M/S. D.L.F. Qutab Enclave Complex ... vs State Of Haryana And Ors on 17 February, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1648, 2003 (5) SCC 622, 2003 AIR SCW 1046, (2003) 2 SCR 1 (SC), 2003 (3) ALL CJ 1836, 2003 (2) SLT 602, 2003 (5) SRJ 81, 2003 (2) SCALE 145, 2003 (1) LRI 724, 2003 (2) ACE 470, 2003 HRR 540, (2003) 9 ALLINDCAS 129 (SC), 2003 (2) SCR 1, 2003 ALL CJ 3 1836, (2003) 1 RECCIVR 817, (2003) 2 SCALE 145, (2003) 2 WLC(SC)CVL 716, (2003) 4 INDLD 152, (2003) 4 ALL WC 3233, (2003) 2 LANDLR 429, (2003) 2 SUPREME 123, (2003) 2 ICC 697

Author: S.B. Sinha

Bench: S.B. Sinha, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  4908 of 2002

PETITIONER:
M/s. D.L.F. Qutab Enclave Complex Educational Charitable Trust

RESPONDENT:
State of Haryana and Ors.

DATE OF JUDGMENT: 17/02/2003

BENCH:
S.B. Sinha & AR. Lakshmanan

JUDGMENT:
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J U D G M E N T WITH CIVIL APPEALS NOS. 4909, 4910 AND 4911 OF 2002 S.B. SINHA, J:

Interpretation of Section 3(3)(a)(iv) of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter called and referred to for the sake of brevity as 'the said Act') falls for consideration in these appeals which arise out of a judgment and order of the Punjab and Haryana High Court dated 7.3.2001 passed in C.W.P. No.7245 of 1997 filed by the appellant of Civil Appeal No. 4908 of 2002.

M/s. DLF Universal Ltd. (DLF) is a public limited company registered and incorporated under the Indian Companies Act. It purchased free-hold lands at Gurgaon in the State of Haryana for setting up a colony known as DLF Qutab Enclave Complex. It applied for and was granted licence in terms of the provisions of the said Act.

> M/s. DLF Universal Limited and other group of companies created DLF Qutab Enclave Complex Educational Charitable Trust (Trust) wherefor 85 sites were earmarked for constructions of schools/ community buildings in the complexes. The said sites vested in the Trust by reason of a deed. The Trust entered into agreements of lease with Gunjan Nikunj Educational Institute (P) Ltd., Mr. A.H. Handa, New Ekta Educational Society, Satish Mohindra and Sukhjeet Kaur Mann (hereinafter referred to as 'fourth parties').

Three of the lessees from the Trust, namely, New Ekta Educational Society, Satish Mohindra and Sukhjeet Kaur Mann applied for approval and were granted building plans by the 2nd respondent herein.

On or about 9.2.1994 the 2nd Respondent issued a letter to the DLF directing it to ensure that no other fourth party right is created on community site, in respect whereof third party interest was created prior to 7.8.1991. The said cut off date was fixed purported to be on the basis of the resolution taken in a meeting held under the Chairmanship of the then Chief Minister of the State of Haryana wherein a resolution was adopted to the effect that no further third party right could be created. The State of Haryana by a letter dated 25.10.1994 issued instructions as regards transferring community sites to third and fourth parties and raising constructions thereupon which are broadly classified into three heads:

> I. Where community sites are still in the ownership of the colonizers II. Sites where colonizers have created third party rights before 7.8.1991 III. Cases where the licensee has created fourth party right on community sites.

The said instructions were followed by another addenda in terms of a letter dated 13.2.1996 stating that the time schedule of three years for construction on community buildings would also apply to all sites where third and fourth party rights have been created before 7.8.1991 and in respect thereof, the remaining conditions of letter dated 25.10.1994 shall be applicable. The legality or validity of the directions contained in the said two letters dated 25.10.94 and 13.2.96 were the subject matter of the writ petition filed by the Trust in Punjab and Haryana High Court marked as Civil Writ Petition No. 7245 of 1997.

It appears that a proposal was mooted in the said proceeding as to whether the dispute between the parties could be amicably resolved and pursuant thereto or in furtherance thereof by an order dated 21.9.2001 the Trust was given an opportunity by the High Court to obtain and file affidavits of the parties in whose favour licences had been granted for construction and running of the schools.

Allegedly, the respondents No. 1 and 2 pursuant to the observations made by the High Court held meetings with all concerned an d found the said proposal to be acceptable.

Thereafter affidavits were filed by the concerned fourth parties stating that they would abide by the conditions of the licence issued in favour of DLF as also the rules and regulations and instructions issued by the First and Second Respondents. In the said affidavits it was further affirmed that

schools would be built within the time specified by the Respondents.

The High Court by an order dated 13.12.2000 recorded that the parties had nearly reached a consensus and draft agreement was directed to be put up for its consideration.

However, the learned Advocate General for the State of Haryana on or about 16.2.2001 appeared and stated before the High Court that it was not possible for the State to accept the said proposal and requested that the Writ Petition be decided on merits.

The Writ Petition by reason of the impugned judgment was dismissed holding:

> (i) The petitioner is a duplicate of the licensee. It has been created to fiddle with figures. A consuming avarice and not charity is the cause for its creation.
>
> (ii) The Act and the Rules do not permit the licensee to transfer sites without the permission of the competent authority. The action of the respondents in refusing to recognize the transfers cannot be said to be illegal.
>
> (iii) The impugned circulars are not arbitrary, illegal or unfair. These do not impinge upon the protection of Article 14 of the Constitution.
>
> (iv) The failure of the Authority to act or the mere silence of the State cannot be a ground for the court to put its seal of approval on deeds which do not have the sanction of the Statute and the Rules.

Mr. Harish Salve, the learned senior counsel appearing on behalf of appellant in Civil Appeal No. 4909 of 2002 would submit that the said Act, the Rules framed thereunder or the conditions of licence do not provide for imposition of any embargo on transfer of the lands, in question, to third parties by DLF and as such the impugned judgment is not sustainable. The learned counsel would contend that by reason of the said Act only grant of licence as regards regulation of user of land is contemplated and the restrictions imposed thereunder must be held to be operative qua the terms and conditions of licence and not qua the owners of the properties. Mr. Salve would urge that so long the user of the land conforms to the provisions of the Act, Rules or the terms and conditions of the licence, no restriction on exercise the right of the owner to transfer the land can be imposed having regard to absence of a statutory provision in relation thereto. He would argue that the question as to whether the Trust was an entity independent of DLF is wholly irrelevant or not inasmuch as even assuming that it is so, having regard to the terms and conditions of licence as the third parties and the fourth parties are claiming interest through the owner, they would also be bound thereby. In that view of the matter and particularly having regard to the fact that the fourth parties by way of affidavits had undertaken to abide by the terms and conditions of the licence granted pursuant to or in furtherance of the said Act and the Rules framed thereunder, the purport and object for which Town Planning Act has been enacted would not be violated. It was argued that conversely if it be held that the DLF was entitled to transfer those lands to the third parties, the profits accrued by reason of the transactions of the Charitable Trust lose relevance for a decision

upon the validity of the refusal of the Government to sanction the building plans. The learned counsel would submit that having regard to the expression 'development works' meaning 'internal and external development works', used in the statute, no fetter on transfer of lands can be inferred, as long as lands reserved for construction of schools, hospitals, community centers etc. are used for the said purpose. By reason of the provision contained in Section 3(3) of the Act, it was submitted, the licensee was merely obligated to construct or get constructed schools, hospitals, community centers etc. and thus, in terms thereof no prohibition has been imposed as regard transfer thereof to an institution or an individual so as enable them to undertake construction of schools, hospitals and community centers at their own cost.

Drawing our attention to the instructions dated 9.2.1994 issued by the Director, Town & Country Planning impugned in the writ petition, the learned counsel would submit that the same merely shows that an executive decision in relation thereto was taken which was not backed by any statute or statutory rule and as such the same should have been declared ultra vires by the High Court.

Mr. M.L. Verma, the learned counsel appearing on behalf of the appellant in Civil Appeal No. 4908 submitted that in the facts and circumstances of this case the High Court should not have made adverse comments as regard the functioning of the Trust.

The learned counsel appearing on behalf of the appellants in Civil Appeal No. 4910 and 4911 would inter alia submit that keeping in view the fact that the Trust issued advertisements which were published in various newspapers in the year 1991 declaring availability of educational sites in the colony in question, it cannot be said, that the respondents No. 1 and 2 were not in the know thereof. It was submitted that the appellants upon due enquiry satisfied themselves about the title of the DLF whereafter only they purchased the lands in question bona fide and for valuable considerations within the knowledge of the State of Haryana and as at no point of time the State of Haryana objected thereto, the purported impugned directions issued in the year 1994 and 1996 could not have given retrospective effect and retrospective operation with effect from 7.8.1991.

Mr. Mahendra Anand, the learned counsel appearing on behalf of the Respondent Nos. 1 and 2 would, on the other hand, submit that although there does not exist any express bar on transfer of lands by the owners thereof by creating third party or fourth party interest, the same must be inferred having regard to the scheme of the said Act. The learned counsel would contend such a scheme would appear not only from the interpretation clauses of the Act but also from Section 7 thereof as also the rules framed thereunder and the licences granted pursuant thereto or in furtherance thereof. According to the learned counsel having regard to the scheme of the act, the Court should apply the rule of purposive construction so as to hold that the licensee itself was bound to construct schools, hospitals, community centres etc. at its own cost. It was submitted that if the State can take over the lands without payment of any compensation, it must necessarily be held that it has also the concomitant right to keep control thereover which would include imposing restriction on transfer of the said land. The owner of the land by necessary implication, the learned counsel would urge, was not entitled to exercise any right over the property and its right to use the same was restricted to get constructions raised through a third party wherefor also it has itself to incur costs. Mr. Anand would contend that the extent of regulation can further be judged by the fact that a

colonizer is not entitled to enter into a profitable venture, the reasonable profit being restricted to 15% by the Legislature and thus in the event the owner could create third party and fourth party interests, the same would defeat the very purpose and object of town planning.

The said Act was enacted to regulate the use of land in order to prevent ill plant and haphazard urbanization in or around towns in the State of Haryana. It came into force with effect from 16th November, 1971 except Section 10 thereof which came into force on 30th January, 1975 when the State Act received the assent of the Governor of State of Haryana.

'Colony' has been defined in Section 2(c) of the said Act in the following terms:

> "colony" means an area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes subject to certain restrictions specified therein."

Colonizer has been defined in Section 2(d) thereof which reads thus:

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

> "Development Works" in terms of Section 2(e) would mean internal and external development works.

> "External Development works" and "internal development works"

have been defined in Section 2(g) and 2(i) of the Act as under:

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

> (i) "internal development works" means

> (i) metalling of roads and paving of footpaths;

> (ii) turfing and plantation with trees as open spaces;

> (iii) street lighting;

> (iv) adequate and wholesome water supply;

(v) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(vi) any other work that the Director may think necessary in the interest of proper development of a colony;

Interpretation clauses except Section 2(g) having regard to user of expression "means" can neither be construed liberally nor can be held to be exhaustive ones.

It is not in dispute that DLF is a colonizer. It is further not in dispute that licences had been granted to it for the construction of a colony. It also stands admitted that schools, hospitals, community centers and other community buildings were required to be constructed in the colony in terms of the licences granted under the Act.

Section 3 of the said Act provides for application for licence and grant thereof. Sub-section (2) of Section 3 clearly states that the Director before granting the licence may enquire into the title of the land as also capacity of the colonizer to develop a colony.

Such enquiry is also required to be made having regard to the plan regarding development works to be executed in a colony and in conformity with the development schemes of the colonies of the neighbouring areas.

In terms of sub-section (3) of Section 3 of the said Act, the Director upon arriving at a satisfaction as regard the requirements specified in Clause

(a) to (f) would grant licence subject to the licensee's furnishing a bank guarantee and giving an undertaking as specified in clause (a) thereof.

The relevant provision of Section 3(3) of the said Act reads thus:

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

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

(i) ..

(ii) ..

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and

thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

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

Section 7 prohibits advertisement and transfer of plots and reads as under:

"7. Prohibition to advertise and transfer plots. Save as prescribed in Section 9, no person shall

(i) without obtaining a licence under Section 3 transfer or agree to transfer in any manner plots in colony or make an advertisement or receive any amount in respect thereof;

(ii) erect or re-erect any building in any colony in respect of which a licence under Section 3 has not been granted;

(iii) erect or re-erect any building other than for purpose of agriculture on the land sub- divided for agriculture as defined in clause (aa) of section 2 of this Act."

The State of Haryana in exercise of its power under Section 24 of the said Act made the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as 'the Rules'). Rule 10 provides that the applicant for grant of a licence would be required to fulfil certain conditions laid down therefor. Rule 11 specifies the conditions required to be fulfilled by the applicant. Sub-rule (e) of Rule 11 is identically worded with Section 3(3)(a)(iv) of the Act.

Licence to a colonizer is granted in form LC-IV. Condition No. (b) of the licence again is in identical terms with Section 3(3)(a)(iv) of the said Act.

Although the object of the said Act is laudable but does it mean that with a view to achieve the same the regulatory provisions contained therein should be construed as a total prohibition on transfer of land not only in relation to those which are required for development works but also to schools, hospitals, community centers and other community buildings, is the core question involved in these appeals.

Construction of schools, hospitals and community centres and other community buildings do not come within the purview of the term 'development works'. They come within the purview of the term "Amenities". Only in relation to the development works the colonizer is bound to pay the

development charges, carry out and complete development works. He has also the responsibility to maintain the same for a period of five years from the date of issue of the completion certification whereafter, the same is required to be handed over to the Government or the local authority as the case may be, free of cost.

At the outset, we may notice that the cost of development works indisputably is to be raised from the plot holders, but as construction of schools, hospitals, community centres and other community buildings do not come within the purview of the term 'development works', the costs therefor are not to be borne by them.

The expression "Development Work" as noticed hereinbefore is not synonymous with "Amenity". The expression "Amenity" has been used only in proviso appended to Clause (v) of Section 3(3)(a) and Rule 2(b) of the Rules. Rules are subservient to the Act, although they may be read con- jointly with the Act, if any necessity arises therefor. Even Rule 5 specifies the obligation of the colonizer as regard providing for the development works. The expression "amenity" as defined in Rule 2(b) of the Rules is wider than "development works". No principle of construction of statute suggests that a wider expression used in the rule may be read in the Statute employing narrower expression. Even in the rule the said expressions have been used for different purposes. The licence, also does not postulate that all amenities must be provided by the colonizer at its own expense. If the terms 'Development Works' and 'Amenity' are treated as carrying the same meaning, the plot holders may be held to be bound to meet the costs for construction of schools, hospitals, community centres etc. The cost of construction in terms of the said provisions thereof is to be borne by DLF or its nominees.

Right of transfer of land is indisputably incidental to the right of ownership. Such a right can be curtailed or taken away only by reason of a statute. An embargo upon the owner of the land to transfer the same in the opinion of this Court should not be readily inferred. Section 3(3)(a)(iv) of the Act does not expressly impose any restriction. The same is merely a part of an undertaking. Assuming that a prohibition to transfer the land can be read therein by necessary implication, it is interesting to note that the consequence of violation of such undertaking has not been specified. In other words, if a transfer is made in violation of the undertaking, the statute does not provide that the same would be illegal or the transferee would not derive any title by reason thereof.

The right of a transferee, however, would be subject to the building laws or regulatory statute relating to user of the property. In terms of the said Act, in the event the Government, takes over the plots it would be at liberty to transfer such land to any person or institution including a local authority as it may deem fit. Purpose of such a clause, therefore, is to ensure that schools, hospitals, community centres and other community buildings are established at the places reserved therefor in the sanction plan but there does not exist any embargo as regards the person or persons who would run and manage the same.

A regulatory act must be construed having regard to the purpose it seeks to achieve. State as a statutory authority cannot ask for something which is not contemplated under the Act. A statute relating to regulation of user of land must not be construed to be a limitation prohibiting transfer of

land which does not affect its user.

The plan provides that schools, hospitals etc. would be located at particular sites. When that purpose is satisfied, the Court in the name of interpretation would not make a further attempt to find out who did so.

It is not in dispute that respondent Nos. 1 and 2 have sought to impose such a ban specifically by reason of the impugned circulars issued in the years 1994 and 1996, which in unmistakable terms go to show that even according to them such a bar did not exist prior thereto. It is accepted that even the concerned respondents had recognised at least three transfers. If transfer of the sites reserved for construction of school was prohibited under the statute, it is axiomatic that in absence of any provision contained therein, the respondent could not exercise any power of regularizing such transaction. A transfer prohibited by a statute would be illegal and not irregular. Once it is held that such transfer would only be 'irregular' which can be cured, it would necessarily mean that there was no absolute statutory bar in relation thereto. The building plans which were submitted on various days in 1992 and onwards had been accepted and sanctioned. If it be held that such transfers by the DLF Qutab were illegal, there was no occasion for the respondents No. 1 and 2 herein to pass the building plans keeping in view of the fact that transferee thereof did not acquire any title whatsoever. Such a right of transfer to third parties to raise construction having been accepted by the respondents No. 1 and 2 prior to 1994, it does not now lie in their mouth to contend that there existed a statutory bar. The primal question is as to whether by reason of an executive fiat, a right to transfer one's own property could be curtailed? The answer to the said question must be rendered in the negative.

Expropriatory statute, as is well known, must be strictly construed.

In terms of Section 3 of the Act, a colonizer has to construct schools, hospitals, community centres and community buildings at its own cost or to get the same constructed by any other institution at its cost and for the said purpose lands have to be set apart. However, in the event the same is not done within a reasonable time, the State would be at liberty to take over the lands and fulfil the said objects as specified in the sanctioned plan. The power of the Government to take over the lands must be held to be restricted and would be applicable only in a case where community services had not been developed. In other words, where the community services had not been developed the question of acquisition thereof by the Government would arise and not in any other situation.

The High Court in our opinion, committed a manifest error in holding that despite the fact that the statute uses two different expressions as regards cost to be incurred for construction of schools, hospitals and community centres etc. the effect thereof would be the same. In case of licensee the words used are 'at his own cost' whereas in respect of the others, the words used are 'at its cost'. When different terminologies are used by the legislature it must be presumed that the same had been done consciously with a view to convey different meanings. Had the intention of the legislature been, as has been held by the High Court, that the cost for such a construction has to be borne by the licensee irrespective of the fact as to whether it undertakes such constructions itself or get them constructed by its contractors, there was absolutely no reason as to why clearer terms could not be

used by the legislature. The words 'at his own cost' refer to the licensee, whereas in the case of his nominee being either an institution or a person, as the case may be, the words 'at its cost' have been used. The expression "at his own cost" and "at its cost" must be held to have separate and distinct meaning. They are not meant to aim at the same person.

The words 'institution' or 'person' evidently do not refer to a building contractor as understood in ordinary parlance. It must be held to carry different meanings. Indisputably, any person can get constructions made on his own land either under his own supervision or through a contractor. For the purpose of raising constructions through a contractor, permission of the statutory authorities is not necessary. In that view of the matter, clearly the legislature did not contemplate that the words 'any other institution or individual' refer only to a building contractor for the purpose of construction of the buildings alone and for no other purpose.

It may be that the agreement is between DLF and the respondent No. 2 but the same would not mean that the transferees from the DLF would not be bound by the terms and conditions of the licence as the statutory obligations of the licensee would percolate down to its transferees as they would be claiming interest under the licensee. In terms of the provisions of the said Act, Rules and the condition of licence, the Director Town and Country Planning as also the State of Haryana would be entitled to exercise control in terms of the statutory provisions over the subsequent transferees. Creation of third party or fourth party interest, it is axiomatic, would not by itself take away the right of control of the State and other regulatory measures which can be taken under the statute.

In other words, the liability of the colonizer in the matter of construction of schools, hospitals etc. would continue in the event, he or his transferees fail to comply the conditions of licence and he would be subjected to the consequences laid down therefor in Section 10 of the said Act.

The Government in other words would continue to regulate the user for which the site had been earmarked and upon failure of the licensee or his transferees to comply with such statutory obligation, the Government would be entitled to take over such land.

The question may be considered from another angle. A statutory obligation had been placed upon the colonizer. The right of colonizer to transfer the land would be subject to such obligation inasmuch as it cannot transfer a right higher than it has. The right to transfer the land shall carry with it the obligation of the owner thereof to use the land in a particular manner as laid down in the statute as also the terms of the licence. It is also pertinent to note that a draft rule was published on 13th December, 1991 in terms whereof a condition was imposed in condition (e) in the licence granted in form LC-IV to the following effect:

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

The said Amendment itself goes to show that the legislature sought to remedy a mischief which was existing prior thereto. Such a step on the part of the State of Haryana is also a pointer to the fact that even according to it, prior permission therefor was not required.

Basic Rule of interpretation of Statute is that the Court shall not go beyond the statute unless it is absolutely necessary so to do. Rule of 'purposive constructions' would be resorted to only when the statute to observe or when read literally it leads to manifest injustice or absurdity.

It may be true that 55% of the acquired lands were plottable but as to whether D.L.F. has recouped its investments by transferring the plottable land to the plot holders is a question which, in our opinion, is irrelevant for the purpose of construction of statute. The High Court, in our opinion, therefor, adopted a wrong approach.

It is also incorrect to contend that that sub clauses (iii) and (iv) of Section 3(3)(a) of the Act stand on a different footing. A bare perusal of the said provision would clearly show they are not. In terms of clause (iii), a colonizer is responsible to maintain and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate whereas in terms of clause (iv), a colonizer undertakes to construct schools, hospitals, community centers and other community buildings or get the same constructed by any other institution or individual. Sub-clauses (iii) and (iv) of Clause (a) of sub- section (3) of Section 3 of the said Act, thus, aim at different purposes.

We do not also agree with the submission of Mr. Anand to the effect that as regards development of community sites, the State acts as a parens patriae. The State Act have been enacted for regulation of user of land so that the development of a town may not haphazard. It seeks to achieve the purposes mentioned in the preamble and no other.

In these cases, we are not concerned with the question as to whether the provisions of the Transfer of Property Act are applicable in the State of Haryana or not. Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. Such a right, being incidental to the right of ownership; having regard to Article 300A of the Constitution of India, cannot be taken away save by authority of law.

We may now consider the decisions whereupon Mr. Anand placed strong reliance.

In Charan Lal Sahu Vs. Union of India [(1990) 1 SCC 613] this Court was considering the provision of Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. The question which arose for consideration therein was as to whether the State has the requisite jurisdiction and power as a 'parent' to fight litigation for the victims so as to uphold their fundamental rights. A question as to whether the State Act is ultra vires the Constitution also arose for consideration. The Court with a view to uphold the constitutionality of the Act held that the Scheme of the Act suggests an obligation on the part of the State. The court, in the fact situation obtaining therein, took recourse to the principles of liberal interpretation holding:

> ".The freedom to search for 'the spirit of the Act' or the quantity of the mischief at which it is aimed (both synonymous for the intention of the Parliament) opens up the possibility of liberal interpretation "that delicate and important branch of judicial power, the concession of which is dangerous, the denial ruinous". Given this freedom

> it is a rare opportunity though never to be misused and challenge for the judges to adopt and give meaning to the Act, articulate and inarticulate, and thus translate the intention of the Parliament and fulfil the object of the Act. After all, the Act was passed to give relief to the victims who, it was thought, were unable to establish their own rights and fight for themselves. It is common knowledge that the victims were poor and impoverished. How could they survive the long ordeal of litigation and ultimate execution of the decree or the orders unless provisions be made for their sustenance and maintenance, especially when they have been deprived of the right to fight for these claims themselves? We, therefore, read the Act accordingly."

The said decision, therefore, was rendered in a completely different fact situation and is not applicable to the fact of the present case.

In Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and two others [(1952) 3 SCR 683] this Court was considering the provisions of Preventive Detention Act. In that case the Court took recourse to literal meaning. It was held that the Court should not interpret an act in such manner which would defeat the provisions thereof whose meaning is quite plain.

No exception to the said ratio can be taken.

In The State of Punjab Vs. Ajaib Singh and Another [(1953) 4 SCR 254] this Court was considering the constitutional validity of the provisions of Abducted Persons (Recovery and Restoration) Act in terms whereof police officers were entitled to take abducted person to the custody of the officer in charge of the camp. The construction of the terms 'arrest and detention' came up for consideration and in that situation it was held:

> "Sri Dadachanji contends that such consideration should not weigh with the court in construing the Constitution. We are in agreement with learned counsel to this extent only that if the language of the article is plain and unambiguous and admits of only one meaning then the duty of the court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

In Tirath Singh Vs. Bachittar Singh and Others [(1955) 2 SCR 457] an election dispute was the subject matter of the lis. The question which arose for consideration therein was as to whether the principles of natural justice had to be read in the proviso appended in the Section 99(1)(a) of the Act. Repelling such contention it was held:

> "But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or

> absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence".

(Maxwell's Interpretation of Statutes, 10th Edition, page 229). Reading the proviso along with clause

(b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."

In Canara Bank vs. Nuclear Power Corporation of India Ltd. & Others [(1995) Supp. 3 SCC 81], the question which fell for consideration of this Court was as to whether the Company Law Board performs judicial functions that are ordinarily performed by courts under Section 9-A of the Act and in that context it was held to be a court. The said decision cannot be held to have any application in the instant case.

The said decisions having been rendered on the fact of the matters involved therein and cannot be held to have any application whatsoever in the instant case.

The question which now arises for consideration is as to whether clause (t) of the licence agreement can be read as a restriction of the right to transfer the community sites. Clause (t) of the licence agreement reads as under:

> (a) That the owner shall drive maximum net profit @ 15% of the total cost of development of a colony after making provisions of statutory taxes.

In case the net profit exceeds the 15% after completion of the project period, surplus amount shall either be deposited within two months in the State Government Treasury by the owner or he shall spend this money on further amenities/ facilities in his colony for the benefit of the residents therein."

The cap on profit, in our opinion, is irrelevant for the purpose of construction as regards the right of colonizer to transfer the land. Clause (t) of the Licence, in other words, cannot be construed to put in an implied limitation of the owner of the land to transfer its land. It is for the State of Haryana to invoke the said clause if and when any occasion arises therefor.

Furthermore, having regard to the fact that the DLF had made its intention to transfer the lands known through advertisements in the widely circulated newspapers; offerees must be held to have exercised their 'due diligence' at the time of acquisition of interest in the plots and in that view of the matter such interest cannot be put in jeopardy unless it is found out without any difficulty whatsoever that the colonizer had no right to transfer the said land and the effect of such transfer would lead to illegality. The fourth parties are bona fide transferees for value and thus their right of claiming interest cannot be jeopardized by reason of executive instructions or otherwise particularly

in absence of any pleadings by the respondents No. 1 and 2 to the effect that fraud has been practised by the colonizer or the parties colluded with one another to achieve an illegal purpose.

For the reasons aforementioned the impugned judgment cannot be sustained which is set aside accordingly.

Before parting, however, we may observe that in the event, it is found that the colonizer or the transferees had failed to discharge their obligations in terms of the said Act, Rules and conditions of licence, it would be open to the prescribed authorities to take such action against them as is permissible in law.

For the foregoing reasons, the appeals are allowed but in the fact and circumstances of the case, there shall be no order as to costs.

1. The Court in a case of this nature is not concerned with the morality of law. It is concerned with its essence. The preamble of the act shows it is meant to regulate use of land in certain manner. It is not concerned with the ownership. The definition of 'owner' is an inclusive definition. It has to be construed liberally.

2. The expression "at his own cost" and "at its cost" must be held to have separate and distinct meaning. They are not meant to aim at the same person.

3.

4.

6. 1990 1 scc 613 at 692 The freedom to search for 'the spirit of the Act' or the quantity of the mischief at which it is aimed (both synonymous for the intention of the Parliament) opens up the possibility of liberal interpretation "that delicate and important branch of judicial power, the concession of which is dangerous, the denial ruinous". Given this freedom it is a rare opportunity though never to be misused and challenge for the judges to adopt and give meaning the Act, articulate and inarticulate, and thus translate the intention of the Parliament and fulfill the object of the Act. After all, the Act was passed to give relief to the victims who, it was thought, were unable to establish their own rights and fight for themselves. It is common knowledge that the victims were poor and impoverished. How could they survive the long ordeal of litigation and ultimate execution of the decree or the orders unless provisions be made for their sustenance and maintenance, especially when they have been deprived of the right to fight for these claims themselves ? We, therefore, read the Act accordingly.

1955 2 scr 457 at 464 But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence". (Maxwell's Interpretation of Statutes, 10th

Edition, page 229). Reading the proviso along with clause (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition.

1953 4 scr 254 at 264 Sri Dadachanji contends that such consideration should not weigh with the court in construing the Constitution. We are in agreement with learned counsel to this extent only that if the language of the article is plain and unambiguous and admits of only one meaning then the duty of the court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.

CIVIL APPEAL NO. 4909 OF 2002

M/s. D.L.F. Universal Ltd. Appellants

Versus

State of Haryana and Another Respondents.

CIVIL APPEAL NO. 4910 OF 2002

Gunjan Nijunj Educational Institute (P) Ltd. Appellants Versus M/s. DLF Universal Ltd. and Others Respondents.

CIVIL APPEAL NO. 4911 OF 2002

A.H. Handa and Others Appellants

Versus

M/s. DLF Universal Ltd. and Others Respondents.