc. not forming part of the main residential building shall not form a separate subdivision(s) and shall form part of one or more of the apartments of the main building.

(4) A residential building on a plot of 1400 square yard or more may be subdivided into two dwelling units on each floor provided that building regulations so permit.”

50. However, the 2001 Rules came to be repealed on 1 st October 2007. Immediately thereafter, the 2007 Rules came to be notified on 7th November 2007. Rule 16 of the said Rules reads thus:

“16. Fragmentation/Amalgamation. No fragmentation or amalgamation of any site or building shall be permitted.

Provided that amalgamation of two or more adjoining sites with the same ownership shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto.

Provided further that fragmentation of any site shall be allowed if such fragmentation is permitted under any scheme notified by the Administration.”

51. It could thus be seen that Rule 16 of the 2007 Rules also does not permit fragmentation/amalgamation of any site or building. Insofar as commercial or industrial sites are concerned, amalgamation is permitted subject to the condition that the revised plans are approved by the competent authority, prior thereto. However, the second proviso also permits fragmentation of any site if such fragmentation is permitted under any scheme notified by the Administration.

## VI. FINDINGS OF THE HIGH COURT:

52. In the impugned judgment, what has been held by the High Court is that, though in view of Rule 16 of the 2007 Rules, no floorwise sale of property is permissible and though, it does not permit a residential house to be converted into apartments, and that though no sale of a defined portion or part of the building is permissible, however, mere construction of three floors on a private plot and utilization of the same as independent units would not amount to fragmentation. The High Court has held that fragmentation will take place only if there is a division of the site or division of the building with an element of exclusive ownership, i.e., partition by metes and bounds, which is prohibited by Rule 16 of the 2007 Rules.

53. The High Court has held that for holding that apartmentalization is being carried out, certain requisites have to be met. In view of the High Court, the following factors would be necessary for holding that it amounts to apartmentalization:

- (i) “There has to be a subdivision of a building duly recognized by the Estate Officer along with proportionate share in common areas and common facilities;
- (ii) Each subdivision of a building to be a distinct, identifiable property to which the owner/lessee shall have title;

(iii) The recognition of each sub-division as an apartment by the Estate Officer would be accorded by way of a fresh letter of allotment or a fresh conveyance deed; and

(iv) Pursuant to such recognition, such sub-division/apartment to be the sole and exclusive property of the declared owner/lessee.”

54. The High Court held that, in the present case, the pre-requisites noticed hereinabove were missing. The High Court held that, by virtue of sale of share(s) by a co-owner and thereafter, the purchaser/vendee occupying a specific portion of the building on the basis of an internal arrangement/understanding, sub-division of the building as provided under the 2001 Rules does not take place. It held that the specific portion under the occupation of a co-owner is not accorded any recognition by the Estate Officer in any manner. It also held that the co-owner also does not become the sole and exclusive owner of such specific portion under his occupation.

55. As such, the High Court though holds that what was permissible under the 2001 Rules, became impermissible after its repeal and notification of the 2007 Rules, it held that construction of three different floors in a building or a site and occupation of the same by three different persons would not amount to apartmentalization inasmuch as the same does not have recognition of the Estate Office.

56. The 2001 Rules, in effect, permitted the apartments to be constructed on a site and permitted sub-division of a building as a distinct, identifiable property to which the owner/lessee would have title along with proportionate share in the declared common areas and common facilities. However, on account of the objections of the residents of Chandigarh, the 2001 Rules were repealed so as to prevent further apartmentalization. However, it is clear from the modus operandi as could be seen from the various documents placed on record that the builders/developers are, in fact, continuing to do the same thing which was permissible under the 2001 Rules and became impermissible after repeal thereof. The result of the judgment of the High Court is that, though the construction of apartments is prohibited, still the construction of a building and converting it into apartments would not be impermissible since the same would not be apartments within the meaning of the 2001 Rules.

#### VII. REPORT OF THE BOARD OF “INQUIRY AND HEARING” :

57. It will further be relevant to note that Chandigarh Administration has notified the CMP-2031. It will be relevant to note that in the draft CMP-2031, there was a provision for apartments. For considering the objections to the provisions made in the draft CMP-2031, the said Board, consisting of Senior Officers of the Chandigarh Administration, was constituted on 10th November 2013. The report of the said Board would reveal that Chandigarh was conceived as “Garden City” and in view of the socio-economic conditions and living habits of the people, vertical and high-rise buildings were ruled out. It would further reveal that Le Corbusier incorporated principles of light, space and greenery in the plan and used human body as the metaphor. It would also reveal that Chandigarh has been planned as a low-rise city and has been so developed that even after sixty years of its

inception, its original concept has been retained to a large extent. The said Board, while submitting its report, has laid down certain guiding principles, which are thus:

“GUIDING PRINCIPLES The objections received by the Administration have been considered by the Board of Inquiry keeping in view the following guiding principles:

1. Chandigarh being the capital of Punjab and Haryana is an administrative city and has to be retained as such. Industrial growth in the city needs to be limited to ensure its economic sustainability.

2. Chandigarh has heritage value and it is important to preserve and maintain the integrity of the original concepts and planning postulates of sun, space and verdure.

3. The northern sectors of Chandigarh (Corbusian in Chandigarh) should be

preserved in their present form as far as possible. As far as redevelopment of some specific pockets is concerned, that can be done keeping proper perspective in mind. Any redevelopment in northern sectors (Phase I) should only be done keeping the recommendations of the Expert Committee on Heritage in mind.

4. The Architectural Controls should be holistically reviewed, if at all. Any policy in this regard should be universal and for all times to come (till is reviewed) to avoid any arbitrariness & discrimination.

5. Chandigarh being a landlocked city and land being scarce, available land pockets be utilized for govt. use/public purpose on priority.

6. The same practice as followed while developing the New Delhi Municipal area (Lutyen's Delhi) be followed in respect of the city of Chandigarh. The efforts should be to keep the character of the city intact.

7. The architecture of the city needs to be preserved and retained in sync with Le Corbusier's vision.

8. The low-rise character of the city needs to be maintained.

9. The focus needs to be on building an efficient public transport system and augmenting parking spaces in the city.

10. Chandigarh has limited land and to preserve the integrity of the original concepts, it needs to be ensured that the city is not pressurized beyond its holding capacity.

11. The peripheral area and the Tri-City are intrinsically linked. One cannot be successfully planned or implemented without also looking at the other. Specific plans for every village in this area are a necessity and the overall plan must accommodate the growing requirements along with the



requirement for ecological conservation of the natural resources in the vicinity.

12. State of the art best international practices in all aspects of planning & infrastructure development need to be adopted.

13. Chandigarh is today known throughout the world for being one of the best planned urban environment. In large part, it is due to the high proportion of open space, social facilities, civic amenities and infrastructure per living unit. The introduction of apartment rules, by itself does not have any provision to add these essential services and facilities within the existing built-up environment. It will only add residential density while ignoring other urban infrastructure thereby being detrimental to the city environment and will only lead to the long term decline of the city.”

58. It can thus clearly be seen that the said Board has considered that Chandigarh has a heritage value and it is important to preserve and maintain the integrity of the original concepts and planning postulates of Sun, Space and Verdure. It also emphasized that the northern sectors of Chandigarh (Corbusian Chandigarh) should be preserved in their present form as far as possible. It also states that any redevelopment in the northern sectors (Phase I) should only be done keeping the recommendations of the Heritage Committee in mind. It further provides that the same practice as followed while developing the New Delhi Municipal area (Lutyen’s Delhi) be followed in respect of the city of Chandigarh. The efforts should be to keep the character of the city intact. It further emphasizes that the architecture of the city needs to be preserved and retained in sync with Le Corbusier’s vision. It states that the low-rise character of the city needs to be maintained. It states that Chandigarh is today known throughout the world for being one of the best planned urban environment. It states that the introduction of 2001 Rules by itself does not have any provision to add these essential services and facilities within the existing built-up environment. It states that it will only add residential density while ignoring other urban infrastructure thereby being detrimental to the city environment and will only lead to the long-term decline of the city.

59. Chapter III of the said Report elaborately deals with the objections opposing redensification in Phase I Sectors and reintroduction of the 2001 Rules in Chandigarh. It will be relevant to refer to the recommendations of the said Board, which read thus:

“CHAPTER-III: RECOMMENDATIONS OF THE  
BOARD  
3.1. RESIDENTIAL

All objections pertaining to the residential areas in the sectoral grid were taken together. The representationists were given oral hearing also. The main objection which has been raised is regarding redensification of Phase 1 sectors and reintroduction of Apartment Rules in Chandigarh. The proposal in this regard in the draft Master Plan is reproduced below:

“The Chandigarh Apartment Rules to be reintroduced: Sub division of residential plots of 1,000 sq. yards and above into two dwelling units on each floor shall be

permitted. The residential buildings on plots of less than 1000 sq. yards will be permitted floor-wise sub-division into separate dwelling units with not more than one dwelling unit on each floor of the building. The above provisions are to be allowed within the prevailing FAR and Ground Coverage norms." P-78 of CMP- The representationists have vehemently objected to the proposals contained in the Draft Master Plan regarding redensification and introduction of Apartment Rules. This Board had detailed deliberations on this issue and the views are as following.

Rapid growth of urban population is predicted by census and planning authorities: Chandigarh being the headquarters of Punjab and Haryana along with being a major gateway of Himachal Pradesh is uniquely positioned for exponential growth as it is an extremely attractive destination for all segments of the population. With rapidly growing population that lives in slums and unauthorised residential developments within the periphery area along with increasingly unaffordable housing for lower and middle class families, we feel that there is necessity to increase the housing stock for the success of the city.

Perhaps with this objective in mind, the draft master plan makes a series of recommendations for increasing the housing stock of the city. One of these is the redensification of Phase I sectors and the introduction of the Apartment Rules. A more careful examination of the facts will reveal that there exist several reasons why the introduction of Apartment Rules is not an appropriate solution to the city's requirements of affordable housing. To enumerate a few:

- i) Chandigarh city has a distinct heritage value from the point of view of city architecture and the basic concepts of sun, space and verdure in planning. An expert committee on heritage was constituted by GoI, whose recommendations have already been approved by the Government of India. The Expert Heritage Committee has recommended that the northern sectors of Chandigarh (Corbusian in Chandigarh) should be preserved in their present form as far as possible. Specifically it has been recommended that no further enhancement should be given in FAR. Therefore the concept of redensification in general will go against the heritage of the city. As far as redevelopment of some specific pockets is concerned, that can be done keeping proper perspective in mind. General redensification is not recommended. The expert committee has taken a serious note of the relaxations in FARs and building controls already given earlier and has recommended that they should be revoked.
- ii) An accurate audit of existing residential plots will reveal that many plots are inhabited by joint families, multi-generation families, have been internally divided and rented out and have legal disputes of ownership etc. Further there is a vast majority of residents who chose to live in Chandigarh due to the suburban character of the city and want to live in the present sort of system without the arrangement of group housing or apartment configurations. The present representationists typically belong to this class. All these properties will not be available for redevelopment into apartment configurations irrespective of what is proposed in the master plan.
- iii) Increasing density and especially housing density is an extremely important task and challenge for the planners and administrators of the city. It is something which cannot be left to the vagaries

of market to determine the impact of density on the city and its infrastructure. Individual developments of apartments in plots will result in increase in density in the areas of the city that are most profitable to the developers rather than where these housing units are required.

iv) The introduction of apartment rules will most essentially create apartments in the higher cost bracket of saleable units and is unlikely to create any low income or mid income housing. The demand in the city is for lower income and middle income housing rather than housing for the rich and affluent. A situation like this will predictably lead to proliferation of slums required to service the higher density of highest income group people.

v) Location of the redevelopment will also be an adhoc situation depending on individual owners' prerogative rather than a formulated or predictable distribution of apartment units in the city. City planners, therefore, will have no advance knowledge where and in what number the population density will increase. The planning for support and supply infrastructure, therefore, will also not be able to anticipate growth. This is, therefore, the least desirable and surely the most inefficient and expensive way to add infrastructure to the city.

vi) There is a strong possibility that the introduction of the apartment rules will lead to a further increase in real estate prices. This will be in stark contradiction to the original aspect of creating more affordable housing, whereby the character of the city will be lost and gains will also not be significant.

vii) Chandigarh is today known throughout the world for being one of the best planned urban environment. In large part, it is due to the high proportion of open space, social facilities, civic amenities and infrastructure per living unit. The introduction of apartment rules, by itself does not have any provision to add these essential services and facilities within the existing built up environment. It will only add residential density while ignoring other urban infrastructure thereby being detrimental to the city environment and will only lead to the long term decline of the city.

Keeping in mind these elements, it will be prudent to annul and negate any efforts to revive the Chandigarh Apartment Rules in its current form. This will not serve to create a large stock of available housing will not increase affordability. It will not serve MIG and LIG and will add to unplanned and unregulated growth of population density without any matching increase in social and physical infrastructure or amenities. The only beneficiary to this scheme will be a handful of developers which would be detrimental to the existing and future residents of the city. In conclusion, while there is an urgent requirement for increase of affordable housing stock in Chandigarh, the Apartment Rules is a poor and wholly inadequate instrument for this purpose.

The Board, therefore, recommends that all references in the draft Master Plan in respect of the reintroduction of 'Apartment Rules' should be deleted and redensification of any government residential/institutional pocket in Phase□ sectors should only be done with the prior approval of the Chandigarh Heritage Conservation Committee.”

60. It is thus clear that though an attempt was made in the draft CMP 2031 to permit apartments on residential plots, the same was vehemently opposed. The Report considered the recommendations of the Heritage Committee recommending that the northern sectors of Chandigarh should be preserved in their present form as far as possible. It has been recommended that no further enhancement should be given in FAR. It also considered that the concept of redensification in general will go against the heritage of the city. It has further taken into consideration that the Heritage Committee has taken a serious note of the relaxations in FARs and building controls already given earlier and has recommended that no further relaxation be given and has also recommended that the relaxations already granted should be revoked.

61. The said Board further considered that individual development of apartments in plots will result in increase in density in the areas of the city that are most profitable to the developers rather than where these housing units are required. It further considered that the introduction of the 2001 Rules will most essentially create apartments in the higher cost bracket of saleable units and is unlikely to create any low income or middle income housing. It considered that the demand in the city is for lower income and middle income housing rather than housing for the rich and affluent. It further considered that a situation like this will predictably lead to proliferation of slums required to service the higher density of highest income group people. It further considered that the planning for support and supply of infrastructure would not be sufficient to meet the growth in population density on account of apartmentalization.

62. The said Board also considered that the introduction of the 2001 Rules would lead to further increase in real estate prices. It considered that this will be in stark contradiction to the original aspect of creating more affordable housing, whereby the character of the city will be lost, and the gains will also not be significant. It considered that Chandigarh is today known throughout the world for being one of the best planned urban environment, due to the high proportion of open space, social facilities, civic amenities and infrastructure per living unit. It considered that the introduction of the 2001 Rules by itself does not have any provision to add these essential services and facilities within the existing built up environment. It stated that this will only add residential density while ignoring other urban infrastructure thereby being detrimental to the city environment, and will only lead to the long term decline of the city.

63. It could thus be seen that the Report clearly opposed reintroduction of the 2001 Rules. The Report has been duly accepted and all references regarding re-introduction of the 2001 Rules have been deleted in the Final CMP 2031, which was notified on 23rd April 2015.

#### VIII. CHANDIGARH MASTER PLAN 2031:

64. Clause 1.2 of the CMP 2031 would reveal that the original plan of Phase I divided the city into a grid of 30 sectors with the Capitol Complex as well as the Civic Centre. Sector 17 was designed as the Central Business District. It provided that, the greenbelt at the centre ran north east to south east. Wide roads were planned in a systematic hierarchy providing structure to the city which has well planned facilities. Landscaped green avenues give it amenity value. It states that the First Phase which is considered as city's Historic Core was designed for population of 1,50,000 in low rise

plotted development. Phase-II from Sectors 31 to 47 for the remaining targeted 3,50,000 was with 4-storeyed apartments for government employees with an increase in the ratio of smaller plots/lesser open areas/nearly four times increase in density. Though there is a reference that the original concept itself included redensification of Phase-I, no details with regard to the same were available.

65. A perusal of the CMP-2031 would reveal that while finalizing the CMP-2031, the Expert Committee took into consideration the preservation of original concept of the plan, maintaining the basic character of the town, preserving ecology and environment, heritage status of the city, promoting sustainable urban development etc. The Expert Committee also took into consideration the Report of the Heritage Committee constituted by the Government of India under the chairmanship of His Excellency, the Administrator, UT Chandigarh and the approved letter of the Government of India dated 23rd December 2011.

66. Clause 1.9 of the CMP-2031 provides the guiding principles for comprehensive CMP-2031. Clause (v) thereof states that Chandigarh's architecture shall preserve the vitality of all public and private buildings. Public open spaces shall be created as vibrant community spaces, and the left-out monuments envisaged by Le Corbusier shall be completed. Urban design shall be the guiding principle for improving the quality of inner and outer spaces. It also considers that one of the challenges for Chandigarh was the high degree of traffic congestion.

67. Clause 1.12 of the CMP-2031 would reveal that Chandigarh has a universally acclaimed rich 'Heritage' and 'Green City' character.

68. Clause 4.5 of the CMP-2031 states the salient features of the Chandigarh Plan. It states that the function of Living occupies primary place and has been organized into a cellular system of sectors based on the concept of a neighbourhood unit. Each sector, with the exception of some sectors, has a size of 800m × 1200m which was determined on the parameter of providing all amenities, i.e., shops, schools, health centres and places of recreation and worship within a 10-minute walking distance of the residents. The originally planned population of a sector varied between 3000 and 20,000 depending upon the size of plots, the topography of the area, and the urban design considerations. Each sector is introvert in character and permits only four vehicular entries into its interior to provide a tranquil and serene environment conducive to the enrichment of life. It also emphasized on family life and community living. It states that Chandigarh is planned as a green city with abundance of open spaces. It ensures that every dwelling has its adequate share of the three elements of Sun, Space and Verdure. The location of green belt was in the north-south direction to link all sectors with the Shivalik range of hills/mountains. The city was planned as a low-rise city and even after sixty years of its inception, it still retains the original concept to a large extent.

69. Clause 5.3 of the CMP-2031 deals with density. It states that the population density during the last five decades has increased 9 fold, from 1051 to 9252 persons per sq. km. It states that Chandigarh shall continue to record higher densities with further population growth, which poses a challenge for maintaining the quality of life and providing basic and essential services even to its poorest residents as envisioned by the city's planners.

70. Clause 5.3.2 of the CMP 2031 states that though Phase I was planned to be low density development with 9000 acres of land housing 1,50,000 population, i.e., the density of 16 persons per acre, as per 2001 Census, it was 26 persons per acre. It states that by the year 2001, the density of Phase I had already exceeded the designed density whereas that of Phase II sectors was the same as was designed. It states that the city still has reasonable capacity to accommodate additional population. It further states that the density pattern is likely to undergo considerable change in the years to come with the city recording higher growth and development. As per the existing trends, the sectors falling in Phase I shall continue to have lower density as compared to the sectors falling in Phase II.

71. Clause 5.7.4 of the CMP 2031 deals with the holding capacity of UT Chandigarh based on Master Plan recommendations. It specifically states that in order to maintain the basic character of the city as an administrative city, unnecessary increase in the population should be avoided. It states that with the coming up of new towns in the periphery of Punjab and Haryana, the excess population can be easily accommodated in those towns. It states that since the land stock in Chandigarh is limited, the uses related to governance and administration should get priority in the allocation of land. It states that additional population will have to be diverted to the adjoining settlements by viewing the entire context of planning in the regional framework. However, the table in the said clause, dealing with private plots, shows the total units to be 22,788 and number of dwelling units as triple this number, at 68,364.

72. Clause 6.3 of the CMP 2031 deals with private housing. It states that nearly 1/3 rd of the private plots have an area of one kanal or above. It states that the first phase of the city had low density with residential plots ranging from 5 marlas to 8 kanals. The second Phase has much higher density with a switch mostly to three to four storey flats with the largest plot size being 2 kanals.

73. It will be pertinent to refer to the relevant parts of Clause 6.12 of the CMP 2031, which read thus:

“6. HOUSING IN CHANDIGARH .....

6.12 MASTER PLAN PROPOSALS .....

Approval of the Chandigarh Heritage  
Conservation Committee

Since Phase I sectors have been recommended for Heritage status, the reutilization of the identified housing /institutional pockets in the first phase shall be undertaken with the prior approval of the Chandigarh Heritage Conservation Committee. ....

ADDITIONAL FAR AND GROUND COVERAGE TO PRIVATE HOUSING The Chandigarh Administration vide notification dated 16/10/2008 has already permitted increased ground coverage and FAR for all sizes of private residential plots and introduced the concept of zoning in place of frame control. Under these regulations, all private plots can build upto 3 floors with each floor having potential of having an independent unit. There are approximately 23000 private plots

of all categories within the sectoral grid of the Chandigarh Master Plan. Assuming that each plot will eventually be built upto 3 storeys with one unit per floor, the total dwelling units available will be 69000 which can house approximately 3,00,000 population.”

74. Clause 19.1 of the CMP 2031 considered the major recommendations, some of which include thus:

“19 CHANDIGARHS HERITAGE ..... 19.1 THE MAJOR RECOMMENDATIONS  
INCLUDE

1. The city’s monumental architecture, principles of town planning of Sun, Space, and Verdure, as enunciated by Le Corbusier, along with urban design, landscaping, honesty in the use of construction materials, like shuttered concrete and exposed brickwork, ought to be preserved as Modern Heritage of Universal Value for which Chandigarh has become known throughout the world.
2. A holistic approach towards protection, preservation, and maintenance of heritage buildings and unique characteristic of the city should be adopted.
3. The philosophy, plans and approach envisioned by Pandit Jawahar Lal Nehru with regard to the new city should not be lost sight of and kept in mind while taking the steps for the above purposes.
4. The philosophy, plans and designs propounded and used by Le Corbusier, while building the city, should not be allowed to be affected and should be kept in mind while protecting preserving, maintaining and expanding heritage structures.
5. Efforts should be directed to retain the essence of the original Plan of the city and as such the following is recommended:

Chandigarh shall remain an  
Administrative City.  
Chandigarh shall retain the essential  
planning postulates of Sun, Space, and  
Verdure.  
Chandigarh shall be a Low-Rise City.  
Chandigarh shall be a Green City.
6. Corbusian Chandigarh title to the first phase of the city which is the most representative of Le Corbusier's thought and philosophy is truly worthy of recognition for its Modern Heritage Value. The sectors 1 to 30 planned and detailed out by the original team in fulfillment of the CIAM principles of Living, Working, Care of Body and Spirit and Circulation.
7. Heritage status to Sector 22, built as the first typical sector on the concept of the neighbourhood and Heritage status to Sectors 7 and 8 as a tribute to the architect planner, Albert Mayer.

No development must be allowed that may jeopardize their original concept.

8. Preservation of the concept of a neighbourhood unit, no further enhancement in FAR, supplementing the V7s with an efficient public transport system, execution of the pedestrian footpaths and cycle tracks, augmenting parking spaces in the city, development of villages and slum rehabilitation, regular upkeep.

9. The Committee has also made recommendations for a Master Plan for Chandigarh to ensure regulated development of the city's Inter State Regional Plan and mechanism for its implementation, City Development Plan, Solar City, restoring the city's strong imageability, Urban Design, restoration of Architectural Control/Frame Control, Design, Advertisement Control Order.

10. Revitalization of the City Centre, construction of the Eleven Storied Tower.

11. Holistic planning of Capitol Complex to address immediate and future requirements, no scope for additional buildings within campus completion of the incomplete projects of the Capitol Complex, including the Museum of Knowledge, the Martyrs' Memorial, revitalization of the plaza, campus lighting and illumination to highlight building edifices, addressing the security issues to enable comfortable visitor access to the Capitol Complex. The concern of development on the North of Chandigarh and the peripheral areas around the Capitol Complex.

12. Redensification of pockets of Government Housing The concept of Redensification has not been recommended in the Master Plan.

Instead pockets identified by the Expert Heritage Committee have been recommended for Reutilisation if required. (see Chapter on Housing).

13. Prior Concept Approval for identified private and Government buildings with the principal objective to maintain a harmonious urban form of Chandigarh and in keeping with its original concept, Prior Concept Approval of new buildings and/or additions and alterations in old ones of identified private and government properties has been recommended. Following are the parameters for imposing the regulation of prior concept approval: Since many private buildings fall along important arteries, namely, V3s and V4s, constituting major part of Chandigarh's urban imageability, there is an urgent need to regulate individualistic/idiosyncratic use of weird forms, senseless geometry, garish colours and unaesthetic materials to preserve the original character of the city besides retaining sanity in architectural and urban designs.

The second criterion is the building's architectural importance and the individual professional standing of the architects who constituted the foreign team of architects.

The third parameter is the location of the building, which is crucial because an ill-designed structure can become an eyesore whereas a sensitive design that respects its architectural legacy would be a landmark asset in many ways.



Similarly, the development/additions and alteration of green belts should be done sensitively and in the same spirit as that of the original plant.

Location of Mobile Towers is very important from the urban design point of view and as such, this too has been recommended for prior concept approval.

14. Constitution of the Chandigarh Heritage Conservation Committee.

15. Restoration and preservation of building materials – Concrete & Brick buildings.”

75. Clause 19.11 of the CMP 2031 talks about the inclusion of Chandigarh in the UNESCO World Heritage List due to its outstanding universal value. It will be relevant to refer to the said recommendations, which are thus:

“19.11 INCLUSION OF CHANDIGARH IN THE UNESCO WORLD HERITAGE LIST DUE TO ITS OUTSTANDING UNIVERSAL VALUE RECOMMENDATION OF THE MASTER PLAN COMMITTEE It has been perceived that Chandigarh’s inscription on World heritage list would bring many benefits as the city would join a select list of other modern movement cities/urban areas currently inscribed on the UNESCO’s heritage list.

A UNESCO heritage status shall bring about a boost to domestic and international tourism and related benefits to the city’s economy and build public awareness about the values of Chandigarh’s unique modern heritage.

It will not only ensure protection of significant heritage buildings and areas from neglect, willful destruction, defacement, inappropriate alterations but will also provide for preparation of a comprehensive urban development plan which respects international heritage conservation criteria, is environmentally sustainable and also handles the future developmental needs of the city. The move was intended to train our officials for technologically appropriate repair and conservation of heritage buildings.

CHANDIGARH SHOULD MAKE CONCERTED EFFORTS FOR WORLD HERITAGE STATUS IN CONSULTATION WITH THE MINISTRY OF HOME AFFAIRS AND THE ARCHEOLOGICAL SURVEY OF INDIA.”

76. It will also be relevant refer to Clause 20.3 of the CMP 2031, which reads thus:

“20.3 AN EFFECTIVE ENVIRONMENTAL MANAGEMENT PLAN FOR CHANDIGARH AND FOR THE REGION It is recommended that an Effective Environmental Management Plan be devised for the region including Chandigarh which includes environmental strategy, monitoring regulation, institutional capacity building and economic incentives. The proposal needs a legal framework and a

monitoring committee to examine the regional level proposals/ big developments by Constitution of an Inter State high powered “Regional Environmental Management Board” as per the proposal of Ministry of Environment and Forests, Government of India.”

77. A perusal of various clauses in the CMP 2031 itself would reveal that the CMP 2031 emphasizes on maintaining monumental architecture and principles of town planning concept of Sun, Space, and Verdure, as enunciated by Le Corbusier. It also emphasizes that Corbusier’s Chandigarh, i.e., Phase I of the city, which is the most representative of Le Corbusier’s thought, is truly worthy of its modern heritage value. In spite of observing this, it states that eventually three storeys with one dwelling unit per floor would be constructed on these plots.

#### IX. CONSIDERATION OF CITED CASES: □

78. The provisions of Rule 14 of the 1960 Rules as well as Rule 16 of the 2007 Rules fell for consideration in some matters before this Court as well as before the High Court.

79. The learned Single Judge of the High Court in the case of Chander Parkash Malhotra (supra) considered a dispute with regard to House No. 50, Sector 10 A, Chandigarh, which, on the death of the original owner, was inherited by his sons and daughters. Some of the legal heirs, i.e., brothers and sisters of Chander Parkash filed a suit for partition of the property in which a preliminary decree came to be passed by the trial court on 30th September 1983. In appeal, the learned District Judge modified some of the findings recorded by the trial court. Thereafter, the proceedings for passing of the final decree were taken up by the trial court. A Local Commissioner was appointed to suggest the mode of partition, who submitted his report on 7th February 1989. The petitioner therein, Chander Prakash, raised his objections to the said report. The said objections were rejected by the trial court. The report of the Local Commissioner was to the effect that the property in dispute cannot be partitioned by metes and bounds. The order of the trial court came to be challenged before the High Court by way of revision. In the revision, the validity of Rule 14 of the 1960 Rules was also challenged. The learned Single Judge, vide its judgment dated 22nd February 1991, held Rule 14 of the 1960 Rules being ultra vires to the Constitution of India and also beyond the powers of the rule-making authority.

80. The said judgment of the learned Single Judge came to be challenged by the Chandigarh Administration before this Court in the case of Chandigarh Administration (supra). It will be relevant to refer to Ground ‘G’ of the said appeal, which reads thus:

“G. That the Punjab Capital (Development and Regulation) Rules are framed under Section 22 of the Punjab (Development and Regulation) Act, 1952.

The provisions of Section 22 are constitutional and do not suffer from any excessive delegation of legislative power. It specifically provides that the rules shall be made for carrying out the purposes of the Act and further lays down the subject matter which the rules have to provide. The aims and objects with which the Act is enacted is to vest in the State Government the legal authority to

regulate the sale of building sites and to frame building rules on the pattern of Municipal Bye-laws and for the planned development of the town. The entire Act was purposefully directed to provide a reasonable social control of the urbanization visualized by the creation of an altogether new capital city for the State from scratch. The pre-eminent ideas underlying the same were:—

(i) The need and incentive to create an altogether new places where none existed.

(ii) That too within the shortest possible time, and

(iii) Further to ensure that it conformed to an ideal concept of a planned city as against the haphazard urbanization of the mushroom growth of slums which in the ultimate analysis can even strangle an existing town to extinction. It was to effectuate these purposes that the rules have provided a ban on fragmentation of sites and hence is a reasonable restriction on the right of property. Keeping in view the object and the preamble of the Act and the Rules framed thereunder, the same have to be viewed in a broader perspective. The fundamental right under Articles 14 and 19 of the Constitution are not absolute rights. The Constitution itself has imposed reasonable restrictions on its exercise in the interest of general public.

Consequently, the restriction imposed by Rule 14 in furtherance of the object of the Act has to be judged as a reasonable restriction.”

81. This Court, vide order dated 24 th November 1992 passed in the case of Chandigarh Administration (supra), observed thus:

“Leave granted.

In the present case, the respondents did not want the partitioning of the plot by metes and bounds. All that they wanted was the partitioning of the building and additions and alterations therein to make separate living units in the same building. Even this partition as well as addition was to be done by them with the approval of the Chandigarh Administration according to its building bye-laws. Since no fragmentation of any site including the building was involved, there was no question of the violation of rule 14 of the Chandigarh Administration (Sale of Sites and Buildings) Rules, 1960.

In the circumstances, it was not necessary to declare rule 14 invalid as the High Court has done. To that extent, we set aside the order of the High Court.

It is made clear that the respondents before partitioning the building or making additions and renovations in the same will take permission of the Chandigarh Administration according to law. The appeal is disposed of accordingly. There shall be no order as to costs.”

82. This Court specifically set aside that part of the judgment of the High Court which had held Rule 14 of the 1960 Rules to be unconstitutional. It could also be seen that, in the said case, the dispute was amongst the legal heirs of the original allottee.

83. It appears that, frustrated by the litigation, the brothers and sisters of Chander Parkash sold the property to R.B. Chahal and Mrs. Sukhraj Chahal. The final decree proceedings reached up to the High Court by way of second appeal in the case of Sh. Chander Parkash Malhotra v. Sh. R.B.S. Chahal<sup>13</sup>. An application was made by R.B. Chahal and Mrs. Sukhraj Chahal for their impleadment since they had purchased shares of co-owners. The learned Single Judge, while disposing of second appeal vide its judgment dated 1st December 1993, observed thus:

“6. As already noticed above, property cannot be partitioned according to bye-laws. The only alternative left is that the parties be permitted to bid among themselves and whosoever gives the highest bid, be allowed to purchase the property. In case this mode is not acceptable, the trial court should determine the market value and given option to the appellant to purchase the share of the added respondents. In case he fails to do so within the time that the trial court may allow for the purpose, the added respondents be allowed to pay the price of the share of Chander Prakash-appellant.”  
13 1993 SCC OnLine P&H 1179

84. In the case of Tilak Raj Bakshi (supra), the property situated in Chandigarh was owned by one Kripa Ram Bakshi. He had executed a registered will on 4 th September 1974 in favour of the plaintiff, the first defendant and another son who was the 3rd defendant in the suit. The disputed house was transferred in favour of the aforesaid three persons by the Estate Officer. The plaintiff had filed a suit claiming that in view of an agreement between the three brothers namely himself, the first defendant and the younger brother, the third defendant, without the concurrence of the plaintiff, the first defendant could not have sold the suit scheduled property to the second defendant. The second defendant, who was not a part of the family, contended that the plaintiff did not have any preferential right and that he was a bona fide purchaser. The trial court found that the plaintiff was entitled to specific relief and declared the sale unit as null and void. The second defendant appealed against the said judgment of the trial court. The appeal of the second defendant was dismissed by the Appellate Court. The Appellate Court also allowed the cross-appeal filed by the plaintiff and directed the second defendant to handover possession to the plaintiff. However, the High Court allowed the second appeal, and the civil suit filed by the plaintiff was dismissed. The matter thereafter reached this Court.

85. This Court considered the arguments advanced on behalf of the plaintiff that the same would result in contravention of the 1960 Rules made under the 1952 Act. This Court, further considering certain provisions of the 1952 Act, observed thus:

“59. From a perusal of the aforesaid provisions, it becomes clear that the word “site” means any land which is transferred under Section 3 of the 1952 Act. When it comes to the terms of Section 3, it contemplates power with the Central Government to transfer by auction, allotment or otherwise any land or building belonging to the

Government in Chandigarh on such terms and conditions as may subject to any Rules that can be made under the Act, the Government thinks fit to impose. Thus, though it is open to the Central Government to transfer either land or building belonging to the Government in Chandigarh under Section 3 of the 1952 Act, the word “site” is confined to only the land which is transferred by the Central Government under Section 3. In fact, the word “building”, as defined in the Act, points to any construction or part of construction which is transferred under Section 3. It includes outhouse, stable, cattle shed and garage and also includes any building erected on any land transferred by the Central Government. The construction must be intended to be used for residential, commercial, industrial or any other purposes. A clear distinction is maintained between “site” and “building”. The Chandigarh (Sale of Sites and Buildings) Rules, 1960 came to be made. Section 22 of the 1952 Act confers power upon the Central Government to make the rules for various purposes, which are mentioned in sub-section (2). It includes Sections 2(a), 2(d), 2(e) and 2(h) of the 1952 Act, which read as follows:

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

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

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

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

86. After reproducing Rule 16 of the 2007 Rules, this Court observed thus:

“61. It is on the strength of the provisions contained in Rule 14 of the 1960 Rules and Rule 16 of the 2007 Rules that the appellant would argue that the assignment of the share of the first defendant occasioned a breach of the law. The second defendant, on the other hand, would point out that there was no issue of fragmentation ever raised before the courts and the same was not decided in the courts.

62. It is contended by the second defendant that the sale deed in favour of Respondent 1 specifically says that the sale is in respect of one-third share in the residential House No. 13 of Sector 19A, Chandigarh. After the sale deed, it is contended, one-third share of the party was duly transferred and mutated in the name of Respondent 1-second defendant by the Chandigarh Administration. The High Court, in fact, tides over this objection by the appellant by pointing out that once the

second defendant steps into the shoes of the first defendant, he became a co-owner and his remedy is to sue for partition and while fragmentation of property, is not “admissible”, the market value of the property can be determined, and buying each other's share, as per the provisions of Sections 2, 3 and 4 of the Partition Act, 1893.

63. While it may not be true that the issue of fragmentation was not raised in the courts, we would think that the appellant is not able to persuade us to hold that the assignment in favour of the second defendant is vulnerable on the basis that it involves fragmentation. We have noticed the deposition of the plaintiff about partition of the house into three portions. We have noted the fact that one-third share has been duly transferred and mutated in the name of the first respondent/second defendant by the Chandigarh Administration.”

64. The second defendant has produced the communication dated 19-12-1997 which indicates the transfer of rights of site in Sector 19A held by Vishnu Dutt Mehta (first defendant) is noted in favour of the second defendant subject to certain conditions. This is obviously before the 2007 Rules came into force.

65. In the light of the aforesaid facts, we cannot permit the appellant to impugn the transaction on the said ground.”

87. It could thus clearly be seen that, in the said case also, the property was bequeathed to plaintiff, the first defendant and another brother who was the third defendant. The second defendant had purchased the property from the first defendant and as such, he became a co-owner. The Court found that the assignment in favour of the second defendant was not vulnerable on the basis that it involved fragmentation. However, it also noted the deposition of the plaintiff about partition of the house into three portions. It also noted that the 1/3rd share had been duly transferred and mutated in the name of the first respondent/second defendant by the Chandigarh Administration. It also noted that the transfer of rights of site in Sector 19A held by the first defendant was duly noted in favour of the second defendant subject to certain conditions on 19 th December 1997. It noted that this was obviously before the 2007 Rules came into force.

88. In another second appeal before the High Court in the case of Arvind Kapoor v. Kumud Kapoor and Another<sup>14</sup>, again there was a dispute between three siblings <sup>14</sup> Regular Second Appeal No. 1562 of 2012 dated 28.05.2019 – a brother and two sisters. The dispute was with regard to House No. 2174, Sector 44C, Chandigarh. The sisters had relied on the family settlement dated 13 th June 2000. Arvind Kumar filed a suit seeking a declaration that the family settlement dated 13th June 2000 was obtained by fraud and as such, not binding on him. One of the sisters namely Sangeeta Chopra sought a declaration that she was the owner of the first floor of the said house and that she be given possession of the said property along with mesne profits/damages, as the brother Arvind Kapoor had illegally occupied the same. The other sister also supported the claim of Sangeeta Chopra. With regard to scope of Rule 14 of the 1960 Rules, the learned Single Judge vide its judgment dated 28th May 2019, observed thus:

“29. .... Yet, even if it were to be presumed that a purely legal question can be raised even at this stage, with this Court itself to decide on it as a substantial question of law, I would hold that as a matter of fact legal partition of the suit property has not been sought by respondent Sangeeta Chopra once she withdrew her claim to ownership of the first floor thereof because of the statutory bar on such partition. Seeking possession of a particular floor of the property, in terms of the family settlement reached voluntarily between the parties, would not legally amount to partial partition, especially in the face of the fact that such partition in any case is statutorily barred by the aforementioned rule, i.e., Rule 14 of the Chandigarh (Sales of Sites and Buildings) Rules, 1960. It is to be specifically noticed that the applicability of the said rule or the enactment under which the rules have been promulgated, is not denied by either party.

Further, as noticed above, there is no statutory bar on possession/occupation of individual floors, as long as joint ownership is not partitioned.”

89. It thus appears that Sangeeta Chopra withdrew her claim to ownership of the first floor of the property because of the statutory bar on such partition and restricted her claim for seeking possession of a particular floor of the property in terms of the family settlement. The High Court therefore held that the same would not legally amount to partial partition. It held that there is no statutory bar on possession/occupation on individual floors, as long as joint ownership is not partitioned.

90. It is thus clear that all the aforesaid cases arose out of the dispute between the legal heirs of the original allottee, who became co-owner of the property on the demise of original allottee. Whenever any share of co-owner was sold to an outsider, it was held that such a purchaser stepped into the shoes of one of the co-owners and as a co-owner, he was entitled to the share of the property.

91. Insofar as the case of Tilak Raj Bakshi (supra) is concerned, this Court has specifically observed that the rights of the first defendant were already transferred in favour of the second defendant prior to the 2007 Rules coming into force.

#### X. CONSIDERATION OF ISSUES:

92. Permitting co-owners of a building and site to occupy a particular part of the building as per the family arrangement/settlement, is a matter totally different than permitting construction of a building, which would have three apartments, and then selling the same to three different persons.

93. It is relevant to note that the 2001 Rules had introduced the concept of apartments in the city of Chandigarh. The said Rules permitted sub-division of a building duly recognized by the Estate Officer. Each sub-division of a building was recognized as a distinct, identifiable property to which the owner/lessee had title along with the proportionate right in the declared common areas and common facilities. The 2001 Rules also permitted any residential building situated on a residential plot to be sub-divided into separate dwelling units, with not more than one dwelling unit on each

floor.

94. Since the citizens of Chandigarh opposed apartmentalization, the 2001 Rules came to be repealed on 1st October 2007. Immediately thereafter on 7th November 2007, the 2007 Rules came to be notified. Rule 16 of the 2007 Rules specifically prohibited fragmentation of a site or building. Although fragmentation of any site could be allowed, if such fragmentation was permitted under any scheme notified by the Administration; admittedly, no such scheme is notified. As such, the effect is that though a building was permitted to be converted into apartments between the year 2001 and 2007, the same is not permitted after the year 2007.

95. When the draft CMP-2031 was published, it was proposed to re-introduce the 2001 Rules, through which sub-division of residential plots of 1000 sq. yards and above into two dwelling units on each floor was to be permitted. The residential buildings on plots of less than 1000 sq. yards were to be permitted with floor-wise sub-division into separate dwelling units with not more than one dwelling unit on each floor of the building. The said Board was constituted to consider the objections/suggestions to the draft CMP-2031. The said Board considered various aspects such as recommendations of the Heritage Committee, which were accepted by the Government of India. It also considered recommendations of the Heritage Committee that the northern sectors of Chandigarh (Corbusian Chandigarh) should be preserved in their present form as far as possible, that no further enhancement should be given in FAR. The said Board considered that the concept of redensification in general would go against the heritage of the city.

96. The said Board also considered that individual developments of apartments in plots will result in increase in density in the areas of the city that are most profitable to the developers, rather than where these housing units are actually required. It considered that introduction of the 2001 Rules will most essentially create apartments in the higher cost bracket of saleable units, and is unlikely to create any low income or mid income housing. It also considered that the demand in the city was for lower income and middle-income housing rather than housing for the rich and affluent. It also considered that if the re-introduction of the 2001 Rules is permitted, it will lead to proliferation of slums required to service the higher density of highest income group people.

97. It is to be noted that one of the salient features of Le Corbusier's design was that the population density in the northern sectors was to be low, which increases towards the southern sectors. Chandigarh city has been planned as a low-rise city and has been so developed that even after sixty years of its inception, it retains its original concept to a large extent.

98. One of the guiding principles that weighed with the said Board was that Chandigarh had Heritage Value, and it was important to preserve and maintain the integrity of the original concepts and planning postulates of Sun, Space and Verdure. Another principle that weighed with the said Board was that any redevelopment in northern sectors (Phase-I) should only be done keeping the recommendations of the Heritage Committee in mind. Another guiding factor was that the same practices as followed while developing the New Delhi Municipal area (Lutyen's Delhi) be followed in respect of the city of Chandigarh. The architecture of the city was to be preserved and retained in sync with Le Corbusier's vision. The low-rise character of the city needs to be maintained. The



recommendations of the said Board had been accepted while notifying the CMP 2031.

99. It is important to note that the CMP 2031 itself states that Phase I Sectors have been recommended for Heritage status, and that the reutilization of the identified housing/institutional pockets in the first phase has to be undertaken with the prior approval of the Heritage Committee. Having observed this at one place, it is difficult to apprehend as to how, though the CMP 2031 observed that by the year 2001 itself, the planned density of 16 per acre in Phase I has been exceeded, it estimated the holding capacity to be 34 per acre. It also records that as per 2001 Census, the density in Phase I was 26 per acre.

100. The CMP 2031 thereafter observes that under the regulations, all private plots can build up to three floors with each floor having the potential of having an independent unit. It further observes that there are approximately 23000 private plots of all categories within the sectoral grid of the Chandigarh Master Plan. It assumes that each plot will eventually be built upto 3 storeys with one unit per floor, taking the number of dwelling units to 69000 approximately.

101. It also recognized that the “Corbusian Chandigarh” title given to Phase I of the city, which is the most representative of Le Corbusier's thought and philosophy, is truly worthy of recognition for its Modern Heritage Value. It further records that Sectors 1 to 30 are planned and detailed out by the original team in fulfillment of the CIAM principles of Living, Working, Care of Body and Spirit and Circulation.

102. The CMP 2031 also recommends that concerted efforts should be made for getting the world heritage status for Chandigarh in consultation with the Ministry of Home Affairs and the Archeological Survey of India. It also records that it has been perceived that Chandigarh's inscription on the World heritage list would bring many benefits as the city would join a select list of other modern movement cities/urban areas currently inscribed on the UNESCO's heritage list.

103. It will be pertinent to note that in the appeal filed before this Court in the case of Chandigarh Administration (supra), which was filed by the Chandigarh Administration challenging the judgment of the High Court holding Rule 14 of the 1960 Rules to be unconstitutional, it was specifically submitted that Rule 14 of the 1960 Rules was enacted in order to restrict the further growth of Chandigarh city. It had been submitted that the 1960 Rules provide a ban on fragmentation of sites and as such, was a reasonable restriction on the right of property. It is further to be noted that even in the reply filed on behalf of the Chandigarh Administration in the present proceedings before the High Court, it had been averred thus:

“10. That the contents of paragraph 10 as stated are wrong and denied. The Chandigarh Administration does not permit a residential house to be converted into an apartment on account of the fact that "The Chandigarh Apartment Rules 2001" now stand repealed. However, the architectural controls and building bye-laws are of the highest standards, even otherwise the Estate Office maintains a strict vigil on the construction activities/ compliance of Rules and Building Bye-Laws in UT Chandigarh.

Therefore, contrary to the claims of the petitioner, the character of Chandigarh is intact.

11. That the contents of paragraph 11 as stated are wrong and denied. However, there is no bar on alienation/transfer of a share in a property by a true owner, as it is permissible as per the provisions of the enactments and the recognized principles of civil law referred above. Therefore, an owner of a freehold residential house is permitted to sell his share or a part of the shares in the said house. It is further submitted that no floor wise sale of property is permissible under the Capital of Punjab (Development & Regulations)" Act, 1952. The contents of the preliminary objections as well as the preliminary submissions may also be read as a part and parcel of this paragraph."

104. It can thus clearly be seen that Chandigarh Administration has reiterated its stand that it does not permit residential house to be converted into an apartment on account of the fact that the 2001 Rules now stand repealed. It however stated that there is no bar on alienation/transfer of a share in a property by a true owner, as it is permissible as per the provisions of the enactments and the recognized principles of civil law. It is stated that an owner of a freehold residential house is permitted to sell his share or a part of the shares in the said house. However, it is reiterated that no floorwise sale of property is permissible under the 1952 Act.

105. The Division Bench of the High Court, vide an interim order dated 27th July 2021, reproduced the stand of Chandigarh Administration. It also noticed that in the subsequent affidavit dated 20th July 2021 of the Assistant Estate Officer, Chandigarh, it was specifically deposed that no sale of defined portion/plot of building is permissible, nor any such sale has been recognized by the Chandigarh Administration except those registered during the year 2001 to 2007 when the 2001 Rules were in vogue.

106. Since the Division Bench was seized of the matter, it thought it was appropriate to scan through the advertisements that were published in news dailies in the recent past, having circulation in the city, so as to find out whether any floorwise sale of dwelling units is advertised. It noticed that in the Sunday Tribune dated 25th July 2021 itself, as many as 24 advertisements were published inviting the purchasers/investors to purchase independent floors. In this order itself, the High Court has reproduced such advertisements. After reproducing such advertisements, the Division Bench observed thus:

"The aforereproduced advertisement(s) lend credence to the assertion raised on behalf of the petitioners that under the garb of sale of certain percentage share of a residential unit independent floors are being sold.

We find that the written statement filed on behalf of the official respondents/ Chandigarh Administration as also the subsequent affidavit of the Assistant Estate Officer is totally silent on such aspect. In our view, the Chandigarh Administration ought to have been alive to such situation and particularly when there were specific averments made in the present petition which was filed way back in the year 2016. Being in a state of denial on paper would not suffice. In the fitness of things, the Administration should have carried out some kind of physical verification to

ascertain as to whether such modus operandi had been resorted to after repeal of the Apartment Rules, 2001. Mr. Pankaj Jain, learned Senior Standing counsel on a specific query having been put, concedes that no such verification has been carried out.

We are constrained to observe that UT Administration has chosen to skirt a vital issue that has been raised in the instant petition. In view of the above we direct UT Administration to forthwith carry out an exercise whereby in the first instance the properties/buildings would be identified from the office of the Estate Officer where the record of the rights is maintained wherein sale of share(s) be it to the extent of 50%, 30% or 20% has been sold/ transferred to a person outside the family of the original owner/ shareholder. The second step would be to carry out a physical inspection of such identified buildings/dwelling units to find out as to whether the sale of share(s) has actually translated into the buyer occupying an independent floor in the otherwise composite dwelling unit or to find out as to whether independent floors are in the process of being constructed commensurate to the share(s) that has been purchased in such dwelling unit. It would be open for the official respondents to seek the cooperation/ assistance of the concerned police authorities/law enforcement agencies to facilitate the carrying out of the physical inspection of the premises in question. We further direct that this entire exercise be carried out under the supervision of the Chief Architect, UT Chandigarh.

To ensure that such exercise does not become overly time consuming and the object is only towards a fact finding exercise we are of the view that it ought to be a sample exercise. The same be confined from the date of filing of the instant petition till 31.12.2019. Still further the exercise to confine only with regard to residential buildings.”

107. It is thus clear that the Division Bench found that the written statement filed on behalf of the Chandigarh Administration as also the subsequent affidavit of the Assistant Estate Officer, Chandigarh is totally silent on the aspect of advertisements of sale of independent floors. It observed that, Chandigarh Administration ought to have been alive to such situation, and particularly when there were specific averments made to that effect in the writ petition which was filed way back in the year 2016. The Division Bench observed that the Chandigarh Administration should have carried out some kind of physical verification to ascertain as to whether the aforementioned modus operandi had been resorted to after the repeal of the 2001 Rules. The High Court recorded the contention of the Senior Standing Counsel on behalf of the Chandigarh Administration that no such verification has been carried out. The Division Bench thereafter issued a direction to the Chandigarh Administration to forthwith carry out an exercise in two steps. In the first step, the properties/buildings were to be identified from the office of the Estate Officer where the record of the rights is maintained wherein share(s) be it to the extent of 50%, 30% or 20% has been sold/transferred to a person outside the family of the original owner/shareholder. The second step was to carry out physical inspection of such identified buildings/dwelling units to find out as to whether the sale of share(s) has actually translated into the buyer occupying an independent floor in the otherwise composite dwelling unit or to find out as to whether independent floors are in the process of being constructed, commensurate to the share(s) that has been purchased in such dwelling unit.

108. It is thus clear that when the interim order was passed on 27th July 2021, the Division Bench was conscious of the fact that even according to the Chandigarh Administration, it was not permissible to construct apartments on the sites allotted and sell it to different persons. It is informed that, in pursuance to the directions of the High Court dated 27th July 2021, a survey was conducted and it was found that 891 sites were converted into three apartments each.

109. From the material placed on record, it appears that the modus operandi that is devised by the developers is that the allottee of the house would convey 50% of the share to the first purchaser, 30% to the second purchaser and 20% to the third purchaser. Thereafter, all the three purchasers would enter into either a settlement deed or a Memorandum of Understanding (MoU) under which the party having 50% share of the house is entitled to the entire ground floor with basement including the back courtyard but excluding the front courtyard and the staircase. The second purchaser having 30% share in the house would be entitled to the entire first floor excluding the staircase. The third purchaser having 20% share of the house would be entitled to the entire second floor including the roof of the second floor but excluding the staircase.

110. It will be relevant to refer to the recitals in one of such settlement deeds executed on 2 nd May 2013, which read thus:

“Whereas as per the present rules of the Estate Office it could not been mentioned in the Sale Deed that the possession of which floor/portion/area has been given to the purchaser so this MOU has been executed between the parties to avoid any future misunderstanding/litigation among all the co-owners of the said house in respect of their respective possession in the said house in lieu of their respective shares in the said house so this MOU has been executed between the parties and all the parties have agreed with each other on the following terms and conditions.”

111. It is thus clear that, the parties who entered into such an MoU, were conscious of the fact that as per the Rules of the Estate Office, it could not be mentioned in the sale deed that the possession of particular floor is given to the purchaser. It asserts that the MoU has been executed between the parties to avoid any future misunderstanding/litigation amongst all the co-owners of the said house in respect of their respective possession in the said house in lieu of their respective shares in the said house.

112. It will also be relevant to refer to Clause 12 of the said Settlement Deed dated 2nd May 2013, which reads thus:

“12. That from now on all the parties shall hereafter peacefully hold, use and enjoy their respective portions as their own property without any hindrance, interruption, claim or demand whatsoever from each other. But as the parties are owners of different portions in one common house, they will be dependent upon each other in many ways in their day to day lives. So they should try to co-exist amicably with each other as brothers and sisters and family members, always keeping in mind the necessities, comforts, rights and feelings of each other and try to sort out any

differences, discomforts and dissatisfactions in a peaceful and dignified manner.”

113. It is thus clear that the MoU clearly states that all the parties, after entering into such a document, would peacefully hold, use and enjoy their respective portions as their own property without any hindrance, interruption, claim or demand whatsoever from each other. No doubt, it states that since the parties are owners of different portions and would be dependent upon each other in many ways, they should try to co-exist amicably with each other as brothers and sisters and family members.

114. According to the High Court, the said does not amount to fragmentation, which is prohibited by Rule 16 of the 2007 Rules. The High Court has held that fragmentation will take place only where there is a division of the plot or division of the building with an element of exclusive ownership that is by partition by metes and bounds.

115. It will be relevant to refer to the meaning of “fragment” and “fragmentation”, as per Webster’s Encyclopedic Unabridged Dictionary of the English Language, which reads thus:

“Frag.ment (frag’ment), n. – 1. a part broken off or detached: scattered fragments of rock. 2. a portion that is unfinished or incomplete: Fragments of his latest novel were penciled in odd places. 3. an odd piece, bit, or scrap. – v.i. 4. to disintegrate; collapse or break into fragments: The chair fragmented under his weight. – v.t. 5. to break (something) into pieces or fragments; cause to disintegrate: The vase was fragmented in shipment. Outside influences soon fragmented the culture. 6. to divide into fragments; disunify. [ME < L fragment (um) a broken piece, remnant, equiv. to frag – (s. of frangere to break) + -mentum – MENT] Frag.men.ta.tion (frag’men’ta’shen), n. – 1. act or process of fragmenting; state of being fragmented.

2. the disintegration, collapse, or breakdown of norms of thought, behavior, or social relationship.

3. the pieces of an exploded fragmentation bomb or grenade. [FRAGMENT + -ATION]”

116. A perusal of the aforesaid clauses from the settlement deeds, which have been reproduced hereinabove, it is clear that the understanding between the parties is that they are independent owners of different floors. It would also reveal that as per their understanding also, the present Rules of the Estate Office, would not permit to mention in the sale deed that the possession of which floor/portion/area has been given the purchaser. In any case, what is to be found is the real intention behind the transaction. When the transaction clearly shows that it is being entered into for the purpose of constructing three different apartments on each floor and also mentions that the same is not permissible under the existing rules, the intention of the parties is to construct three different units which are disintegrated. This is nothing else but fragmentation. In our view, it is an attempt to by-pass the statutory prohibition.

117. It will also be relevant to refer to an undertaking which the owner is required to furnish in an application for obtaining the occupation certificate:

“UNDERTAKING OF OWNER .....

6. I/We do hereby certify that buildings will be used for residential purposes as per allotment letter and its use will not be changed or converted into Apartments without obtaining written permission from the competent authority.”

118. The application which is to be made in the said format is still in vogue. In the teeth of such an undertaking and the specific stand of Chandigarh Administration that it does not permit construction of apartments, it is difficult to appreciate as to how building plans have been sanctioned which ex facie show that they are nothing else but apartments.

119. It is thus clear that the modus operandi of the developers is, in effect, resulting into apartmentalization of the buildings. What is not permissible in law after the repeal of 2001 Rules on 1st October 2007, and enactment of Rule 16 of the 2007 Rules, is indirectly being permitted under the guise of sale of shares and subsequent MoUs. It is also to be noted that though an attempt was made in the draft CMP 2031 to reintroduce the provision for apartments, after considering the objections, it was decided to delete the same from the final CMP 2031. As already stated hereinabove, on account of such transactions, number of sites have been purchased through the aforesaid modus operandi; buildings were demolished and three apartments were constructed thereon.

120. The High Court in the impugned judgment though holds that it is not permissible to construct apartments in view of repeal of the 2001 Rules, goes on to hold that the said would not amount to apartmentalization, inasmuch as there is no sub-division of a building duly recognized by the Estate Officer along with the proportionate share in common areas and common facilities. It holds that by virtue of sale of share(s) by a co-owner and thereafter, the purchaser/vendee occupying a specific portion of the building on the basis of an internal arrangement/understanding, “sub-division of building” as contemplated under the 2001 Rules does not take place. In our considered view, the said reasoning is not sustainable in the teeth of Rule 16 of the 2007 Rules.

121. If the reasoning which is adopted by the High Court is to be accepted, then it will lead to a situation wherein, as aforementioned, what is not directly permissible in law, is being indirectly permitted. Therefore, in our view, the reasoning of the High Court would not be tenable in law.

122. As stated hereinabove, the CMP 2031 itself states that since Phase I Sectors have been recommended for heritage status, the re-utilization of the identified housing/institutional pockets in the first Phase has to be undertaken only with the prior approval of the Heritage Committee. Even in the report of the said Board, it has been specifically stated that the Heritage Committee has recommended that northern sectors of Chandigarh (Corbusian Chandigarh) should be preserved in their present form as far as possible. It is also stated that general redensification is not recommended. It has considered that the Heritage Committee has taken a serious note of the

relaxations in FAR and building controls already given earlier and has recommended that no further relaxation be given and has also recommended that the relaxations already granted should be revoked.

123. This Court in the case of *Bangalore Medical Trust v. B.S. Muddappa and Others*<sup>15</sup>, while considering the provisions of Bangalore Development Authority Act, 1976, has considered an issue with regard to deviation from duly sanctioned scheme thereby sacrificing the public interest in the preservation and protection of environment. It will be apposite to reproduce certain observations made in the aforesaid judgment, which read thus:

“18. ....Any unauthorised deviation from the duly sanctioned scheme by sacrificing the public interest in the preservation and protection of the environment by means of open space for parks and play grounds and 'ventilation' will be contrary to the legislative intent, and an abuse of the statutory power vested in the authorities...”

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be 15 (1991) 4 SCC 54 taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

36. ....Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air.....”

124. In the case of *Shanti Sports Club and Another v. Union of India and Others*<sup>16</sup>, this Court enunciated the difference between developed and developing countries vis-à-vis planned development and observed that the object of planned development had been achieved by developed countries by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and 16 (2009) 15 SCC 705 rationalisation of laws and concluded that developed countries had laid great emphasis on the planned development of cities.

125. It was further observed that the people of developed countries had greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the Master Plan etc. and that they respect the laws enacted by the legislature for regulating planned development of the cities and seldom is there a complaint of violation of Master Plan etc. in the construction of buildings, residential, institutional or commercial. On the other hand, the scenario in developing

countries like ours was substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity. This Court observed as under:

“74. ....In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn a blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads.....

75. Unfortunately, despite repeated judgments by this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”  
[Emphasis supplied]

126. A strong reliance has been placed on behalf of the respondents on the provisions of the 2017 Rules. It has been submitted that the 2017 Rules clearly permit construction of three storeys. It is submitted that ‘storey’ has been defined to mean any horizontal division of a building so constructed as to be capable of use as a living apartment, although such horizontal division may not extend over the whole depth or width of the building but shall not include mezzanine floor. It is therefore submitted that when the 2017 Rules itself permit construction of three storeys having independent kitchens etc. and the 2017 Rules having not been challenged, it is not permissible for the appellants to argue that three persons cannot be permitted to occupy three different dwelling units on each storey.



127. We are unable to accept the said argument. It is a different matter that three co-sharers decide to construct a building for residential house and construct three storeys for occupation by each of the co-sharers. However, allowing such modus operandi to continue, which, in effect, nullifies the effect of repeal of the 2001 Rules, enactment of the 2007 Rules, and recalling an attempt to reintroduce apartmentalization in the draft CMP-2031, would be permitting to do something indirectly which is not permissible in law.

128. Another aspect that needs to be taken into consideration is that the CMP-2031 as well as the report of the said Board emphasizes that in order to maintain the “Corbusian Chandigarh” status of Phase-I of Chandigarh, no redensification is to be done without the permission of the Heritage Committee. Undisputedly, permitting three apartments to be constructed in one dwelling unit would result in increasing the density in population in the Le Corbusier zone. This, in our view, cannot be done without the same being approved by the Heritage Committee and the Central Government.

129. It further needs to be noted that one of the guiding principles that has been taken into consideration by the said Board is that the same practices which were followed while developing the New Delhi Municipal area (Lutyen’s Delhi) be followed in respect of the city of Chandigarh. Insofar as the practices that were followed while developing New Delhi Municipal area (Lutyen’s Delhi), a Bench consisting of three learned Judges of this Court had an occasion to consider the same in the case of New Delhi Municipal Council and Others v. Tanvi Trading and Credit Private Limited and Others<sup>17</sup>, wherein this Court observed thus:

“6. On 18-1-1990, the Master Plan, 2001 was approved wherein it was specifically mentioned that the bungalow character of LBZ needs to be preserved. The Master Plan even without specifically mentioning LBZ guidelines visualised similar treatment of LBZ so as to maintain the low density area without in any manner adversely affecting the 17 (2008) 8 SCC 765 green cover in the area. On 27-7-1993 objections were invited to the Zonal Development Plan whereas on 25-5-1994 the New Delhi Municipal Council Act, 1994 came into force.”

130. In the said case, this Court was considering an appeal challenging the judgment of the Division Bench of the High Court vide which it was held that the order rejecting building plans submitted by the respondents for the construction of a 15 storeyed building in the Lutyens Bungalow Zone (LBZ) was illegal. Vide the said judgment of the High Court, the New Delhi Municipal Council was directed to return the building plans submitted by the respondents with an endorsement “sanctioned” within the time specified in the order. This Court, however, vide judgment dated 28th August 2008, set aside the judgment of the High Court and allowed the appeal in the following terms:

“47. On the facts and in the circumstances of the case, this Court is of the opinion that the respondents would be entitled to construct bungalow on their plot of land, in terms of guidelines dated 8-2-1988 and that they would not be entitled to construct fifteen dwelling units which is quite contrary to those guidelines. The record does not indicate that the building plans of the respondents are fully compliant with the

requirements of the Delhi Master Plan, 2001 and the Delhi Bye-Laws, 1983 and, therefore, the impugned judgment deserves to be set aside.”

131. Though, it may not be strictly possible to adhere to the practices that are followed in LBZ, when the report of the said Board as well as the CMP<sup>18</sup> emphasizes on the approval of the Heritage Committee before permitting any redensification in the Le Corbusier zone, the Chandigarh Administration could not have made the provisions in the CMP<sup>18</sup> permitting redensification without the approval of the Heritage Committee.

132. A perusal of the CMP<sup>18</sup> itself would reveal that the Expert Committee observes that Chandigarh’s inscription on UNESCO’s World Heritage list would bring many benefits as the city would join a select list of other modern cities/urban areas currently inscribed on it. In our view, in this background, providing something which would adversely affect the heritage status of the Le Corbusier Zone, without the approval of the Heritage Committee, would not be permissible.

133. The material placed on record would clearly reveal that Phase I was designed for a low-rise plotted development with a greenbelt at the Centre running north east to south east. Wide roads planned in a systematic hierarchy provide structure to the city which has well planned facilities. Landscaped green avenues give it amenity value. In our view, permitting anything which would have an adverse effect on the heritage status of the city without the approval of the Heritage Committee itself would be contrary to the CMP<sup>18</sup> and the report of the said Board.

134. Insofar as the contention raised on behalf of the respondents that the restriction on transfer of property would not be permissible in view of the provisions of the TP Act is concerned, it is to be noted that in the case of Chander Parkash Malhotra (supra), the High Court had held Rule 14 of the 1960 Rules to be ultra vires to the Constitution of India. However, in an appeal filed by the Chandigarh Administration, this Court set aside the said order of the High Court. Apart from that, it is to be noted that Rule 14 of the 1960 Rules and Rule 16 of the 2007 Rules have been enacted under the 1952 Act. It is a settled law that in case of a conflict between a special provision and a general provision, the special provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision. Reliance in this respect is to be made to the judgment of this Court in the case of J.K. Cotton Spinning & Weaving Mills Co., Ltd. v. The State of Uttar Pradesh and Others<sup>18</sup>, which has been consistently followed by this Court.

135. We may also gainfully refer to the observations of a Full Bench of the Punjab & Haryana High Court in the case of Dheera Singh v. U.T. Chandigarh Admn. and Others<sup>19</sup>, wherein the Full Bench has held that “The Parliament, in no uncertain terms, has expressed through a non obstante clause contained in Section 424-A of the Punjab Municipal Corporation (Extension to Chandigarh) Act, 1994 that the provisions of the 1952 Act shall operate and have an overriding effect.” We respectfully agree with the view taken by the Full Bench.

18 [1961] 3 SCR 185 19 2012 SCC OnLine P&H 21473

136. Another aspect that needs to be taken into consideration is that, as observed in the interim order of the High Court dated 27th July 2021, the Chandigarh Administration has not been alive to the situation. Taking into consideration the importance of the matter, we had directed the Estate Officer to remain present during the proceedings of the hearing. Accordingly, Shri Vinay Pratap Singh, Estate Officer, was personally present. The Estate Officer also agreed that though CMP 2031 is opposed to apartmentalization and redensification, under the 2017 Rules there was no restriction to construct three independent units by co-owners. One aspect that needs to be taken into consideration is that though under the 2017 Rules, one dwelling unit is being permitted to be converted into three dwelling units, there is no adequate provision for parking. The Estate Officer also agreed that there was a huge problem of parking in the city of Chandigarh. This aspect had also not been taken into consideration while notifying the 2017 Rules. It is difficult to appreciate as to how on one hand, the Chandigarh Administration is taking a stand that apartmentalization is not permissible and on the other hand, turning Nelson's eye when plans, which ex facie amount to apartmentalization, are being submitted and sanctioned under its very nose.

137. It is further pertinent to note that in the CMP 2031 itself, the Expert Committee has recommended thus:

“Master Plan Committees’ recommendation Preparation and notification of Heritage Regulations should be prioritized. The earlier approved Draft Notification prepared at the time of preparation of the UNESCO Nomination Dossier and the Model Heritage Regulations issued by the GOI can be used as a reference. To prevent undue change or damage to the historic and cultural value of Le Corbusier’s urbanism, interim orders must be issued not to make any modifications in the heritage areas approved by the Government of India, the circulation structure, the generic sector, architectural control and the plantations till such time as heritage regulations are finalized.”

138. It has been recommended that to prevent undue change or damage to the historic and cultural value of Le Corbusier’s urbanism, interim orders must not be issued to make any modifications in the heritage areas approved by the Government of India, the circulation structure, the generic sector, architectural control and the plantations.

139. Judicial notice can be taken of the creation of the city of Brasilia as the capital of Brazil. From the website of the “UNESCO World Heritage Convention”, it could be seen that the city was planned by urban planner Lucio Costa and architect Oscar Niemeyer. It will be interesting to note that while planning the said city, urban living as promoted by Le Corbusier and his treatise titled “How to Conceive Urbanism” served as an inspiration. It is worthwhile to note that in spite of various changes, Lucio Costa’s Pilot Project (Plano Piloto) still remains preserved. It will be apposite to refer to the following extract from the said website:

“The urban framework of Brasilia includes all of the elements required to demonstrate outstanding universal value. A city that is at once urbs and civitas, Brasilia has preserved its original guiding principles intact, as reflected in the

protection of its urban scales, legally protected by local and federal organisms of government of the country. The city finds itself today in the midst of a process of consolidation, in accordance with its dual function as city and capital, through the continuing implementation of new urban services and structures. The World Heritage property is vulnerable to urban development pressure including increased traffic and public transport requirements.

The city's various sectors, as laid out in the initial plan, are now in the process of being supplemented and, indeed, concluded, in line with the original urban principles. These changes in no way jeopardize the singular and outstanding value of Lucio Costa's Pilot Project (Plano Piloto), which remains wholly preserved, both physically and symbolically.

It is possible based on the still undeveloped areas around Brasilia, the surrounding green spaces, and the location's topography, to clearly distinguish the city's limits from the territorial expanse in which it was introduced, singular attributes that enable analysis of the site without losing any of the basic information critical to transmitting its continued Outstanding Universal Value."

140. It will also be relevant to extract the following passage from the said website, which would show the steps taken for protection of the urban framework of Brasilia:

"Protection of the Urban Framework of Brasilia is governed by a series of legal instruments intended to ensure its preservation on three operational levels: local, federal, and global. At the local level, a set normative instruments consisting of specific laws aimed at protecting the heritage site as well as highly complex body of technical and operational urban legislation based on the Federal District's Urban and Land Settlement Policy have been put in place."

141. The said website would also show that similar steps have been taken for protecting the White City of Tel Aviv and the city of Le Havre, rebuilt by Auguste Perret.

142. We find that similar steps need to be taken by the Chandigarh Administration as well as the Government of India for protecting the heritage status of Le Corbusier's Chandigarh.

143. In this respect, we may also refer to the Directive Principles contained in Articles 49 and 51A(f) and (g) of the Constitution of India, which read thus:

"49. Protection of monuments and places and objects of national importance. – It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

51A. Fundamental duties. – It shall be the duty of every citizen of India – .....

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”

144. A conjoint reading of the aforesaid provisions would reveal that a responsibility is cast upon the State as well as the citizens to protect and conserve the heritage. Undisputedly, Phase I of Chandigarh, i.e., Corbusian Chandigarh, even according to the respondent authorities, possesses a heritage status. The CMP 2031 itself emphasizes that Chandigarh should be included in the UNESCO’s World Heritage List due to its outstanding universal value. As already discussed hereinabove, the fragmentation/apartmentalization of residential units in Phase I of Chandigarh is destructive of the vision of Le Corbusier. It is also opposed to the concept of protecting and preserving the heritage status of Corbusian Chandigarh. As such, it is necessary that the respondent authorities must take every possible step for preserving the heritage status of Corbusian Chandigarh.

#### XI. ENVIRONMENTAL ISSUES:

145. One another important aspect that needs to be taken into consideration is the adverse impact on environment on account of haphazard urbanization. It will be relevant to refer to Clause 20.3 of the CMP 2031 which we have already reproduced hereinabove. It has been recommended that an Effective Environmental Management Plan be devised for the region including Chandigarh, which includes environmental strategy, monitoring regulation, institutional capacity building and economic incentives. It is observed that the proposal needs a legal framework and a monitoring committee to examine the regional level proposals/big developments by the constitution of an Inter State high powered Regional Environmental Management Board, as per the proposal of the Ministry of Environment and Forests, Government of India.

146. The United Nations Environment Programme (UNEP) notes in its publication titled “Integrating the Environment in Urban Planning and Management – Key Principles and Approaches for Cities in the 21st Century” that more than half of the world’s population is now living in urban areas. It further noted that by the year 2050, more than half of Africa and Asia’s population will live in towns and cities. It recognized that City Development Strategies (CDSs) have shown how to integrate environmental concerns in long term city visioning exercises. It states that environmental mainstreaming can help to incorporate relevant environmental concerns into the decisions of institutions, while emerging ideas about the green urban economy show how density can generate environmental and social opportunities. It states that the strategies need to be underpinned with governance structures that facilitate integration of environmental concerns in the planning process.

147. The said publication defines EIA to be an analytical process or procedure that systematically examines the possible environmental consequences of the implementation of a given activity (project). It is aimed to ensure that the environmental implications of decisions related to a given activity are taken into account before the decisions are made.

148. Judicial notice is also taken of the cover story published in the weekly, “India Today”, dated 24th October 2022, titled as “Bengaluru – How to Ruin India’s Best City” by Raj Chengappa with Ajay Sukumaran. The said article depicts the sorry state of affairs as to how the city of Bengaluru, once considered to be one of India’s best cities, a ‘Garden city’ has been ruined on account of haphazard urban development. It takes note of as to how on account of one major spell of rain in the September of 2022, the city bore the brunt of nature’s fury. Various areas of the city were inundated with heavy rains. The loss the flood caused to the Outer Ring road tech corridor alone was estimated to be over Rs.225 crore.

149. The article notes that, while on one hand, on account of heavy rains, many of the houses were submerged in water, on the other hand, the city faced a huge shortage of drinking water.

150. The article further notes that rapid expansion of the city with no appropriate thought given towards transportation and ease of mobility has led to nightmarish traffic jams on its arterial roads. It notes that, almost overnight, Bengaluru's municipal jurisdiction grew from 200 sq. km. to 800 sq. km. It observes that the only one to benefit was the politician-businessman-builder nexus, which has thrived. It further noted that though posh colonies mushroomed in new areas, the infrastructure lagged, as roads remained narrow, the drainage poor, and no adequate provision for garbage disposal too.

151. The article notes that the primary canals known locally as rajakaluves were once natural rain-fed streams across which farmers built small bunds over time, to arrest the flow of water and create lakes. It further notes that these interlinked man-made lakes worked as a storm-water drain network. However, in order to meet the demand for space for construction and roads, the administrators allowed the lakes to be breached regularly. The lakes, which once numbered a thousand odd, are now reduced to a paltry number. Worse, the rajakaluves that channelized the storm water had buildings built over them.

152. The warning flagged by the city of Bengaluru needs to be given due attention by the legislature, executive and the policy makers. It is high time that before permitting urban development, EIA of such development needs to be done. XII. CONCLUSION:

153. Taking overall view of the matter, we are of the considered view that permitting redensification in Phase I, which has heritage value, on account of being “Corbusian Chandigarh”, without the same being approved by the Heritage Committee, is contrary to the CMPD 2031 itself. The CMPD 2031 on one hand does not permit apartmentalization, however, on the other hand, it estimates the number of dwelling units to be triple of the plots available. Though on account of repeal of the 2001 Rules in the year 2007 and on account of Rule 16 of the 2007 Rules, the High Court itself holds that apartmentalization is not permissible; it goes on to hold that though the developers/builders are in effect indulging into construction of three apartments in a building, the same does not amount to apartmentalization. In our view, this would amount to permitting something indirectly which is not permitted directly. The authorities of the Chandigarh Administration are blindly sanctioning building plans, when from the building plans itself it is apparent that the same are in effect converting one dwelling unit into three apartments. Such a haphazard growth may adversely affect

the heritage status of Phase I of Chandigarh which is sought to be inscribed as a UNESCO's heritage city. It is further to be noted that though the Chandigarh Administration is permitting one dwelling unit to be converted into three apartments, its adverse effect on traffic has not been addressed. With the increase in number of dwelling units, a corresponding increase in the vehicles is bound to be there. However, without considering the said aspect, one dwelling unit is permitted to be converted into three apartments.

154. We find that the High Court has failed to take into consideration all these aspects. No doubt that the High Court has issued certain directions so as to protect the interest of home buyers. It has also observed that "Chandigarh Administration chooses to stay smug, taking a stand on paper that floor-wise sale of residential building is not permissible while residential floors are being advertised for sale right under its nose". It therefore directed the Chandigarh Administration to issue a notice to be published at periodic intervals in the newspapers for the purposes of sounding a word of caution and educating such home buyers who have already purchased a share in a residential building/site as also the prospective home buyers. The High Court also directed the Chandigarh Administration to mention in the said notice that fragmentation of site/building is specifically prohibited under the 2007 Rules. It further directed to mention in the said notice that the Chandigarh Administration does not recognize ownership rights over any floor/part of any site/building by virtue of such transactions. A word of caution was also directed to be put, that in case a dispute arises between the co-sharers/co-owners, the only remedy would be to put the property to auction and the sale proceeds thereafter be distributed inasmuch the fragmentation/division of the building/site by metes and bounds is specifically prohibited.

155. In our view, the High Court ought not to have stopped at that. Having noted the stand of the Chandigarh Administration that the construction and floor-wise sale of residential building was not permissible in view of Rule 16 of the 2007 Rules, the High Court ought to have held that the statutory rules framed under 1952 Act expressly prohibits fragmentation/division/bifurcation/apartmentalization of a residential unit in Phase I of Chandigarh. The legislative intent as found in Rule 14 of the 1960 Rules has been clearly reiterated in Rule 16 of the 2007 Rules, which has been enacted under Section 5 read with Section 22 of the 1952 Act. We are of the considered view that the High Court has erred in not considering the same.

156. Shri Patwalia fairly conceded that the said exercise has acted as a deterrent and number of such transactions amounting to apartmentalization have substantially reduced.

157. No doubt that the High Court has rightly issued the directions to safeguard the interest of the home buyers. However, we find that the High Court itself having found that after the repeal of the 2001 Rules and enactment of the 2007 Rules, apartmentalization was not permissible, it ought not to have permitted a modus operandi which indirectly permits to do what was not permissible in law. In any case, taking into consideration the heritage status of Phase I, the High Court ought to have considered the matter in correct perspective.

158. We may gainfully refer to an article by Jonathan Glancey dated 11th December 2015 titled "Is this the perfect city?", published by the BBC, which reads thus:

“Of all the world’s ideal cities, Chandigarh has done remarkably well, offering striking monumental architecture, a grid of self-contained neighbourhoods, more trees than perhaps any Indian city and a way of life that juggles tradition with modernity. While history tells us ideal cities are mostly best left on paper, Chandigarh – perhaps one of the least likely appears to have succeeded against the grain.”

159. As could be seen from the said article, Chandigarh has done remarkably well, offering striking monumental architecture, a grid of self-contained neighbourhoods, more trees than perhaps any Indian city and a way of life that juggles tradition with modernity.

160. At the cost of repetition, it must be noted that the CMPD 2031 itself, at more than one place, states that Chandigarh has been planned as a green city with abundance of open space and to ensure that every dwelling has its adequate share of the three elements of Sun, Space and Verdure. The fragmentation/apartmentalization of single dwelling units in Phase I of Chandigarh, in our view, will injure the ‘Lungs’ of the city as conceptualized by Le Corbusier. In this regard, the observations of this Court in the case of Municipal Corporation of Greater Mumbai and Others v. Kohinoor CTNL Infrastructure Company Private Limited and Another<sup>20</sup>, are highly instructive. In the said case, this Court held as follows, regarding the implications of overcrowding of cities:

“13. ....When the cities are overcrowded, the roads are narrow and the traffic is increasing, the situation will be extremely hazardous for the children and senior citizens. There will be no greens in the buildings and the people will always crave for fresh and pure air. The buildings without greens will add to the ever increasing temperature of the overcrowded cities and urban areas. To put it differently, all constructions without adequate green and recreational areas will have serious impact on the environment and human life.....”

161. The High Court ought to have been alive to the unique status of Chandigarh and considered the matter from that perspective.

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162. One other aspect that needs to be taken into consideration is that on account of certain acts and omissions of the Chandigarh Administration, in certain areas, there has been a chaotic situation. As already pointed out herein, on one hand, the 2001 Rules have been repealed in the year 2007 and the 2007 Rules have been enacted. In view of Rule 16 of the 2007 Rules, there is a specific bar on fragmentation of sites or buildings. It is the specific stand of the Chandigarh Administration that construction of apartments is not permissible. On the other hand, the 2017 Rules are enacted in such a way that there is scope for the construction of apartments. Not only that, but the Chandigarh Administration is sanctioning plans which, in effect, permit apartmentalization.

163. We may gainfully refer to the following observations made by the Full Bench of the High Court in the case of Dheera Singh (supra), which read thus:



“103. The Executive has in the instant case, with reference to the 1952 Act, failed to live up to the expectations of the residents as instead of approaching the Ministry concerned with a concrete proposal on data based information for onward consideration of the Legislature to rejuvenate the 1952 Act and make it more vibrant and alive to the issues in praesentia or in future, it has gone for ad hoc solutions taking refuge under Section 22 of the Act. Strangely, the amount of penalty or fine fixed by the Legislature in the year 1952 (Sections 8, 13 & 15) has not been got revised even after the expiry of 60 years.

104. The principles governing the powers of delegated legislation are fairly settled. Such a power is exercisable to implement and achieve the objects of a Statute within the framework of the legislative policy; every delegate is subject to the authority and control of the principal who can always direct, correct or cancel the action of the subordinate legislation; the delegate in the garb of making rules cannot legislate on the fields covered by the Act.”

164. We are therefore inclined to issue certain directions so as to ensure that the issue regarding apartmentalization is first examined by the Heritage Committee so as to preserve the heritage status of Corbusian Chandigarh. We are also inclined to direct the Chandigarh Administration to take steps for amending the CMP 2031 and the 2017 Rules after the issue has been addressed by the Heritage Committee. However, we feel that such important issues cannot be left only to the discretion of the Chandigarh Administration. We therefore find it necessary to direct that after the Chandigarh Administration takes decision to amend the provisions, the same shall be placed before the Central Government for its consideration and final decision. We find that for protecting the heritage status of Corbusian Chandigarh, it is necessary that we should exercise our powers under Article 142 of the Constitution of India and issue certain directions.

165. In that view of the matter, we hold that in view of Rule 14 of the 1960 Rules, Rule 16 of the 2007 Rules and the repeal of the 2001 Rules, fragmentation/division/ bifurcation/apartmentalization of a residential unit in Phase I of Chandigarh is prohibited.

166. We further issue the following directions:

(i) The Heritage Committee is directed to consider the issue of redensification in Phase I of the city of Chandigarh;

(ii) Needless to state that the Heritage Committee  
would take into consideration its own

recommendations that the northern sectors of Chandigarh “(Corbusian Chandigarh)” should be preserved in their present form;

(iii) The Heritage Committee shall also take into consideration the impact of such redensification on the parking/traffic issues;

(iv) After the Heritage Committee considers the issues, the Chandigarh Administration would consider amending the CMPD 2031 and the 2017 Rules insofar as they are applicable to Phase I in accordance with the recommendations of the Heritage Committee;

(v) Such amendments shall be placed before the Central Government, which shall take a decision with regard to approval of such amendments keeping in view the requirement of maintaining the heritage status of Le Corbusier zone;

(vi) Till a final decision as aforesaid is taken by the Central Government:

a. the Chandigarh Administration shall not sanction any plan of a building which *ex facie* appears to be a *modus operandi* to convert a single dwelling unit into three different apartments occupied by three strangers; and b. no Memorandum of Understanding (MoU) or agreement or settlement amongst co-owners of a residential unit shall be registered nor shall it be enforceable in law for the purpose of bifurcation or division of a single residential unit into floor-wise apartments.

(vii) We further direct that hereinafter, the Central Government and Chandigarh Administration will freeze FAR and shall not increase it any further;

(viii) That the number of floors in Phase I shall be restricted to three with a uniform maximum height as deemed appropriate by the Heritage Committee keeping in view the requirement to maintain the heritage status of Phase I; and

(ix) That the Chandigarh Administration shall not resort to formulate rules or bye-laws without prior consultation of the Heritage Committee and prior approval of the Central Government.

167. Before we part with the judgment, we observe that it is high time that the Legislature, the Executive and the Policy Makers at the Centre as well as at the State levels take note of the damage to the environment on account of haphazard developments and take a call to take necessary measures to ensure that the development does not damage the environment. It is necessary that a proper balance is struck between sustainable development and environmental protection. We therefore appeal to the Legislature, the Executive and the Policy Makers at the Centre as well as at the State levels to make necessary provisions for carrying out Environmental Impact Assessment studies before permitting urban development.

168. We direct the copy of this judgment to be forwarded to the Cabinet Secretary to the Union of India and the Chief Secretaries to all the States to take note of the aforesaid observations. We hope that the Union of India as well as the State Governments will take earnest steps in that regard.

169. We must place on record our deep appreciation for the valuable assistance rendered by Shri P.S. Patwalia and Shri Ranjit Kumar, learned Senior Counsel appearing on behalf of the appellants

and Shri K.M. Natraj, learned ASG, Shri Kapil Sibal, Shri Ajay Tewari and Shri Gaurav Chopra, learned Senior Counsel appearing on behalf of the respondents.

170. In the result, the appeals are allowed in the aforesaid terms.

171. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....J.

[B.R. GAVAI] .....J.

[B.V. NAGARATHNA] NEW DELHI;

JANUARY 10, 2023