Rameshwar vs State Of Haryana on 12 March, 2018

Equivalent citations: AIRONLINE 2018 SC 418

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Adarsh Kumar Goel

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8788 OF 2015

Rameshwar & Others ……

VERSUS

State of Haryana & Others ..

With

CIVIL APPEAL NO.8794 of 2015,

CIVIL APPEAL NO.8791 of 2015

&

CIVIL APPEAL NO.8782 of 2015

JUDGMENT

Uday Umesh Lalit, J.

1. These appeals by special leave are directed against the common Judgment and Order dated 15.12.2014 passed by the High Court of Punjab and Haryana at Chandigarh dismissing Civil Writ Petition No.23769 of 2011 with other connected matters. Appeal arising from Civil Writ Petition No.23769 of 2011 namely Civil Appeal No.8788 of 2015, has been taken as Date: 2018.03.12 13:53:54 IST Reason:

the lead matter and the facts stated therein are dealt with in detail.

2. The aforesaid Civil Writ Petition No.23769 of 2011 was filed by 117 landholders for the following principal relief:

> "a) Issue writ direction or order, especially in the nature of certiorari quashing the entire action of the respondents who invoked Sections 4 & 6 for the alleged public purpose but ultimately compelled the petitioners to be divested of their valuable and fertile land at throwaway prices under the threat of acquisition to the private persons and consequently after issuing Section 6 and at the stage of final proceedings under Section 9, the acquisition was withdrawn with fraudulent intentions after the land was purchased by the private builders in active connivance with State functionaries and further the entire acquisition proceedings were initiated with mala fide intention, illegally and in violation of the provisions of the Land Acquisition Act. The same is vitiated by fraud and all transactions including the sale deeds etc. are liable to be set aside without invoking the provisions of Part VII of the Act and with a further prayer for an enquiry/investigation through an independent agency in respect of the entire fraud played by the respondents and their officials;...."

3. The relevant facts leading to the filing and disposal of the aforesaid writ petition were:-

> (i) On 27.08.2004 Haryana Government, Industries Department issued a Notification under Section 4 of the Land Acquisition Act, 1894 ("Act" for short) for acquiring lands admeasuring about 912 Acres from three villages namely, Manesar, Lakhnoula and Naurangpur, Tehsil and District Gurgaon for setting up Chaudhari Devi Lal Industrial Township, to be planned as an Integrated Complex for residential, recreational and other public purposes. The notification was duly published in newspapers. The landholders including some of the writ petitioners filed their objections under Section 5A of the Act.
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> (ii) Soon after the initiation of acquisition, various sale deeds were executed by the landholders including some of the writ petitioners in favour of certain builders/private entities. Some such builders/private entities who had recently purchased the lands also preferred objections under Section 5A of the Act.
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> (iii) On 26.02.2005, a report was prepared by Land Acquisition Collector recommending to the State Government that land admeasuring 224 acres be released from acquisition. Thereafter, appropriate notification under Section 6 of the Act was issued on 25.08.2005 in respect of rest of the land admeasuring 688 acres.
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> (iv) This acquisition was subject matter of challenge in number of Writ Petitions filed by the landholders and the subsequent purchasers viz.

builders/private entities.

(v) Even after issuance of notification under Section 6 of the Act, the builders/private entities continued approaching the landholders. It was submitted that the landholders were being shown Award Nos.7, 8, 9, 10 and 12, all passed on 09.03.2006 in respect of adjoining villages for the same purpose namely setting up of Chaudhary Devi Lal Industrial Township, where compensation was awarded @ Rs.12.5 lakhs per acre. In all these cases, notifications under Section 4 were issued on 17.09.2004 while declarations under Section 6 were issued on 27.10.2004 and the lands covered under Award Nos. 7, 8, 9, 10 and 12 were i) 114 Kanals 02 Marlas,

ii) 68 Kanals 15 Marlas, iii) 43 Biswas, iv) 65 Kanals 08 Marlas and v) 3515 Kanals 01 Marlas respectively. It was submitted that the landholders were thus cornered with the prospect of impending acquisition and the idea that the compensation would be awarded @ Rs.12.5 lakhs per acre and were persuaded to enter into transactions with builders/private respondents transferring their holdings @ Rs.20-25 lakhs per acre.

(vi) On 02.08.2007 notices under Section 9 of the Act were issued calling upon the landholders to appear on 26.08.2007 for pronouncement of award. Soon after such notice, the builder/private entities started enhancing the price and bought the lands from the landholders at a price around Rs.80 lakhs per acre.

(vii) On 24.08.2007, the State Government passed an order dropping the acquisition and stating that a fresh notification would be issued in place of the present proceedings. The reasons given in the order dated 24.08.2007 were as under:

> "In this connection, it is informed that State Government has notified that certain parcels of land have been released by Government on the recommendation of Minister's Committee separately. Some of these parcels are acquired in the land acquisition proceedings under consideration. Further, Town and Country Planning Department has also informed that there are several cases wherein builders applied for licence/CLU on the land which also form part of the acquisition proceedings. Furthermore, in a number of cases the courts have stayed dispossession of land. In the circumstances, it is difficult at this stage to make up a view as what could be the shape and size of the land eventually being acquired by Government. It will not be appropriate to go ahead with these proceedings in the present form. State Government has, therefore, ordered that a fresh notification be issued in place of the present proceedings indicating therein as to which are the lands that are available for acquisition without any encumbrances."

> (viii) On 20.09.2007 Haryana State Industrial and Infrastructure Development Corporation (for short HSIIDC) submitted a proposal to constitute an Inter Departmental Committee to survey the area and submit its recommendations for initiating fresh acquisition proceedings. On 09.10.2007 pending Writ Petitions filed by the landholders and the subsequent purchasers were disposed of by the High Court as having become infructuous in view of the dropping of the acquisition on 24.08.2007 and subsequent decision to constitute an Inter Departmental Committee.

(ix) On 27.12.2007 licence Nos.283 and 284 were issued by the State Government for setting up a housing society.

(x) On 26.03.2008 the Inter Departmental Committee submitted a report recommending complete withdrawal of acquisition. It was stated in the report that 12 applications for grant of licence along with requisite fees were submitted by various colonizers in respect of an area of about 362 acres.

(xi) Around 22.09.2009, approvals of building plans of group housing societies and schemes of private builders came to be granted.

(xii) Having come to know that the lands under acquisition were now being utilized for private gain by various builders/colonizers, the farmers started agitation against the process adopted by the Governmental machinery.

(xiii) On 29.01.2010 a decision was taken by the State Government in Industries and Commerce Department to close the acquisition proceedings in view of the recommendations of the Inter Departmental Committee dated 26.03.2008 which in turn had been accepted by the HSIIDC.

(xiv) The farmers' agitation against the decision of the State Government favouring the builders was widely reported in newspapers on 01.03.2011. The agitation continued beyond August and September, 2011. On 20.09.2011 a request was made by sending communications to various functionaries for registration of FIR in respect of fraud played by the officials of the Land Acquisition Department as well as the Director, Town Planning in active connivance with the builders.

(xv) On 19.12.2011 the aforesaid Writ Petition No.23769 of 2011 was filed in the High Court of Punjab and Haryana at Chandigarh by 117 landholders. It was submitted that the entire action of initiating the acquisition and thereby compelling writ petitioners/landholders to divest their valuable and fertile land at throwaway prices under the threat of acquisition to certain private builders and then dropping the acquisition just two days before the date fixed for declaration of award was deliberate and was fraught with malice.

(xvi) In the written statement filed by Respondent No.3 – ABW Infrastructure Limited, it was submitted that the answering respondent had obtained requisite licences for its residential as also commercial/group housing project namely ABW Niketan and had raised loans to the tune of Rs.170,00,00,000/-.

(xvii) In their written statements, Respondent Nos.4 and 5 namely Metropolis Realtors Pvt. Ltd. and Flair Realtors Pvt. Ltd. submitted that both these Companies were incorporated on 03.02.2006; that the prices of lands in and around Gurgaon were increasing as Gurgaon city was developing fast and another factor causing rise in prices was that Master Plan for the area – i.e. Gurgaon Development Plan was notified on 05.02.2007.

(xviii) The written statement submitted by Respondent No.6 – Metropolis Infrastructure Pvt. Ltd. stated that said Company was incorporated on 19.04.2006. Rest of the submissions were on lines similar to that of Respondent Nos.4 and 5.

(xix) On 06.12.2012 written statement was filed by State of Haryana justifying its action of withdrawal of acquisition. It was submitted that the writ petitioners had approached the Court more than 4½ years after the decision of the State Government of dropping the acquisition proceedings. It was denied that there was any nexus between the builders and the State officials or that the exercise of acquisition was in any manner mala fide or fraudulent.

(xx) In their replications filed on 15.01.2013, it was submitted by the writ petitioners that most of the lands were purchased by the builders or their substitute companies after the issuance of the Notification under Section 4 of the Act and yet, the sale deeds executed between the parties made no mention of factum of such notification. Further, the escalation of prices in last 20 days namely after the issuance of the notices under Section 9 showed that the builders were not only aware but were also sure that the acquisition would be dropped by the State Government. The hike in price was essentially to lure the landholders as after dropping of the acquisition there would be no threat to the landholders.

(xxi) On 24.02.2014 the High Court directed the State of Haryana to give details about various acquisitions initiated around the time in question for the same public purpose namely, setting up of Chaudhary Devi Lal Industrial Township.

(xxii) Accordingly, on or about 21.03.2014 an additional affidavit was filed on behalf of State of Haryana giving relevant details in a tabular chart. These details appear to be in addition to the lands covered under Awards 7, 8, 9, 10 and 12 of 09.03.2006. The relevant tabular chart was as under:-

> Details of Sections 4 and 6 notifications along with the Revenue Estates as mentioned in the written statement dated 06.12.2012 Sl. Events 912 acres, 24 acres, 163 acres, 3718 acres, 3510 acres, No. IMT, IMT, IMT, IMT, IMT, Manesar Manesar Manesar Manesar Manesar
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> 1. Date of 27.08.2004 27.12.2005 25.11.2005 08.12.2006 25.04.2008 Sec. 4 Notification
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> 2. Land Area 912A-0 K-7M 24A-4K-5M 163A-3K-15M 3718A-6K-9M 3510A-5K-1M Notified U/S 4
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> 3. Villages Lakhnaula, Manesar Manesar, Fazilwas, Fazilwas, Naurangpur, Khoh, Kukrola, Kukrola, Manesar Kasan Kharkhri, Kharkhri, Bas Bas Lambi, Lambi, Mokalwas, Mokalwas, Seharavan Seharavan Fakharpur. Fakharpur.
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> 4. Purpose Setting up of Setting up Setting up of Setting up of Setting up of Chaudhary of the Chaudhary Chaudhary Devi Lal Chaudhary Industrial Devi Lal Devi

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			and other public utilities.	and other public utilities, etc.		
5.	Date of Sec. 6 Notification	25.08.2005	15.07.2006	24.11.2006	18.01.2008	0 2
6.	Land Area Notified u/S 6	688A-3K-12M	24A-4K-5M	162A-3K-14M	3510A-5K-1 M	9 3
7.	Date of Award	Award not announced as the acquisition proceedings were allowed to lapse vide government order dated 24.08.2007	26.06.2008	24.02.2007	Section 6 Notification was inadvertently issued after expiry of the period of one year from the date of last publication of Section 4 notification and became a legal nullity. Fresh Section 4 notification for 3510 acres was issued on 25.04.2008.	2 A r 1 w a 2 A r l a v d t S C o i a i 6 o t s 0

(xxiii)Thus, in addition to lands covered by said Awards dated 09.03.2006, about 1315 acres of land stood acquired whereas 688 acres of land covered by Declaration under Section 6 of the Act in the present case was dropped from acquisition. It is

relevant to note that in relation to acquisition referred to in Column No.5 vide award dated 24.02.2007 (annexed at page-307 in the Paper book) compensation was assessed at the rate of Rs.12.5 lakhs per acre; identical to one assessed in Awards dated 09.03.2006.

(xxiv) The aforesaid petition as well as connected matters were dismissed by the High Court vide its judgment under appeal. It was observed that the landholders had taken no action after their writ petitions were dismissed as infructuous by order dated 09.10.2007 and the present action initiated more than 4½ years after such dropping of acquisition was wholly belated. It was observed:

> "It is the case of the petitioners, that they were forced to sell their property under the threat of acquisition to the private respondents and thus the sale deeds so executed by them in their favour, deserved to set-aside. However we are unable to agree with the said contention raised by the Ld. Counsel for the petitioners as at no stage did the petitioners ever raised hue and cry viz. the said acquisition proceedings. Even when the writ petitions were filed by them in the year 2005 impugning the said acquisition proceedings, then also no grievance was raised by them in this regard and in fact during the pendency of these writ petitions, they even sold off their land to the private respondents for consideration and even got sale deeds executed in their favour. Even when the said writ petitions were dismissed as infructuous vide order dated 09.10.2007, then also no such distress or grievance was raised by them before this Court. Until the filing of the present writ petition, no action much less coercive action was taken by the petitioners against the respondents viz. setting aside of the sale deeds on the ground of fraud which thus apparently shows that not only did they acquiesced to the dropping of the said acquisition proceedings by the State Government but also waived off their right to challenge the same as well as the sale deeds executed by them in favour of the private respondents in view of Article 59 of the Limitation Act and thus now at this stage they have no vested or accrued right to challenge the said sale deeds voluntarily executed by them in favour of the private respondents and that too after a long yawning gap of 10 years in view of Section 31 of the Specific Relief Act, for which the present writ petitions being hit by delay and latches cannot be entertained for initiating such an action."

4. The Landholders being aggrieved by the decision of the High Court dated 15.12.2014 filed petitions for special leave to appeal in this Court.

After hearing both sides this Court granted special leave on 06.10.2015 and continued the interim order granted earlier which was to injunct any further construction on the lands in question. This Court also recorded the submission of the Counsel for the State that investigation was entrusted to CBI and directed CBI to place its report before this Court, as and when the investigation was over. An interim report was filed by CBI in March, 2017. On 30.01.2017 Mr. C.A. Sundaram, learned Senior Advocate was appointed Amicus Curiae to assist the Court. The subsequent order dated 21.03.2017 records that the CBI had filed its interim report, a copy of which was directed to be given to the learned Amicus Curiae. The matters were thereafter taken up for hearing.

5. Appearing for the appellants in the lead matter, Mr. Dhruv Mehta, learned Senior Advocate submitted:

> (a) The licences granted by the State Government to the private builders for development, in the face of the fact that the lands were notified for acquisition, were nothing but an abuse of power and such exercise was directly in breach of the relevant policy. In his submission, the policy dated 19.12.2006 issued by the State Government provided that the licences could be granted where the applicants/land owners had applied for licences before the issuance of Notification under Section 4 of the Act and the release could be considered on individual merits of each case. He further submitted that as accepted by the State Government, out of 15 licences granted by the State Government, 8 were granted between the date of issuance of Notification under Section 6 and the date when the acquisition was dropped i.e. on 24.08.2007 and other 7 licences were granted after 24.08.2007. Thus all the licences, as a matter of fact, were granted after the issuance of Notification under Section 6 of the Act.
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> (b) He submitted that the purchases made by the builders in the present case were after the lands were notified under Section 4 of the Act on 27.08.2004. At least sixty sale deeds were executed between the issuance of Notifications under Sections 4 and 6 of the Act while four sale deeds were executed on the date of declaration under Section 6 i.e. on 25.08.2005 and fifty sale deeds were executed after the issuance of Notification under Section 6 and prior to the dropping of acquisition vide decision dated 24.08.2007. The fact that the builders had enhanced the price and sold the lands at a price of Rs.80 lakhs and above per acre after the issuance of notice under Section 9, clearly indicated that they were aware that the land acquisition proceedings would be dropped.
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> (c) Though the declared intent while initiating acquisition was to sub-serve public interest, the State Government kept on granting licences in respect of lands covered under acquisition in the teeth of its relevant policy. A colourable exercise of power was evident and substantiated by the Report dated 26.03.2008 which indicated that 12 licence applications were pending in respect of area aggregating approx. 362 acres and that was taken to be good reason to withdraw the lands from acquisition finally.

(d) This entire mechanism was deliberately employed so that valuable lands belonging to the landholders could be cornered by a set of builders/private entities and after having seen that the desired result was obtained, the acquisition was dropped and later completely withdrawn.

(e) Since the entire decision making process was nothing but an abuse of and fraud on power, the landholders were justified in seeking annulment of all the transactions. In his submission, though annulment of transactions can normally be in an action between the vendor and vendee, since the transactions were directly as a result of abuse of and fraud on power, a Writ Court could certainly deal with such issues and while granting relief against such fraud on power, incidental and

consequential directions could also be passed annulling such transactions. Reliance was placed on the decisions of this Court in Greater Noida Industrial Development Authority v. Devender Kumar and Others1 and in Uddar Gagan v. Sant Singh & Others2. 2011 (12) SCC 375 2016 (11)SCC 378 Learned counsel appearing for other appellants in connected matters adopted the submissions of Mr. Dhruv Mehta, learned Senior Advocate.

6. Learned Amicus Curiae initially filed a memo at which stage the interim report of CBI was not filed in Court. After said copy was made available to him pursuant to the Order dated 21.03.2017 he filed three more memos. In his memo dated 28.03.2017 after referring to certain factual aspects as emerging from the interim report of CBI, he submitted :-

> "6. From all the above, it appears that lands were purchased by Builders during acquisition proceedings and also after acquisition proceedings were dropped on the basis that fresh acquisition proceedings would be initiated. It further appears that the builders in the meantime were working to have the acquisition proceedings dropped and their applications for building licenses were also being processed and the issuance of such licenses themselves became a reason for dropping all proceedings. It does not appear anywhere from the record that the sellers of the lands were aware that the acquisition proceedings would be dropped but it has been alleged by them in the writ petition that they were informed of such acquisition proceedings and were therefore, asked to sell their interests. It would appear that rather than running the risk of what the award would amount to and having to contest the matter for the grant of the award, the purchasers transferred their interest to the builders, who on their part, as based on the CBI Report, appear to have used every effort to ensure that the acquisition proceedings were themselves dropped.

7. xxx xxx xxx

8. In these circumstances, should this Hon'ble Court find that the case of the Petitioners/landholders is made out, and that they were in fact fraudulently enticed to sell their lands and there appears to be very suspicious circumstances in which the acquisition proceedings itself was dropped, the following could be considered:-

> a. Insofar as the areas where no construction has been made and no third party interests through registered instruments to ultimate purchasers (not other builders) have been created, that the said sales be declared void and the lands restored to the original landholders who be directed to return the monies received by them;
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> b. Where third party interests have been created, the builders be directed to disgorge their profit/part of their profits on such sales, to be then distributed amongst the original landholders. To arrive at such profit the difference between the purchase price and the sale price less actual cost of construction could be applied. Insofar as plots are concerned, the difference between the buying and selling price could be determined;

> c. The aforesaid directions could be passed based on the application of Sections 55(5) of the Transfer of Property Act and in particular, Sections 55(5)(a) and 55(6) of the said Act. Such orders could also be passed based on Sections 17(5) read with Section 17(2) and Sections 19 and 65 of the Contract Act;(Refer:- Coaks versus Boswell reported as (1886) IA 232/Summers versus Griffiths reported as (1865) 35 Beavan 27/Mulla on Transfer of Property, 8th Edition, Page 376-381 and 407-409) d. Apart from these, such reparation could also be made by application of the rule of Unjust Enrichment, which has been recognized as being applicable to cases in the field of equity, contract or tort (Refer:- Black's Law Dictionary, 9th Edition / Indian Council for Enviro – Legal Action versus Union of India and Others reported as 2011 (8) SCC 161) e. The Interim Report of the CBI discloses complicity on the part of Government officials in the entire process. In such event, not only would transactions within this entire conspiracy be fraudulent, if they are traced to mala fide exercise of the State's power, they would also be against public policy.

f. In view of the inordinate increase in the price of land it would not be practical to require the State Government to pay the present consideration or be called upon to acquire these lands and as that would be a drain on the public exchequer. It would perhaps be best to restore status ante insofar as practicable i.e., lands on which constructions have not been made or which have not been plotted and transferred to third party individuals (not builders). In the case of constructions at a nascent stage, it can be determined whether bona fide third party interests have been created and in the absence thereof, status ante could be restored. In the remaining cases, payment of compensation could be directed through payment of consideration to the original landholders as per (b) above.

g. The manner in which the amounts could be returned could be in the manner as held by this Hon'ble Court in the case of Uddar Gagan Properties Ltd. v. Sant Singh reported as 2016 (11) SCC 378.

h. So far as the conduct of the acquisition proceedings and culpability of persons, government officials and builders in this regard, the CBI may continue its investigation and decide if any action is warranted, and take such action as is found to be necessary."

7. In his memo dated 05.04.2017 it was submitted :-

> "1. Should this Hon'ble Court conclude that there was a fraud in the entire proceedings, it should result in just restitution depending on the Parties involved in the fraud (in pari delicto) and the parties not so involved.
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> 2. Should this Hon'ble Court hold that the land owners were not in pari delicto the reliefs as suggested in Memo No. 2 dated 28.03.2017 may be considered.
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> 3. Should this Hon'ble Court hold that the land owners were also in pari delicto, the following may be considered:-

a. There were 4 Parties involved in the entire net of transactions:-

i. The landowners;

ii. The Builders;

iii. The Officers of the State; and iv. The State itself (as paterfamilias of the public)

4. If builders and officers of the State were involved in the fraud and the land owners were in pari delicto, the actual party deceived would be the State and therefore, the beneficiary of any profits arising out of the fraudulent transactions, ought to go to the State to be utilized for a public purpose."

5. The manner in which this could be achieved could be:-

a. The recommendation of the HPC dated 26.03.2008 to close the acquisition proceedings and the decision/Notification dated 29.01.2010 dropping the acquisition proceedings for the subject properties could be quashed;

b. Upon quashing of the said Notifications/Recommendations, the acquisition proceedings already initiated would resume proprio vigore from the stage where it stood and to that extent would continue to be an acquisition under the Land Acquisition Act, 1894;

c. The period during which the acquisition proceedings stood withdrawn, i.e., 24.08.2007 till the date of this Hon'ble Court's order would be excluded for the purpose of passing of an award and inasmuch as an award was to be declared on 24.08.2007, an award now passed for the said land (in a time bound manner) would be deemed to have been passed on 24.08.2007;

d. The compensation payable under the said award would be based on the market value of the land in the same manner as if the award was passed on 24.08.2007.

e. The said amounts would be deposited and the landholders would be entitled to withdraw the amount representing the difference between what they actually received from the builders and what they were actually awarded.

f. The land would thereupon vest in the State;

g. The transferee builders who are the current owners of the land would have a right to seek allotment of the same from the State, consideration for which would be determined at the present days' market value or market value as on such other date as this Hon'ble Court may deem fit. Credit would be given to the builders for the amounts that they had paid to the original landholders and which is adjusted in (e) above; h. In the event that the builders do not wish to purchase the land at

such rate, the land may be auctioned by the State; and i. Out of the price secured in the auction the amount paid for the acquisition would be deducted. The actual construction costs of any construction made on the lands would also be adjusted and the balance would be retained by the State for use for a public purpose of the area, providing of housing, rehabilitation, etc. by applying the principles of Section 88 of the Indian Trusts Act, 1882."

8. Mr. Vikas Singh, learned Senior Advocate appearing on behalf of respondent No.3 - ABW Infrastructure Limited filed an extensive list of dates and relevant material detailing various transactions under which his client came to purchase the lands in question. The transactions referred to in the list of dates and accompanying documents, put in tabular chart by us are as under:

S. No	Date	Name of Purchaser	Area purchased	No. of Sale Deeds	Price Paid	Average [Price paid per acre]
1	20.10.04 to 17.11.04	M/s Indo Asian Construction Co. Pvt. Ltd.	14.997 Acres	Eight (8)	3,81,71,875/-	2545301/-
2	2.11.04 to 3.1.05	M/s NCR Properties Pvt. Ltd.	10.409 Acres	Eight (8)	2,60,46,875/-	2502342/-
3	24.11.04 to 17.5.05	M/s Sheel Buildcon Pvt. Ltd.	37.44 Acres	Twenty nine (29)	5,69,95,612/-	15,22,319/-
4	27.12.04 to 21.6.05	M/s Divya Jyoti Enterprises Pvt. Ltd.	7.494 Acres	Eight (8)	1,90,00,002/-	25,35,362/-
5	31.12.04 to 15.3.05	M/s Beeta Promoters Pvt. Ltd.	4.881 Acres	Five (5)	1,21,87,500/-	24,96,927/
6	4.01.05 to 5.12.05	M/s Mount Valley Estates Pvt. Ltd.	16.675 Acres	Thirteen (13)	9,04,27,500/-	54,22,939/
7	25.2.05 to 21.10.05	M/s Progressive Buildtech Pvt. Ltd.	25.041 Acres	Fourteen (14)	4,37,15,875/-	17,45,772/
8	25.2.05 to 25.11.05	M/s Ecotech Buildcon Pvt. Ltd.	25.378 Acres	Sixteen (16)	5,38,69,700/-	21,22,693/
9	31.5.05 to 8.11.05	M/s Dugman Engineers Pvt. Ltd.	18.875 Acres	Eleven (11)	8,02,52,375/-	42,51,781/
10	25.8.05 to 14.11.05	M/s Miraz Overseas Pvt. Ltd.	9.181 Acres	Eleven (11)	3,67,25,000/-	40,00,109/
11	25.8.05 to 6.12.05	M/s Yorks Hotels Pvt. Ltd.	19.697 Acres	Twelve (12)	7,87,87,500/-	39,99,975/

On 25.08.2005 Declaration under Section 6 for an area of 688 Acres out of 912 acres was notified.

12 16.12.05 M/s Jassum 5.422 Six (6) 2,36,38,295/- 43,59,700/-

	to 30.04.07	Infrastructure Pvt. Ltd.	Acres			
13	16.1.06	M/s Colonisers Pvt.	Galaxy 3.656 Acres	Three (3)	1,46,25,000/-	40,00,274/
14	23.2.07	ABW Infrastructure Ltd.= Respondent No.3	11.4406 25 Acres	Three (3)	9,72,46,500/-	85,00,104/
15	26.2.07	Respondent No.3	1.475 Acres	One (1)	1,18,00,000/-	80,00,000/
16	2.3.07	Respondent No.3	0.8895 83333 Acres	One (1)	80,00,000/-	89,92,974/
17	18.06.07 to 20.08.07	M/s Jassum Towers Pvt. Ltd.	6.46 Acres	Seven (7)	4,88,00,000/-	75,54,180/
18	20.6.07 to 21.8.07	M/s Jassum Estates Pvt. Ltd.	13.250 Acres	Eight (8)	10,62,50,000/	80,18,868/

24.08.2007 decision was taken by the State to drop the acquisition proceedings. 19 24.12.07 M/s Jassum 1.3275 Two 1,59,50,000/- 1,20,15,066/-

	& 2.8.08	Towers Pvt. Ltd.	Acres	(2)		
20	17.2.11	Respondent No.3	0.76875 Acres	One (1)	1,92,18,750/-	2,50,00,000/-
21	27.2.11	Respondent No.3	0.025 Acres	One (1)	4,48,000/-	1,79,20,000/-
22	18.3.11	Respondent No.3	0.76875 Acres	One (1)	1,92,18,750/-	2,50,00,000/-
		Total	235.55121 Acres		90,13,75,109/-	

The aforesaid chart discloses that the average price paid was initially in the region of Rs.25 lakhs per acre. Soon after the issuance of Section 6 declaration, the price rose to Rs.40 lakhs or above. But just before 24.08.2007 i.e. the date when the State Government decided to drop the acquisition, the price was in the region of Rs.80 lakhs per acre. The price paid after the decision to drop the proceedings was above Rs.1.2 crores per acre. The documents placed by Mr. Vikas Singh, learned Senior Advocate do indicate the names of vendors as well. However, for facility we have not included the names of vendors but have given the other details in the chart. The documents further indicate that all these lands purchased by the first purchasers as indicated in the tabular chart were then taken over by the respondent No.3; one of the ways being-where the controlling interest in the first

purchaser Companies was transferred to Respondent No.3 and one Mr. Atul Bansal was appointed as Director of said companies.

9. The documents placed on record by Mr. Vikas Singh, learned Senior Advocate, further indicate that soon after the aforementioned purchases, applications for grant of licences were made as under:-

A. Aditya Buildwell Pvt. Ltd. and its associate companies namely;

Frost Falcon Industries Ltd., Iceberg Industries Ltd., Mount Valley Estate Pvt. Ltd., Yorks Hotel Pvt. Ltd., Miraj Overseas Pvt. Ltd., Galaxy Colonires Pvt. Ltd., Dough Man Engineers Pvt. Ltd., Jassum Infrastructure Pvt. Ltd., Sheel Buildcon Pvt. Ltd., Progressive Buildcon Pvt. Ltd., Eco Tech Buildcon Pvt. Ltd., Indo Asian Construction Co. Ltd., Beeta Promoters Pvt. Ltd., Divya Jyoti Enterprises Pvt. Ltd., NCR Properties Pvt. Ltd., applied for licence to set up a Township alongwith Demand Draft for Rs.85 lakhs towards Scrutiny and Licence fees. The area was stated to be 190 Acres.

Paras 5 and 7 to 9 of the application were:-

"5 Whether applicant is income YES . tax player, if so, the amount of PAN : AAECA – 5466H income tax paid during each of NIL – in last three years the last three years because of construction work in progress

7. Whether the applicant had ever NO been granted permission to set a colony under any other law, if so, details thereof.

8. Whether the applicant had ever NO established a colony or is establishing a colony and if so, the details thereof.

9. Any other information the The Aditya Buildwell applicants like to furnish. Private Limited, the main applicant company, is in process of converting into a Public Limited Company shortly by name ‘ABW Infrastructure Limited.

The ABW group of companies are already developing number of shopping cum commercials Malls and in process of developing the Township in Mohali, Chandigarh the total projects more than worth Rs.1000.00 crores are in development in progress.” B. ABW Infrastructure Ltd. and its group companies namely;

Progressive Buildtech Pvt. Ltd., Sheel Buildcon Pvt. Ltd., Divya Jyoti Enterprises Pvt. Ltd., Beeta Promoters Pvt. Ltd., Ecotech Buildcon Pvt. Ltd. and Jassum Estates Pvt. Ltd., applied for licence to set up a Group Housing Project of 15.35625 acres alongwith Demand Drafts for Rs.20 lakhs towards Scrutiny and Licence fees. Paras 5 and 7 to 9 of the application were:-

“5. Whether applicant is income YES

	tax payer, if so, the amount of income tax paid during each of the last three years.	PAN : AAECA-5466H Assessment Year: 2007-08 Rs.77,49,859/- NIL- 2005-06, 2006-07 Construction work in progress.
7.	Whether the applicant had ever been granted permission to set a colony under any other law, if so, details thereof.	NO
8.	Whether the applicant had ever establishes a colony or is establishing a colony and if so, the details thereof.	NO
9.	Any other information the applicants like to furnish.	'ABW Infrastructure Limited' The ABW Group of Companies are already developing number of shopping cum commercials Malls and in process of developing the Township in Mohali, Chandigarh the total projects more than worth Rs.1000.00 crores are in development and in progress."

In none of these two cases the applicants themselves had any prior experience and between them, only one had paid Income tax and that too only in one financial year. Both had given same PAN numbers.

10. Since the documents also indicated that after having applied for issuance of licences, respondent No.3 had transferred licence Nos.283 and 284 and sold 33.55 acres of land covered by such licences to DLF Homes Developers Pvt. Ltd., this Court directed respondent No.3 to file statement of profit made by it in respect of such transactions and the following statement was filed by Respondent No.3:

PROFIT MADE BY RESPONDENT NO.3 BY TRANSFERRING LICENSE NO.283 & 284 AND SELLING 33.55 ACRES OF LAND TO DLF HOMES DEVELOPERS PVT. LTD.

1 Amount received by Respondent 150,95,55,301.00 No.3 by transferring License No.283 & 284 and selling 33.55 Acres of land to DLF Homes Developers Pvt.

Ltd.

2 Amount paid by Respondent No.3 for purchasing controlling stake and land in following companies w.r.t.

Licence No.283 (13.89 Acres of Land):

(a) Dugman Engineering Pvt. Ltd. 3,05,53,666.68

(b) Sheel Buildcon Pvt. Ltd. 2,32,33,836.69

(c) Yorks Hotels Pvt. Ltd. 93,49,327.50 6,31,25,830,86 3 Fees paid to the State Government 2,27,87,845.00 4 (2 + 3) 8,59,13,675.00 5 Amount paid by Respondent No.3 for purchasing controlling stake and land in following companies w.r.t.

Licence No.284 (19.643 Acres of land):

(a)Mount Valley Estates Pvt. Ltd. 2,75,88,326.750

(b)Sheel Buildcon Pvt. Ltd. 53,40,980.826

(c) NCR Properties Pvt. Ltd. 38,24,509.704

(d)Divya Jyoti Enterprises Pvt. Ltd. 2,08,91,978.770

(e)Progressive Buildtech Pvt. Ltd. 2,05,66,820.370

(f) Beeta Promoters Pvt. Ltd. 2,54,521.440

(g)Indo Asian Construction Co. Pvt. 2,43,39,673.130 Ltd.

	(h) Dugman Engineers Pvt. Ltd.	2,43,742.600		
	(i) Miraz Overseas Pvt. Ltd.	18,12,337.600		
	(j) Yorks Hotels Pvt. Ltd.	18,02,280.000		
	(k) Jassum Infrastructure Pvt. Ltd.	65,78,935.530		
				11,39.44,106.00
6	Fees paid to State Government			3,27,16,317.00
7			(5 + 6)	14,66,60,423.00
8	Amount paid by Respondent No.3 under Settlement cum Cancellation of Agreement to Sell			119,69,50,000.00
9			(4+7+8)	142,95,24,098.00
10	Profit made by Respondent No.3		(1-9)	8,00,31,203.00

> The aforesaid statement indicates that various entities who had initially purchased the lands from the landholders, had sold the said lands to Respondent No.3 and were paid sums reflected at Sl. Nos.2 and 5 above amounting to Rs.17.70 crores (approx.) for acquiring such interest in said lands. Thereafter, amount of Rs.5.45 crores (approx.) was paid by way of fees to the Government. However, more than Rs.150 crores was received on transfer to DLF Homes Developers Pvt. Ltd. For an applicant who reportedly paid income tax only once during last three years, this by itself constitutes phenomenal earning. From and out of such earnings an amount of Rs.119.695 crores was paid by Respondent No.3 under Settlement-cum-

Cancellation of Agreement of Sell as indicated at Serial No.8.

11. On an inquiry by this Court regarding details of such amounts paid by respondent No.3 as indicated at Serial No.8, those documents were filed on record. The documents make an interesting reading. By way of sample, documents pertaining to transactions between Beeta Promoters P. Ltd. and the intending purchaser Arison Builders P. Ltd. are dealt with in some detail:

> (a) By Agreement of Sale dated 09.10.2007 entered into between M/s Beeta Promoters Pvt. Ltd. = Vendor and M/s Arison Builders Pvt.

Ltd. = Vendee, certain lands were agreed to be sold @ Rs.58.60 lakhs per acre and cheque for Rs 1 lakh and Rs.1 lakh in cash were paid as advance. The relevant portion of the Agreement dated 09.10.2007 was as under:

> "Whereas 'the Seller' is the sole and absolute owner and also in possession of piece of land admeasuring 0.12 Acre land forming part of Rect. No.54 Killa No.6/1 (3-16), 15/2/1 (2-
>
> 16), the extent of their 7/48 share i.e. situated at village Manesar, Tehsil & District Gurgaon Haryana;

And whereas 'the Seller' has agreed to sell and 'the Purchasers' have agreed to purchase the piece of land already owned and in the possession of the First Party as already mentioned above at the rate of Rs.58,60,000/- (Rupees fifty eight lakhs and sixty thousand) per acre, And whereas 'the Seller' has received a sum of Rs.1,00,000/- in cash on 09.10.2007 and Rs.1,00,000/- (Rupees one lakh only) vide Cheque No.579592 dated 25.10.2007 drawn on Punjab National Bank, towards earnest money, the receipt of which is hereby acknowledged and confirmed by 'the Seller' and the balance agreed consideration amount, shall be payable by 'the Purchaser' to 'the Seller' as per the following schedule:-

> (1)On or before 30.12.2007 Rs. 2,00,000/-(Rs.Two lakhs Only) (2)On or before30.05.2008 Rs.3,03,200/- (Rs.Three lakhs three thousand and two hundred only) Balance amount only i.e. the full and final consideration.

NOW THIS AGREEMENT OF SALE WITNESSETH AS UNDER:-

1. That the settled price of Rs.7,03,200/- (Rupees seven lakhs three thousand two hundred only) for sale of 0.12 acres of land in Village Manesar District Gurgaon Haryana by First Party to Second Party, as mentioned in the preamble shall neither be reduced nor enhanced by either party.

2. That 'the Seller' shall be bound to execute the sale deed/proper documents for the transfer of the land and get the same registered in the name of the second party or their nominees on receiving of the balance consideration as per schedule of payment given above.

3. That all the expenses of the execution and registration of the documents shall be payable and borne by 'the purchasers'.

4. That the actual physical and vacant possession of the above said land shall be delivered by 'the Seller' to 'the Purchasers' at the time of registration of the land after receiving the full and final payment."

(b) By Settlement Agreement-cum-Cancellation of Agreement to Sell executed on 30.08.2008 between the aforesaid parties, the earlier arrangement entered vide Agreement of Sale dated 09.10.2007 was cancelled. While cancelling that arrangement, settlement amount of Rs.3.50 crores per acre was paid to the vendee as full and final settlement between the parties and discharge of all claims. The document narrates that though the cheque for Rs.1 lakh was given on the date when the agreement to sell was executed on 09.10.2017, said cheque was never encashed and was returned to the vendee. Thus, the land which was agreed to be sold @ Rs.58 lakhs per acre was not sold at all but by way of settlement Rs.3.5 crores per acre was made over to the vendee. Interestingly, nothing was received by the vendor by way of advance/earnest through Bank channels as the cheque was admittedly never encashed. The relevant portions from the Settlement-cum-Cancellation of Agreement to Sell dated 30.08.2008 were as under:

"And whereas 'the parties' has entered into agreement to sell dated 9th October, 2007, as per the terms of agreements described therein.

And whereas 'the Seller' has agreed to sell and 'the Purchasers' have agreed to purchase the piece of land already owned and in the possession of the First Party as already mentioned above at the rate of Rs.58,60,000/- (Rupees fifty eight lakhs sixty thousand only) per acre.

And where 'the Seller' has received a sum of Rs.1,00,000/- (Rupees one lakh only) vide Cheque No.579592 drawn on Punjab National Bank and Rs.1,00,000/- (Rupees one lakh only) in cash towards earnest money and the balance agreed consideration

amount, was payable by 'the Purchasers' to 'the Seller' as per the following schedule:-

(1)On or before 30.12.2007 Rs. 2,00,000/-(Rs.Two lakhs Only) (2)On or before 30.05.2008 Rs. 3,03,200/- (Rs.Three lakhs three thousand and two hundred only) Balance amount only i.e. the full and final consideration.

And whereas the seller offered to buy back the said land and has not encashed the Cheque No.579592 drawn on Punjab National Bank, received towards earnest money, and also offered to return the same to the purchaser and also agreed to settle the transaction amicably.

NOW THIS AGREEMENT WITNESSETH AS UNDER:-

1. That this agreement shall be effective from the date of signing and shall constitute full and final settlement between the parties of all the respective past and future rights and obligation of parties under agreement to sell dated 9 th October, 2007 for sale of 0.12 acres forming part of Rect.

No.54 Killa No. 6/1 (3-16), 15/2/1 (2.16), the extent of their 7/48 share i.e. situated at village Manesar, Tehsil & District Gurgaon, Haryana.

2. That 'the Seller' shall pay the settlement amount of Rs.3,50,00,000/- per acre to the purchaser towards full and final settlement between the parties and discharge of all claims against the land as acquired by the second party through agreement to sell dated 9th October, 2007 for sale of 0.12 Acres of land in Village Manesar, District Gurgaon, Haryana.

3. That the said total settlement amount Rs.42,00,000/- (Forty two lakhs only) shall be paid on or before 31.03.2009 as per the schedule enclosed.

4. That on receipt of full and final settlement amount, the second party hereby completely and expressly waives, releases, relinquish and forever discharges all claims against the land as acquired by the second party through agreement to sell dated 9th October, 2007 for sale of 0.12 acres of land in Village Manesar, District Gurgaon, Haryana." Identical agreements for sale followed by Settlement Agreements- cum-Cancellation of Agreements to sell were entered into by all the concerned, as set out hereafter.

12. The details of the relevant agreements to sale and Settlement-cum- Cancellation agreements to sell as filed by respondent No.3 are put in a tabular chart by us. Except in the case at Serial No.1 where part of earnest money was deposited in cash, in all other cases, earnest was paid by cheques. However, in none of the cases any cheque which was issued as advance-cum-earnest money was encashed. The relevant recitals in these agreements are identical to those extracted hereinabove. The compensation paid to the vendee in every case is on or about 30.08.2008 and at a consistent rate of Rs.3.50 crores per acre. The said chart is as under:

S. Vendor Purchaser Area of Date of Adv. Amt. Date of Compensation No. land Agreement of recd. By Settlement Amt. (Rs.) (Acres) Sale deed cheque Agreement with (Rs.) transaction amount 1 Beeta Arison 0.12 09.10.2007 2,00,000 30.8.2008 42,00,000 Promoters P. Builders P. Rs.7,03,200 Ltd. Ltd.

2. Divyajyoti Arison 2.47 03.10.2007 50,00,000 30.8.2008 8,64,50,000 Enterprises P. Builders P. Rs.1,44,74,200 Ltd. Ltd.

3. Dugman Kripa 2.6 14.10.2007 50,00,000 30.8.2008 9,10,00,000 Engineers P. Finvest Pvt. Rs.1,51,58,000 Ltd. Ltd.

Gee Ispat 3.28 17.10.2007 6500000 30.8.2008 11,48,00,000 Ltd. Rs,1,91,55,200 Hansh 0.80 20.10.2007 1000000 30.8.2008 2,80,00,000 Metals Ltd. Rs.46,72,000 4 Indo Asian Hari Om 0.8 08.10.2007 8,00,000 30.8.2008 2,99,60,000 Construction Ispat and Rs.46,80,000 Pvt. Ltd. Alloyes Pvt. Ltd.

		Ishom Photo Colour Photo Lab Pvt. Ltd.	2.43	25.10.2007 Rs.1,42,15,500	50,00,000	30.8.2008	
		Matara Traders & Finance Pvt. Ltd.	1.5	18.10.2007 Rs.87,75,000	30,00,000	30.8.2008	
		Pashupati Casting Ltd.	0.9	23.10.2007 Rs.52,65,000	10,00,000	27.08.2008	
5	Jassum Infrastructure Pvt. Ltd.	Shree Bihari Forgings P. Ltd.	1.3	10.10.2007 Rs.76,05,000	24,00,000	30.08.2008	
		Dasna Steel Pvt. Ltd.	.21	10.10.2007 Rs.12,28,500	200000	30.8.2008	
6	Miraza Overseas Pvt. Ltd.	Arison Builders Pvt. Ltd.	0.4	10.10.2007 Rs.23,44,000	5,00,000	30.08.2008	1
7	Mountvally Estates P. Ltd.	Ramdoot Steels P.Ltd.	1	19.10.2007 Rs.58,45,000	10,00,000	30.08.2008	3
		Maya Industries	1.13	22.10.2007 Rs.23,20,000	20,00,000	30.08.2008	3

		Baba Alloys P. Ltd.	0.4	19.10.2007 Rs.66,04,850	8,00,000	30.08.2008	1
8	NCR Properties Pvt. Ltd.	Ritansh Developers and Financing Pvt. Ltd.	1.43	28.10.2007 Rs.83,79,800	25,00,000	30.8.2008	5
9	Progressive Buildtech P.Ltd.	Arison Builders Pvt. Ltd	2.25	06.10.2007 Rs.1,31,85,000	42,00,000	30.08.2008	7
		Shree Bihari Forging P. Ltd.	1.48	Rs.86,72,800	25,00,000	30.8.2008	5
10	Sheel Buildcon P. Ltd.	Arison Builders P. Ltd.	1	06.10.2007 Rs.58,60,000	15,00,000	30.8.2008	3
		Maya Industries Ltd.	2.47	19.10.2007 Rs.1,44,24,800	45,00,000	30.8.2008	8
		RP Vyapar Pvt. Ltd.)	1.9	19.10.2007 Rs.1,11,34,000	30,00,000	30.08.2008	6
		Swarup Rolling Mills P. Ltd.	1.2	12.10.2007 Rs.70,20,000	20,00,000	25.08.2008	4
11	Yorks Hotels P. Ltd.	Ritansh Developers and Financing P. Ltd.	0.17	26.10.2007 Rs.9,95,350	2,00,000	30.8.2008	5
		Hasan Steel & Alloys Pvt. Ltd.	1.7	20.10.2007 Rs.99,53,500	30,00,000	30.8.2008	5
		Global Alloys P. Ltd.	.61	23.10.2007 Rs.35,71,550	10,00,000	30.08.2008	2
			33.55				1

13. Mr. Vikas Singh, learned Senior Advocate also invited our attention to the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the "Haryana Act") and submitted that the Haryana Act provided for colonization encouraging private

participation wherein builders or colonizers become partners with State in ensuring planned development. It was submitted that the writ petition in the present case was bereft of any material particulars and suffered from non-disclosure of collaboration agreements entered into between the builders and the writ petitioners whereunder certain additional benefits were given to the landholders. In his submission, the High Court was justified in dismissing the petition and exemplary costs ought to be imposed on the writ petitioners for embarking on what he termed as adventurous litigation. Ms. Indu Malhotra, learned Senior Advocate appearing for respondent Nos. 4 – M/s Metropolis Realtors Pvt. Ltd. and 6 – M/s Metro Infrastructure Pvt. Ltd. submitted that after National Capital Region Plan was notified on 17.09.2005, Draft Master Plan for Gurgaon Manesar was notified on 11.07.2006, followed by Final Development Plan which was notified on 05.02.2007. The act on the part of the State in dropping the acquisition on 24.08.2007 was completely consistent with the Final Development Plan notified on 05.02.2007. Mr. V. Giri, learned Senior Advocate appearing for respondent No.5 – Flair Realtors Pvt. Ltd. submitted that each writ petitioner had a separate cause of action and therefore must come out and place his individual case and the facts relevant thereto. In his submission in a matter such as the present one, no public law remedy could be invoked and there could be no class action. He further submitted that there was total dearth of pleadings and nothing was alleged or proved as regards element of fraud or mala fides so as to vitiate the transactions in entirety.

14. Dr. A. M. Singhvi, learned Senior Advocate appearing for DLF Home Developers Pvt. Ltd. submitted that his client had purchased 33 acres of land not directly from any of the land owners but from respondent No.3 alongwith requisite licences. According to him, his client purchased the land and the licences when the writ petitions were withdrawn and there was no fetter at all; that his client had paid market price at the rate of Rs.4.5 crores per acre and was bona fide transferee in good faith and that there was no averment either in the High Court or in this Court suggesting that his client was involved in any act of fraud or illegality. He further submitted that his client has already transferred the constructed areas or apartments to various purchasers. Relying on the decisions of this Court in Ramana Dayaram Shetty v. International Airport Authority of India and Others3 where five months delay in preferring writ petition was found to be fatal especially when third party rights had intervened and in State of M.P. and Others v. Nandlal Jaiswal and Others4 where eight months delay was found to be fatal where again third party rights had intervened, it was submitted that no case was made out and the view taken by the High Court ought to be affirmed. Similar submissions were made by Mr. Kapil Sibal, learned Senior Advocate for the same client in a different matter. In his submission, if at all any disgorgement as suggested by the learned Amicus Curiae is to be made, it ought to be by respondent No.3 i.e. the client of Mr. Vikas Singh, learned Senior Advocate and not by DLF Home Developers Pvt. Limited which had paid market value for the land it purchased. Mr. Suri, learned Senior Advocate appearing for flat purchasers from DLF Home Developers Pvt. Ltd. submitted that his clients, coming from middle class, had put in all their savings in purchase of flats. Out of 1348 flats constructed in the complex, 1237 flats were sold and more than 500 apartments were already registered in the names of apartment purchasers.

15. Mr. Nidhesh Gupta, learned Senior Advocate appearing for Earl Infotech Pvt. Ltd. and for Frontier Infrastructure Developers Pvt. Ltd. made (1979) 3 SCC 489 (1986) 4 SCC 566 similar submissions. He submitted that the case in hand was completely different from the fact situation

considered by this Court in Uddar Gagan (supra) in as much as neither was there any distress sale by the land owners nor was there any award made under the provisions of the Act. He further submitted that the entire case set up by the writ petitioners was based on assumptions as to the existence of unjust enrichment and fraud. Mr. Pallav Shishodiya, learned Senior Advocate appearing for Akme Projects Ltd. submitted on similar lines.

16. Dr. Rajeev Dhawan, learned Senior Advocate appearing for PP Realtors Pvt. Ltd. submitted that in an individual case a sale could be invalidated if fraud stood proved on grounds available under the Contract Act, while if sales were sought to be invalidated as a class action then it could only be done on grounds of mala fides in public law. It was submitted that fraud in terms of section 17 of the Contract Act had to be transaction based and strictly established. He further submitted that the reason given for dropping of the acquisition was that licences in respect of about 360 acres of land were under consideration while disputes were raised in respect of rest of the land. At no stage after the disposal of the petitions by the High Court any grievance was raised by the land owners and they must be deemed to have waived their rights. In his submission, land owners were looking for windfall gains when they were asking for setting aside of all the transactions as a class action and that the writ petition was nothing but an abuse of the process of law.

17. Mr. Narender Hooda, leaned Senior Advocate appearing for an individual namely Shri Arvind Walia who had purchased 11 acres of land, submitted that one Mamraj had sold said land in February, 2005. Along with his written submissions, Mr. Hooda placed on record and relied upon Minutes of the Meeting regarding policy issues held on 07.08.1991. Mr. Sidharth Luthra, learned Senior Advocate appearing for Paradise Systems Pvt. Ltd., submitted on lines similar to those adopted by the other leaned Senior Counsel. Mr. B. S. Chahar, learned Senior Advocate appearing in I.A. No.20 in Civil Appeal No.8788 of 2015 submitted that his clients had bought plots, shops and flats only after December, 2009 i.e. after the State had dropped the acquisition and after the pending writ petitions were disposed of by the High Court.

18. The learned Counsel appearing for State of Haryana adopted the submissions of the learned Amicus Curiae and submitted that if this Court were to come to the conclusion that the exercise of power by the functionaries of the State in the present case was colourable and such exercise was fraud on power, then not only should the guilty be booked on criminal side, but on the civil side the mechanism suggested by the learned Amicus Curiae be adopted.

19. Though copies of the interim report of CBI were not given to the parties, some factual aspects dealt with in the report, namely the allegations in the FIR and certain bare minimum facts as found from the record, need to be adverted to. Paras 2 and 18 to 21of the Report were as under:-

> “2. It is alleged in the FIR that the Government of Haryana had issued notification u/S 4 of the Land Acquisition Act, 1894 on 27.08.2004 and u/S 6 on 25.08.2005 of Land Acquisition Act, 1894 for acquisition of land measuring about 912 acres for setting up an Industrial Model Township in Villages Manesar, Naurangpur and Lakhnoula in Distt. Gurgaon. A large number of land owners, in haste, had sold out about 350 acres of land at throw away rates of Rs.20 to 25 lakhs per acre. It is further

alleged that when some land was not sold by the farmers, the Government issued notification u/S 9 of Land Acquisition Act and, thereafter, the private builders had purchased remaining 50 acres of land at the rate of even Rs.1.50 crores per acre. It is further alleged that when all the land had been grabbed from the land owners by land mafia under the threat of acquisition at meager rates, an order was passed by the competent authority i.e. the Director of Industries on 24.08.2007 releasing this land from the acquisition process and the land was released in violation of the government policy, in favour of the builders, their companies and agents, instead of the original land owners. In the above manner, land measuring about 400 acres whose market value at that time was above Rs.4 crores per acre, totaling about Rs.1600 crores, was purchased by the above mentioned criminal conspirators from the innocent land owners for only about Rs.100 crores. Thus, some politicians who were also important functionaries of the State Government, Government Officers and their agents caused a wrongful loss of Rs.1500 crores to the land owners of Village Manesar, Naurangpur and Lakhnoula of District, Gurgaon and corresponding wrongful gain to themselves.

18. That about 444 acres 2 kanal 10 marla of land notified u/S 4 of Land Acquisition Act, 1894 was purchased by the private builders/companies after the date of notification. The details of land purchased by the builders/companies after issue of notification u/Ss 4 & 6 of Land Acquisition Act, is as under:

S.No.	Name of the Company	TOTAL LAND		
		Acre	Kanal	Marla
	Ltd. WZ 172, Palam Colony, New Delhi			
2.	Karma Lakelands Pvt. Ltd., 5 Green Avenue, Vasant Kunj, New Delhi	2	3	6
	16, Industrial Area, Rozka Meo, Sohna			
4.	M/s Manesar Developers Pvt. Ltd.	2	4	17
		0	1	15
	M/s Sisodiya Education Society			
		2	0	15
	M/s Northern India Projects Pvt. Ltd.			
	M/s Earl Infotech Pvt. Ltd. 5/71 WEA Padam Singh Road, Karol Bagh, New Delhi	3	1	15
		0	5	12.5
	M/s Gurunanak Infrastructure Developers Pvt. Ltd.			
		8	8	14.5
	Total			

5.	Indo Asian Construction Co. Pvt. Ltd., Rectangle-1, D4, Saket District Centre, Saket, New Delhi	14	7	3
	NCR Properties Pvt. Ltd. Rectangle-1, D4 Saket Distt. Centre, Saket, New Delhi	11	2	5
	Divya Jyoti Enterprises Pvt. Ltd. Rectangle-1, D4, Saket District Centre	3	0	19
	Sheel Buildcon Pvt. Ltd. Rectangle-1 D4, Saket District Centre, Saket, New Delhi	45	1	6
	Ecotech Buildcon Pvt. Ltd. Rectangle-1, D4, Saket District Centre, Saket, New Delhi	23	2	17.5
	Progressive Buildtech Pvt. Ltd.	22	2	2
	Dugman Engineers Pvt. Ltd. Rectangle-1, D4, Saket District Centre, Saket, New Delhi	23	0	3
	Mount Valley Estates Pvt. Ltd., Rectangle-1, D4, Saket District Centre, Saket, New Delhi	19	4	11
	Galaxy Colonizers Pvt. Ltd. Rectangle 1, D4, Saket District Centre, Saket, New Delhi	3	5	5
	ABW Infrastructure Pvt. Ltd. Rectangle-1, D4, Saket District Centre, Saket, New Delhi	12	4	9
	M/s Miraj Overseas Ltd.	9	1	9
	M/s Beeta Promoters Pvt. Ltd.	3	3	7
	M/s Jassum Estate Pvt. Ltd.	17	1	12
	M/s Jassum Inf. Pvt. Ltd. O/o 64, Purvi Marg, New Delhi- Amit Bhasin	5	2	9
	M/s Jassum Towers Pvt. Ltd. O/o 208-210 SF Rectangle 1, D4, Saket, New Delhi- Sachin Arora	9	7	3.5
	M/s Yorks Hotel Pvt. Ltd.	24	6	16
	Total	248	5	17
6.	Paradise System Pvt. Ltd. E-20 Lajpat Nagar-III, New Delhi	13	1	11
	DJ Tradelink Pvt. Ltd., 201, Surya Kiran Building, 19, KG Marg, Delhi	3	7	9

	Total	17	1	0
7.	Kaliber Associates Pvt. Ltd., E-20, Lajpat Nagar-III, New Delhi	1	1	12
8.	Blue Ocean Construction Pvt. Ltd. A-9/23 Vasant Vihar	1	0	11
9.	DK Steels and Metals Sales Pvt. Ltd. A-21/1 Naraina Indl. Area, Phase II, New Delhi (Seller)	4	4	13
10.	Metropolis Realtors Pvt. Ltd., 20-A, Rajpura Road, Civil Lines, New Delhi	18	0	16
	Flair Realtors Pvt. Ltd., 20-A, Rajpura Road, Civil Lines, New Delhi	2	5	9
	Metropolis Inf. Pvt. Ltd. 20-A, Rajpura Road, Civil Lines, New Delhi	9	0	18
	Total	29	7	3
11.	PP Realtors Pvt. Ltd. B-15, Freedom Fighter Enclave, Neb Sarai, New Delhi	5	7	17
12.	Logical Developers Pvt. Ltd., 17-B, NGF House, Asaf Ali Rd. New Delhi	31	4	9
	Sarvodya Buildcon P. Ltd., 17-B, MGF House, Asaf Ali Road, New Delhi	1	7	7
	Total	33	3	16
13.	Gibbon Propbuild P. Ltd. ECE Hs., 28, KG Mrg. ND	17	2	3
14.	M/s Alana Builders & Dev. Ltd. O/oP-39, Basement, NDSE Part II, New Delhi -Dinesh Kumar	2	5	4
15	M/s Frontiers Infs. Dev. P. Ltd. O/o 38-B, Model Town, Phagwara Punjab- Subodh Nayyar	2	0	13
16.	M/s Angelique International Ltd. O/o 104-107, Hemkunt Tower, 98, NP, N.D.	19	4	9.5
17.	M/s Sukh Shanti Estate P. Ltd. O/o C-52, Shivalik Delhi- Suman Chhabra	6	0	18
18	M/s Innovative Infra. Developers P. Ltd. Reg. Off 736, Sec.14, Urban Estate, Gurgaon	1	5	8
19.	Chirayu Buildtech P. Ltd.	6	5	7
20.	Prosperous Construction Pvt. Ltd.	17	7	1

21.	Unitech Ltd.	4	7	3	
	Total	444	2		10

19. That investigation further revealed that out of the above land purchased by the private builders/companies, one company namely M/s Aditya Buildwell Pvt. Ltd. (now known an ABW Infrastructure Ltd.) and its associates companies had purchased maximum land measuring around 248 acres 5kanal 17maral. Shri Atul Bansal is the Director of M/s Aditya Buildwell Pvt. Ltd. His company M/s Aditya Buildwell Pvt. Ltd. and associate companies namely M/s Jassum Towers Pvt. Ltd. and M/s Jassum Infrastructure Pvt. Ltd. had purchased total land measuring around 44 acres 7 kanal 13.5 marla.

That Sh. Atul Bansal had also taken over the following companies along with their lands measuring about 204 acres during this period, which were purchased by the different builders/directors of these companies:-

SI. Name of the Land Date of purchase of Date of No. Company purchase land from villagers transfer of (in acre). land along with company to Atul Bansal

1. NCR Properties 11 acres November,2004 to 29.06.2007 Pvt. Ltd. 2kanal January, 2005 5marla

2. Yorks Hotel 24 acres August, 2005 to 02.03.2007 Pvt. Ltd. 6kanal December,2005 16marla

3. Dugman 23acres May, 2005 to 02.03.2007 Engineers Pvt. 0kanal November 2005 Ltd. 3marla

4. Miraz Overseas 9acres August, 2005 to 02.03.2007 Pvt. Ltd. 1kanal November, 2005 9marla

5. Galaxy Colonizers 3acres August, 2005 to 07.03.2007 Pvt. Ltd. 5kanal January, 2006 5marla

6. Sheel Buildcon 45acres November, 2004 to 22.04.2008 Pvt. Ltd. 1kanal May, 2005 6marla

7. Progressive 22acres February , 2005 to 22.04.2008 Buildtech Pvt. Ltd. 2kanal October, 2005 2marla

8. Ecotech Buildcon 23acres February , 2005 to 22.04.2008 Pvt. Ltd. 2kanal November 2005 17.5marla

9. Beeta Promoters 3acres December, 2004 to 25.11.2007 Pvt. Ltd. 3kanal March , 2005 7marla

10. Divya Jyoti 3acres December, 2004 to 13.02.2008 Enterprises Pvt. 0kanal June, 2005 Ltd. 19marla

11. Indo Asian 14acres October,2004 to 21.11.2007 Construction Co. 7kanal November, 2004 Pvt. Ltd. 3marla

12. Mount Valley 19acres January, 2005 to 17.05.2008 Estates Pvt. Ltd. 4kanal December,2005 11marla

20. That investigation has revealed that Shri Atul Bansal, Director of M/s Aditya Buildwell Pvt. Ltd. and its below mentioned groups and associate companies had applied for grant of license to set up a township including group housing in an area of 190 acres in Sector- 1A, IMT, Manesar, Gurgaon to the Director, Town and Country Planning, Haryana, Chandigarh on 28.12.2006:-

(i) Frost Falcon Industries Ltd. Sonepat
(ii) Iceberg Industries Ltd.
(iii) Mount Valley Estate Pvt. Ltd.
(iv) Yorks Hotel Pvt. Ltd.
(v) Miraj Overseas Pvt. Ltd.
(vi) Galaxy Colonizers Pvt. Ltd.
(vii) Dough Man Engineers Pvt. Ltd.
(viii) Jassum Infrastructure Pvt. Ltd.
(ix) Sheel Buildcon Pvt. Ltd.
(x) Progressive Buildcon Pvt. Ltd.
(xi) Eco Tech Buildcon Pvt. Ltd.
(xii) Indo Asian Construction Co. Ltd.
(xiii) Beeta Promoters Pvt. Ltd.
(xiv) Divya Jyoti Enterprises Pvt. Ltd.
(xv) NCR Properties Pvt. Ltd.

21. That investigation further revealed that the above case of grant of license to M/s Aditya Buildwell Pvt. Ltd. was examined in the department of Town and Country Planning, Haryana. The Department of Town and Country Planning obtained the report from the HSIIDC regarding status of acquisition of land. The HSIIDC vide letter No. 2206 dated 19.01.2007 intimated that the land in question had been notified u/S 6 of LAA, 1894 by the department of Industries for providing dedicated labour housing to the plot – holders/industrial workers in IMT Manesar and requested that the application should be rejected. Despite the above report of HSIIDC, the Town & Country Planning Department vide letter dated 25.01.2007 asked the applicant to deposit the deficit amount of license fee of Rs.15,11,00,696/-. However, the applicant instead of depositing the deficit amount of license fee had submitted request vide letter dated 14.03.2007 that the area applied for grant of

license (total 190 acres) may be segregated as under:-

Commercial	3 acres
Group housing	25.39 acres
Group Housing	13.94 acres
IT Park	11.28 acres
IT Park	13.72 acres
Residential Plotted	122.67 acres"

Rest of the portions of the interim report being in the nature of deduction or conclusion from facts, are not considered by us.

20. Since the basic reason which weighed with the State Government in arriving at decisions dated 24.08.2007 and 29.01.2010 was the fact that several applications were preferred by builders for licence/CLU in respect of lands forming part of the acquisition proceedings, we deal with relevant statutory framework at the outset.

A] Appropriate resolutions in terms of Article 252 of the Constitution having been passed by the Houses of Legislatures of the States of Haryana, Rajasthan and Utter Pradesh, the National Capital Region Planning Board Act, 1985 (hereinafter referred to as the "NCR Act") was enacted to provide for the constitution of Planning Board for preparation of a plan for the development of the National Capital Region. Reading of Section 2(f) with Schedule to the Act shows that the tehsils of Gurgaon, Nuh and Firojpur-Jhirka of district Gurgaon form part of National Capital Region. Chapter IV of the NCR Act deals with constitution and incorporation of the National Capital Region Planning Board. Chapter IV of the NCR Act deals with "the Regional Plan" which in terms of Section 10 "shall be a written statement and shall be accompanied by such maps, diagrams, illustrations and descriptive matters" and "shall indicate the manner in which the land in the National Capital Region shall be used, whether by carrying out development thereon or by conservation or otherwise". Section 29 of the NCR Act states, "on and from the coming into operation of the finally published Regional Plan, no development shall be made in the region which is inconsistent with the Regional Plan as finally published". According to Section 40, acquisition or determination of any right or interest in the land to give effect to any Regional Plan shall be made by the concerned State. B] The Regional Plan 2001 prepared under the NCR Act was superseded by the Regional Plan 2021, notified on 19.09.2005. Para 17.5 of this Regional Plan 2021 deals with "Zoning Regulations" under which four zones are contemplated namely i) 17.5.1:

> Controlled/Development/Regulated Zone, ii) 17.5.2: Highway Corridor Zone, iii) 17.5.3: Natural Conservation Zone and iv) 17.5.4:
>
> Agriculture (Rural) Zone outside Controlled/Development/Regulated Areas. Para 17.5 stipulates, "...The elaboration of the land use details and zoning regulations would be incorporated in the Sub-regional Plans and Master/Development Plans by the respective State Governments." Para 17.5.1 further clarifies as under:-

"The local authority according to the prescribed uses in the Master/Development Plans will govern detailed land uses within the urbanisable area. The Master/Development Plans of all the towns will be prepared within the framework of the Regional Plan-2021 and Sub-regional Plans. In case any amendment is required in the acts to implement the policies of Regional Plan 2021 that be done by the respective State Governments appropriately." The Master/ Development Plans in respect of all towns, in terms of Para 17.5.1, were thus required to be prepared within the framework of the Regional Plan 2021.

C] Final Development Plan for Gurgaon Manesar Urban Complex was published by Government of Haryana, Town and Country Planning Department vide notification dated 05.02.2007. Annexure A to this notification titled as "Explanatory Note on the Final Development Plan 2021 AD for the controlled area of Gurgaon-

Manesar Urban Complex" stated as under:-

"The Gurgaon-Manesar Urban Complex which is known for Automobile Industries, Modern Commercial Malls, Towers of Cyber Parks and Software Development is situated on prime location on National Highway No. 8, only at a distance of 4 kilometers from the Indira-Gandhi International Air Port and is well linked with all capitals of the world through airways. The name of this town emerged on the world map in 1972, when world famed Maruti Industry was set up in Gurgaon with the collaboration of Suzuki Company of Japan. Now with the coming up of multinational companies like Hero Honda Motor, Honda Motors Ltd, Denso etc. in automobile sector and Microsoft, I.B.M. Nokia, Canon, Dupont, Sapient, British Airways, American Express, ABN Amro Bank, Alcatel, Nestle, Convergys, Hewitt, Vertex, Fidelity Investment, E.Vallue, Keine World India, Becton Dickinson India Private Limited in software development sector; the Gurgaon-Manesar Urban Complex has become abode of International Companies. With the result, the biggest cyber city of India spreading in an area of about 90 acres in addition to numerous cyber parks are being developed in Gurgaon itself within a radius of 15 kilometers from the International airport in private sector to accommodate the needs of software development units of multinational companies.

The availability of high level infrastructure of Airways, Railways, Highways, International Embassies and world famed medical and educational institutions in its close proximity at National Capital of Delhi have become the main factors of attraction for international companies for setting up their business at Gurgaon. In order to meet the demand of foreign investors and also to set up high-tech non polluting industrial units, the Haryana Government initially with the collaboration of Japanese entrepreneurs started setting up Industrial Model Township at Manesar in 1992 through Haryana State Industrial Development Corporation. The said Corporation has developed about 700 hectares land at Manesar and now the developed land is being made available to all entrepreneurs of the world including

India.

The Haryana Urban Development Authority in public sector and licenced colonizers in private sector through Town and Country Planning Department have also played prime role in achieving planned development in Gurgaon-Manesar Urban Complex. The Haryana Urban Development Authority and the licenced colonizers collectively have developed about 8000 hectares land for residential, commercial, institutional and industrial purposes to meet the increasing demand of the public.

The areas of Gurgaon-Manesar Urban Complex which have so far been developed in public and private sector including existing town and village abadies would accommodate 22 lakhs population. In order to cater the future demand of Gurgaon-Manesar Urban Complex an additional area of 21733 hectares has been added in the form of urbanisable area for the said complex to accommodate 15 lacs additional population. Thus, the total urbanisable area of Gurgaon-Manesar Urban Complex would accommodate 37 lakhs population by 2021 AD." This Explanatory Note brings out the potential and importance of Gurgaon-Manesar Urban Complex. It shows that 8000 Hectares of land was already put to residential, commercial, institutional and industrial purposes and additional 21733 Acres of land was to be added to meet the ever increasing demand.

D] Zoning Regulations were set out in Annexure B to the Notification dated 05.02.2007. Paragraph VII of said Annexure B dealt with the extent of private participation and role of Government or Public Authorities in such development. Said Paragraph VII was as under:-

"VII. Sectors to be developed exclusively through Government Enterprises:

(1) Change of land use and development in sectors which are reserved for the public and semi-public zone shall be taken only and exclusively through the Government or a Government undertaking or a public authority approved by the Government in this behalf and no permission shall be given for development of any colony within these sectors.

(2) For the development of sectors reserved for commercial use, private developers shall be permitted to develop to the extent of 50% of the sector area as per the layout plan approved by competent authority, after obtaining license under Act No. 8 of 1975. Balance 50% area shall be developed exclusively by the Government or a Government undertaking or by a public authority approved by the Government.

(3) Notwithstanding the provision of clause (1) and (2) above, the Government may reserve at any time, any other sector for development exclusively by it or by its agencies indicated above." E] The Haryana Act was enacted in the year 1975 to regulate the use of land in order to prevent ill-planned and haphazard urbanization in

and around towns and for development of infrastructure sector and infrastructure projects for the benefit of the State of Haryana and for matters connected therewith. Sections 2(c), 2(d) and 2(k) of the Haryana Act define "colony", "colonizer" and "owner" respectively.

Section 3 of the Haryana Act deals with "Application for licence" and entitles an owner desiring to convert his land into a colony to make an application to the Director for the grant of licence to develop a colony. Sub-Section (2) of said Section 3 stipulates that on receipt of such application by the owner, the Director shall among other things enquire into the "capacity to develop a colony". Section 3 lays down parameters and guidelines for grant of such licence which include inter alia furnishing to the Director a bank guarantee equal to 25 per centum of the estimated cost of development works and a bank guarantee equal to 37½ per centum of the estimated cost of the development works in case of cyber city or cyber park. Unlike sub- Section (1) which uses the expression "owner", the expressions "applicant" and "colonizer" are used in sub-Section (3) onwards. Section 3AA deals with "Establishment and constitution of Board" while the "Functions and Powers of Board" are dealt with in Section 3AC. In terms of sub-Section (2) of Section 3AC, the Board is to act as a Nodal Agency to coordinate all efforts of the Government regarding the development and implementation of infrastructure sectors and infrastructure projects for the benefit of State, involving private participation and funding from sources other than those provided by the State budget. Sub-clauses (f) and (g) of said sub- Section(2) deal with functions such as formulating clear and transparent policies and identifying sectoral concessions to attract private participation. Section 3AE empowers the Government to issue such directions to the Board on matters concerning the infrastructure sectors and the infrastructure projects in the State and states that the Boards shall be bound by such directions. F] The directions were issued by the Government from time to time, in exercise of the power so vested. The minutes of the meeting regarding policy issues "concerning Urban Development in Haryana" held on 07.08.19915 under the Chairmanship of the Chief Minister show that the issues concerning urban development were discussed in detail. Paras 2 to 5 of the minutes were as under:-

> "2. COMPETENT AUTHORITY TO GRANT LICENSES:
>
> The opinion of LR was considered and it was

accordingly decided that DTCP should be the competent authority to grant licence under the Act. On a suggestion from DTCP, however, it was felt that the grant of licence may have wider implications for State Government. It was, therefore, decided that such licences may be granted with prior internal concurrence of the State Government at Minster's level. The State Government will however, exercise appellate powers under the Act in accordance with the opinion of the LR.

3. CONFORMITY OF THE SITE TO THE DEVELOPMENT PLAN/SECTOR PLAN:

The LR's opinion on the matter was discussed and it was clarified by the LR that legally the colony to be licensed has to conform to the Development Plan and not to sector Relied upon by Mr. Narender Hooda, Senior Advocate demarcation. It was

pointed out that the land under application may not always be in a regular shape or in one sector. No minimum limit on proportion of the total area to the area of the sector could, therefore, be stipulated.

4. SIZE OF THE COLONY:

It was decided that except for additional licences for contiguous area/pockets, the minimum area required for the grant of licence shall be 100 acres for an applicant company/group of companies as heretofore.

5. LAND ACQUISITION AND LICENCING:

It was pointed out that in urbanisable areas of Development Plan, both HUDA and private sector take steps to acquire land for development. In a number of cases individuals may acquire land and before they are able to apply/get a license, the area may be notified for acquisition of HUDA. It was, therefore, decided that in the interest of equity in cases where applicants have applied for licence or have acquired land but could not apply for licence before the issue of acquisition notification, release of land could be considered on individual merits of each case." G] On 19.12.2006 "Policy for grant of licences and change of land use cases6" was issued in the form of a Memo from the office of Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning Department. Paragraph 5 of this Memo dated 19.12.2006 was:-

"5) Land Acquisition and Licensing:- Where applicants/land owners have applied for licence before the issue of acquisition notification under section 4 of the Land Acquisition Act, 1894, release of land could be considered on individual merits of each case." Relied upon by Mr. Dhruv Mehra, Senior Advocate This Policy was given effect from 07.06.2005.

H] There were similar Policy statements between 07.08.1991 and 19.12.2006 and even after 19.12.2006 as dealt with and discussed by the High Court of Punjab and Haryana in its Judgment in Amita Banta & Another v. State of Haryana7. Relevant portion of para 11 of said decision is as under:-

".....

Policy dated 6.1.2000 Memorandum Minister-in-Charge Town and Country Planning Minister Administrative Secretary Commissioner and Secretary to Govt.

Haryana, Town and Country Planning Department Sub: Release of land from acquisition where Developers/colonizers have purchased land before the issue of notification under Section 4 of the Land Acquisition Act but submitted application for licence for commercial colonies thereof afterwards.

> xx xxx xxx xxxx It has been felt that apart from providing accommodation for locating commercial officers, a licence for a commercial colony results into receipt of (2010) 1 RCR (Civil) 412 handsome amount to the State Treasury/Haryana Urban Development Authority and it will be in public interest to encourage establishment of such colonies.

Earlier a decision was taken by the CMM (copy of memorandum and decision is placed at Annexure B and C) to release the land from acquisition where developers/colonizers have purchased land before the issue of notification under Section 4 of the Land Acquisition Act, but submitted applications for grant of licence for setting up of residential colony afterwards. But it is a general decision and it is felt that in view of the reasons explained above, the licences for commercial colonies should be treated differently. It is therefore, proposed that if the department intends to issue licence for commercial colony with the internal concurrence of the Government over a land where the owner had purchased it before the notification under Section 4 of the Land Acquisition Act was issued, the release of such land may be allowed before issue of letter of intent.

Policy dated 06.03.2000 It has also been observed that the resources of HUDA have reduced in the recent past, and acquisition activity and development of residential sectors has become costly and time consuming affair due to litigation and, therefore, it would be appropriate to assign a greater role to private sector. But as per decision taken by the CMM in their meeting held on 30.07.98 even if the department finds that the application for grant of licence for residential colony fulfils policy/technical parameters, the land is to be released from acquisition only on the recommendations of the Chief Administrator, HUDA. This results into procedural delay. Since the department of Town and Country Planning, Haryana is responsible for integrated development of urban areas, therefore with a view to avoid procedural delays, it is proposed that on the analogy of decision taken by the CMM on 06.01.2000, the land purchased by the colonizer before issuance of notification under Section 4 of the Land Acquisition Act, 1894 where the Director Town and Country Planning, Haryana decides to issue licence for residential colony and obtained the concurrence of the Government for the same, may be released from acquisition.

Policy dated 26.10.2007

5. Any land in respect of which an application under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 has been made by the owners prior to the award for converting the land into a colony, may also be considered for release subject to the condition that the ownership of the land should be prior to the notification under Section 4 of the Act.

6. That the Government may also consider release of land in the interest of integrated and planned development for the lands where the owners have approached the Hon'ble Courts and have obtained stay dispossession.

Provided that the Government may release any land on the grounds other than stated above under Section 48(1) of the Act under exceptionally justifiable circumstances for the reasons to be recorded in writing.

....."

21. From consideration of afore-stated statutory framework, it is clear:-

> A. The Regional Plan of 2021, notified on 19.09.2005 contemplated that Master/Development Plans in respect of towns were required to be prepared within the framework of said Regional Plan. Accordingly, Final Development Plan for Gurgaon Manesar Urban Complex was published on 05.02.2007. The Explanatory Note, as set out hereinabove brings out potential of the lands situate in said Urban Complex. According to the zonal requirements as set out in Annexure-B of said Notification dated 05.02.2007, the extent of private participation was restricted to 50% for development of sectors reserved for commercial use and rest could be developed only by the Government or Government undertaking or by a public authority approved by the Government.

B. In terms of provisions of the Haryana Act and more particularly Section 3(2), "Capacity to develop a colony" would be a factor relevant for consideration whenever an application for licence was preferred by any owner. Though the provisions of Haryana Act do contemplate coordination of all efforts with regard to development and implementation of infrastructure, sectors and projects with involvement of private participation, the directions issued by the Government have laid down, in clear terms, the extent and scope of such private participation.

C. In accordance with Section 40 of the NCR Act, the concerned States are expected to give effect to any Regional Plan by taking resort to power of acquisition. The inter-play between exercise of such power of acquisition and private participation by permitting licences to owners/colonizers was a matter dealt with by Policy Guidelines issued by the Government from time to time. In terms of policy statements dated 07.08.1991, 06.01.2000 and 06.03.2000 where applicants had applied for licence or had acquired land but could not apply for licence before the issue of acquisition notification, release of land could still be considered on individual merits of each case. The scope got further restricted by policy statement of 19.12.2006, in terms of para 5 whereof, if the applicants/landholders had applied for licence before the issue of acquisition notification under Section 4 of the LA Act, release of land could be considered on individual merits of each case. As this policy was given effect from 07.06.2005, it could possibly be stated that the earlier policies ought to apply to cases before 07.06.2005. But in any case, for said policies dated 07.08.1991, 06.01.2000 and 06.03.2000 to apply, the purchase by applicants had to be before the issue of acquisition notification. Same thought was expressed in the Policy dated 26.10.2007, "....that the ownership of the land should be prior to the notification under Section 4 of the Act." Further, the extent of such participation ought to be in terms of zonal requirements set out in Annexure B to the Final Development Plan dated 05.02.2007.

22. It must be noted at the outset that the aforementioned Policy dated 06.03.2000 was considered by this Court in Uddar Gagan (supra) and in paragraph 21 of its judgment, this Court had observed, "... the policy is applicable only to release of such land from acquisition as is owned/purchased by the developers before the issue of notification under Section 4 of the Land Acquisition Act, 1894.

This condition was required to be strictly complied with and no person other than original owners prior to acquisition could directly or indirectly avail of the said policy". In the present case, notification under Section 4 of the Act was issued on 27.08.2004. After considering various objections made under Section 5A of the Act, the requirement of 688 Acres of land was assessed and declaration under Section 6 to that effect was issued on 25.08.2005. The material placed on record by Mr. Vikas Singh, learned Senior Advocate shows that all lands purchased by his client were after the issuance of notification under Section 4 of the Act. Similarly para 18 of the interim report submitted by CBI shows that over 444 Acres of land was purchased by various builders/private entities after such notification under Section 4 of the Act. Going by the relevant policies holding the field and the law laid down by this Court in para 21 of its judgment in Uddar Gagan (Supra), such purchases did not entitle the concerned builders/private entities to prefer any application for licence, nor could pendency of such applications be taken as a relevant factor while arriving at a decision whether acquisition initiated pursuant to notification dated 27.08.2004 be proceeded further or not. However, the record indicates that such purchases and the pendency of applications for licence under the Haryana Act, was a factor which did weigh while decisions dated 24.08.2007 and 29.01.2010 were taken. A factor which ought to have been discarded in terms of the declared policy statements, became the fulcrum for said decisions. We have therefore, no hesitation in holding that said decisions are inconsistent with and opposed to relevant policy statements. We also reject the submission advanced on behalf of builders/private entities that these decisions were consistent with the Regional Plan under the NCR Act and the Final Development Plan for Gurgaon-Manesar.

23. But the issues raised in the present case go way beyond mere invalidity or illegality of those decisions dated 24.08.2007 and 29.01.2010. What is being projected is that those decisions dated 24.08.2007 and 29.01.2010 were part of a well devised and designed attempt to deprive the landholders and enrich builders/private entities, which would broadly depend upon answers to the following questions:-

> a] Whether the transactions entered into between the landholders and the concerned builders/private entities in the present case could be said to be voluntary and free from any influence.
>
> b] Whether the decisions on part of the state machinery arrived at on 24.08.2007 and 29.01.2010 could be said to be guided by considerations other than those for which the power was conferred; or in other words: was there a fraud on power.
>
> 24. Before we deal with the aforesaid issues, certain crystalized facets of the matter as evident from facts as narrated above and the statutory framework, need to be noted:-
>
> (a) The concerned lands fall in National Capital Region to which the provisions of Regional Plan, 2021 prepared under the NCR Act and Final Development Plan for Gurgaon-Manesar Urban Complex prepared by Government of Haryana do apply. The Explanatory Note set out in Annexure A to said Final Development Plan brings out the potential of the lands in Gurgaon-Manesar and acknowledges its proximity

with Delhi, locational advantages and importance of said lands.

(b) Though Regional Plan, 2021 and Final Development Plan for Gurgaon-Manesar Region Complex were notified on 19.09.2005 and 05.02.2007 respectively, it can well be assumed that stages anterior to preparation and notification of said plans coincided with the initiation of acquisition in the present case. In any case, the potential of said lands was not something which arose out of the blue for the first time in 2007 and it can safely be inferred that such potential was to the knowledge of everybody concerned.

(c) All the transactions in the present case under which the builders/private entities purchased the lands, were entered into after the initiation of acquisition on 27.08.2004. As disclosed in the material placed on record by Mr. Vikas Singh, learned Senior Advocate, his client alone had purchased more than 235 acres of land while as per interim report of CBI, an extent of 444 acres of land was purchased by builders/private entities after the initiation of acquisition. Thus, substantial portion of land out of 688 acres of land as specified in declaration under Section 6 of the Act was purchased by builders/private entities.

(d) Around the time when those purchases were made by builders/private respondents, Awards were declared on 09.03.2006 and 24.02.2007 in respect of lands from adjoining Villages where the acquisition was also initiated for the same public purpose. The compensation awarded was at the rate Rs.12.5 lakhs per acre.

(e) Although the relevant policies did not permit anyone who purchased the concerned lands after initiation of acquisition to prefer an application for licence, the builders/private entities merrily went about purchasing the interest of concerned landholders after such initiation. Most of these companies were incorporated after the acquisition was initiated and had no experience in colonization. Yet substantial and sizeable holding was purchased by them. This is reflective of the intent to cash in on an opportunity made available and garner as much holding as possible. The subsequent transactions of sale by them are also indicative of the attempts to profiteer in the matter rather than any bona fide attempt to develop and colonize the property.

(f) Faced with impending acquisition initiated on 27.08.2004, the landholders were persuaded to enter into transactions with builders/private respondents. The Tabular Chart as set out by way of example in paragraph 8 hereinabove shows that the average price was initially in the region of Rs.25 lakhs per acre which rose to Rs.40 lakhs per acre or above after the issuance of declaration under Section 6 of the Act. The price so received was greater than the rate awarded in Awards dated 09.03.2006 and 24.02.2007.

(g) Notices under Section 9 of the Act were issued by the Authorities on 02.08.2007 calling upon the landholders to appear for pronouncement of award on 26.08.2007. The record indicates that the price paid by the builders/private entities just before 24.08.2007 was in the region of Rs.80 lakhs per acre. This further discloses, as rightly submitted by Mr. Dhruv Mehta, learned Senior Advocate that builders/private entities were aware that the award would not be declared but the land

acquisition proceedings would be dropped.

(h) At least 60 sale deeds were executed between the issuance of Notifications under Sections 4 and 6 of the Act, four sale deeds were executed on the day the declaration under Section 6 was issued and 50 sale deeds were executed after the issuance of Notification under Section 6 and prior to the dropping of acquisition on 24.08.2007. Thus about 114 sale deeds were executed after the initiation of acquisition and prior to the dropping of acquisition vide decision dated 24.08.2007.

(i) The sale deeds in favour of the builders/private entities do not even mention the factum about the issuance of any Notification under Section 4 of the Act, nor any urgency or necessity for the family to dispose of its holdings find any specific clear mention. The sales in question were effected only because of impending acquisition.

(j) The material placed on record by Mr. Vikas Singh, learned Senior Advocate discloses a disturbing feature. The lands which were purchased for a price ranging from Rs.25 lakhs per acre soon after the initiation of acquisition which price rose to Rs.80 lakhs per acre just before dropping of the acquisition, were finally purchased by DLF Home Developers Ltd. at the rate of Rs.4½ crores per acre. Further, the fact that settlement money at the rate of Rs.3½ crores per acre was made over to entities which apparently had done nothing in the matter is quite shocking. Neither had these entities procured the lands from the original landholders nor were they ultimate developers who wanted to develop the property. Such entities can certainly be termed as “middle men” who walked away with tremendous amount of money or benefit at the rate of Rs.3½ crores per acre. Was that a mere bonanza or a deal denoting quid pro quo?

(k) It is true that the price of Rs. 4½ crores per acre was paid in respect of land as well as the licences and well after the dropping of the acquisition and withdrawal of writ petitions pending in the High Court. However this price or the rate shows the tremendous difference between the return received by the original landholders and the actual potential of the land.

(l) In terms of paragraph VIII of Annexure B to the Final Development Plan for Gurgaon-Manesar Urban Complex the extent of private participation was extremely limited and in terms of relevant policy under the Haryana Act no licence could be issued in case any purchase of land was made after the initiation of the acquisition. Yet the concerned Authorities not only entertained such applications for licence but pendency of such applications was taken as a factor for withdrawal from acquisition. Something which ought to have been rejected and discarded outright became the foundation for decision in favour of builders/private entities.

(m) The interim report of CBI in para 21 indicates that objection was taken by HSIIDC and it was prayed that application for licence be rejected. Going by aforesaid paragraph VIII of Annexure B and the relevant policy, such application could never have been entertained but it was so done favourably.

25. In cases where the power conferred under the provisions of the Act was utilized to favour a private person or entity, this Court has always come down heavily. In Uddar Gagan (supra) which

was relied upon by Mr. Dhruv Mehta, learned Senior Advocate and the learned Amicus Curie, the question which arose for consideration inter alia, was whether the power of the State to withdraw from acquisition under Section 48 of the Act after the award had been passed, was utilized to facilitate transfer of title of the land of original owners to a private builder to advance the business interest of the builder. In that case, the builder had purchased the interest of the original landholders after the acquisition was initiated like in the present case and at his instance the lands were released from acquisition at which stage the original landholders had invoked writ jurisdiction and challenged the entire action. The High Court set aside the release orders, quashed the acquisition and went on to direct that the lands be restored to the original land-owners. While considering the matter in an appeal at the instance of the builder, this Court dealt with the observations of the High Court in Paragraph 5. Paragraphs 70 and 80 of the High Court judgment which were inter alia quoted by this Court were as under:-

> "70. To say that the landowners entered into varied contracts with Respondent 11 voluntarily, willingly or without undue pressure is too farcical to be believed. There is a natural and conventional bondage between the land and its tiller. A farmer seldom sells the land save for the compelling reasons. Agriculture being their only source of survival, the loss of land is a terrible nightmare for any farmer. The Land Acquisition Collectors never assess the compensation as per actual market value of the land and the only yardstick to be followed is the Collector's rate fixed for the purpose of registration charges. The farmer cannot sell the land in open market as on issuance of Section 4 notification all sale transactions are invariably banned. These moments of fear and anxiety must have prompted Respondent 11 to indulge in the best bargain. For the farmers the offer was like "better you give the wool than the whole sheep". There was no free trade for the farmers. Their choice was limited: to accept the State compensation at the Collector's rate or a better offer given by State-sponsored private builder. There was inequality of bargaining power. The determination of land value was not at all in the control of farmers. They were groping in the dark. They had no clue that the land will be released. They accepted the unreasonable and unfair unilateral terms and lost their land.
>
> 80. ... Secondly, it is not a case of challenging the sale deeds for the breach of any bilateral terms and conditions or on the conventional grounds where a question of fact has to be proved. The incidental relief to declare the sale deeds as null and void is an offshoot of the broader issues raised by the petitioners including those hovering around the systematic colourable exercise of power by the State apparatus. A constitutional court while performing its solemn duty as a trustee of the fundamental rights of the citizens shall thus be well within its right to lift the veil and unmask the private object behind an acquisition carried out in disregard to the mandate of Articles 14 and 300-A of the Constitution."

26. This Court affirmed the view taken by the High Court as regards quashing of release orders but upheld the acquisition and awards. It further directed that the lands in question vested in State free from all encumbrances. In the context of the present case, the following observations of this Court in

Uddar Gagan (supra) in paragraphs 18, 19, 22 and 23 are quite crucial:-

> "18. .... entertaining an application for releasing of land in favour of the builder who comes into picture after acquisition notification and release of land to such builder tantamounts to acquisition for a private purpose. It amounts to transfer of resources of poor for the benefit of the rich. It amounts to permitting profiteering at the cost of livelihood and existence of a farmer. This is against the philosophy of the Constitution and in violation of guaranteed fundamental rights of equality and right to property and to life. What cannot be done directly cannot be done indirectly also.
>
> 19. ..... It is patent that the State has enabled the builder to enter the field after initiation of acquisition to seek colonisation on the land covered by acquisition. In the absence of the State's action, it was not possible for the builder to enter into the transactions in question which was followed by withdrawal from acquisition.
>
> 22. ..... When the land sought to be acquired for a public purpose is allowed to be transferred to private persons, any administrative action or private transaction could be held to be vitiated by fraud.
>
> 23. .... Fraud on power voids the action of the authority. Mala fides can be inferred from undisputed facts even without naming a particular officer and even without positive evidence."

27. For the present purposes, contents of paragraphs 29 and 30 of the decision in Uddar Gagan (supra) and the directions issued in paragraph 33 are extracted:-

> "29. Once release of land under acquisition is found to be mala fide or arbitrary exercise of power, acquisition of released land stands revived. The operative direction of the High Court to quash the acquisition to the extent it has neither been challenged nor concerns the land transferred to a private builder by abusing the power of acquisition or on account of any extraneous considerations does not appear to be justified. Similarly the direction of permitting the builder to retain the land of those landowners who are not able to refund the sale consideration received by them may permit the builder to illegally retain the land. Moreover, it may not be practicable in the present fact situation to restore the land to the landowners but they can be duly compensated while restoring the land to the State to use it for notified public purpose. Person whose land is taken for houses for others cannot be rendered homeless and unemployed. This will be sheer exploitation. In view of the conduct of the builder, agreeing with the view of the High Court, we do not propose to allow any interest to the builder while permitting refund/reimbursement to it. From the impugned judgment there is nothing to show that the developments which are now relied upon had taken place on the date of filing of the writ petition. It has been specifically held in para 89 of the impugned judgment that no development had taken place till the judgment of the High Court. Any subsequent transactions or

development are of no consequence for rights of parties. Any subsequent transactions entered into by the builder cannot be taken into account and are hit by the principle of lis pendens. In any case it was for the builder to inform the third par- ties to whom the plots have been sold, that the land was under litiga- tion. If the third parties have purchased the land knowing fully about the litigation, they have clearly taken risk and their remedy will be only against the builder. If pendency of litigation was suppressed, the third parties can take their remedies against the builder. Without prejudice to their said private remedies, the court may try to balance equities to the extent possible. We are also of the view that if the authorities have proceeded to entertain applications for licence to give undue benefit to the builder by way of helping him to take over land under the cloud of acquisition, it may call for action against those who have misused their power and to find out the considerations for such misuse.

30. Land is scarce natural resource. Owner of land has guarantee against being deprived of his rights except under a valid law for compelling needs of the society and not otherwise. The commercial use of land can certainly be rewarding to an individual. Initiation of acquisition for public purpose may deprive the owner of valuable land but it cannot permit another person who may be able to get permission to develop colony to take over the said land. If the law allows the State to take land for housing needs, the State itself has to keep the title or dispose of land consistent with Article 14 after completion of acquisition. If after initiation of acquisition, process is not to be completed, land must revert back to owner on the date of Section 4 notification and not to anyone else directly or indirectly.

This is not what has happened.

.....

33. Keeping the above in mind, we are of the view that ends of justice will be served by moulding the relief as follows:

33.1. Notifications dated 11-4-2002, 8-4-2003 and awards dated 6-4-2005 are upheld. The land covered thereby vests in HUDA free from all encumbrances. HUDA may forthwith take possession thereof.

33.2. All release orders in favour of the builder in respect of land covered by the award in exercise of powers under Section 48 are quashed.

33.3. Consequently, all licences granted in respect of the land covered by acquisition will stand transferred to HUDA. 33.4. Sale deeds/other agreements in favour of the builder in respect of the said land are quashed. The builder will not be entitled to recover the consideration paid to the owners but will be entitled to reimbursement as indicated hereinafter. Creation of any third-party rights by the builder also stands

quashed.

33.5. The sale consideration paid by the builder to the landowners will be treated as compensation under the award. The landowners will not be required to refund any amount. The landowners who have not received compensation will be at liberty to receive the same. The landowners will also be at liberty to prefer reference under Section 18 of the 1894 Act within a period of three months, if such reference has not been earlier preferred. 33.6. The builder will be entitled to refund/reimbursement of any payments made to the State, to the landowners or the amount spent on development of the land, from HUDA on being satisfied about the extent of actual expenditure not exceeding HUDA norms on the subject. Claim of the builder will be taken up after settling claim of third parties from whom the builder has collected money. No interest will be payable on the said amount.

33.7. The third parties from whom money has been collected by the builder will be entitled to either the refund of the amount, out of and to the extent of the amount payable to the builder under the above direction, available with the State, on their claims being verified or will be allotted the plots at the price paid or price prevalent, whatever is higher. No interest will be payable on the said amount. 33.8. The State shall give benefit of “Rehabilitation and Resettlement of Land Acquisition Oustees” policy of the State/HUDA to the landowners. Area so required shall be reserved out of the acquired land itself.

33.9. The State Government may enquire into the legality and bona fides of the action of the persons responsible for illegally entertaining the applications of the builder and releasing the land to it, when it had no title to the land on the date of the notification under Section 4 of the 1894 Act and proceed against them in accordance with law.

33.10. This judgment be complied with within one year. 33.11. Quarterly progress report of the action taken in pursuance of this judgment be filed by the State in this Court and final report of compliance may be filed within one month after expiry of one year from today for such further direction as may become necessary.”

28. Apart from the decisions of this Court in Uddar Gagan (supra) following decisions of this Court are noteworthy:

a] In Collector (DM) v. Raja Ram Jaiswal8, it was observed by this Court:-

“26. Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'! Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of

power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides. In such a situation there is no question of any personal ill-will or motive. In Municipal Council of Sydney v. Campbell9 it was observed that irrelevant considerations on which power to acquire land is exercised, would vitiate compulsory purchase orders or scheme depending on them……." b] In Royal Orchid Hotels Limited and Another v. G. Jayarama Reddy and Others10, this Court was called upon to consider question (1985) 3 SCC 1 1925 AC 338 at p. 375 (2011) 10 SCC 608 whether land acquired by the State Government for specified purpose namely Golf-cum-Hotel Resort could be transferred to a private individual.

The observations in paragraph 38 are relevant for the present purposes:-

"38. The courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be overstretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same……" c] In Greater Noida Industrial Development Authority v.

Devendra Kumar and Others11, validity of acquisition of about 156 hectares of land and subsequent transfer of acquired land to the builders and whether such transfer was colourable exercise of power came up for consideration of this Court. In paragraph 43 this Court quoted the observations of Krishna Iyer J in State of Punjab v. Gurdial Singh12 and later made following observations in paragraph 49:-

(2011) 2 SCC 375 (1980) 2 SCC 471 "43. In this context, it will be useful to notice the observations made in State of Punjab v. Gurdial Singh. In that case, while pronouncing upon the correctness of the order passed by the Punjab and Haryana High Court which had quashed the acquisition of the respondents' land on the ground of mala fide exercise of power, this Court observed: (SCC p. 475, para 9) "9. … Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power— sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions—is the attainment of ends beyond the

sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated:

'I repeat ... that all power is a trust—that we are accountable for its exercise—that, from the people, and for the people, all springs, and all must exist.' Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act." .....

49. Before concluding, we consider it necessary to reiterate that the acquisition of land is a serious matter and before initiating the proceedings under the 1894 Act and other similar legislations, the Government concerned must seriously ponder over the consequences of depriving the tenure-holder of his property. It must be remembered that the land is just like mother of the people living in the rural areas of the country. It is the only source of sustenance and livelihood for the landowner and his family. If the land is acquired, not only the present but the future generations of the landowner are deprived of their livelihood and the only social security. They are made landless and are forced to live in slums in the urban areas because there is no mechanism for ensuring alternative source of livelihood to them. Mindless acquisition of fertile and cultivable land may also lead to serious food crisis in the country."

29. The decisions referred in the preceding paragraphs were delivered in the context of exercise of power under the provisions of the Act. In addition, there are few other decisions which were rendered in other fields but considered the issues regarding "fraud on power"; notable amongst them being: S. Pratap Singh v. The State of Punjab13, Express Newspapers Pvt.

Ltd. and others v. Union of India and others14and observations by R.M. Sahai J in Shrisht Dhawan (Smt) v. Shaw Bros.15 The issue concerning unjust enrichment was dealt with by this Court very succinctly in Indian Council for Enviro-Legal Action v. Union of India16 as under :

"151. Unjust enrichment has been defined as:

> "Unjust enrichment.—A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." See Black's Law Dictionary, 8th Edn. (Bryan A. Garner) at p. 1573. A claim for unjust enrichment arises where there has been an "unjust (1964) 4 SCR 733 (1986)1 SCC 133 (1992) 1 SCC 534, at page 553 :
>
> (2011) 8 SCC 161, at page 234 retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience".

152. "Unjust enrichment" has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience". A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance". (Schock v. Nash17, A 2d, 232-33.)

154. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.18, Lord Wright stated the principle thus: (AC p. 61) "... Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution." 732 A 2d 2017 (Delaware 1999) 1943 AC 32

155. Lord Denning also stated in Nelson v. Larholt19as under: (KB p. 343) "... It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution, if the justice of the case so requires."

156. The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment. .....

159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

160. While the term "restitution" was considered by the Supreme Court in South Eastern Coalfields Ltd. v. State of M.P.20 and other cases excerpted later, the term "unjust enrichment" came to be considered in Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs21. This Court said: (Sahakari Khand case, SCC p. 748, para 31) "31. ... 'unjust enrichment' means retention of a benefit by a person that is unjust or inequitable.

(1948) 1 KB 339 (2003) 8 SCC 648 (2005) 3 SCC 738 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else."

161. The terms "unjust enrichment" and "restitution" are like the two shades of green—one leaning towards yellow and the other towards blue. With restitution, so long as the deprivation of the other has not been fully compensated for, injustice to that extent remains. Which label is appropriate under which circumstances would depend on the facts of the particular case before the court. The courts have wide powers to grant restitution, and more so where it relates to misuse or non-compliance with court orders."

30. As held in State of Punjab v. Gurdial Singh (Supra) when a custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, such exercise is nothing but colourable exercise of power and that the power of the State to acquire lands of private persons compulsorily cannot be overstretched to legitimize a patently illegal and fraudulent exercise undertaken to favour certain private persons. This principle has been followed consistently. While dealing with fact situation arising in the context of exercise of power under the provisions of the Act and its interplay with the power under the provisions of the Haryana Act and the concerned policies, the observations of this Court in the decision in Uddar Gagan (supra) are crucial. They cull out principles that entertaining an application for releasing of land in favour of a builder who came into picture after acquisition had been initiated amounts to transfer of resources of poor for the benefit of the rich and that no legitimacy can be conferred to an abuse of power to advance such purpose. Further, mala fides could be inferred from undisputed facts even without naming a particular officer. But the salutary principle discernable from Uddar Gagan (supra) lies in the relief granted by this Court in paragraph 33. This Court agreed with the High Court that there was fraud on power but did not sustain the relief of return of lands to the landholders. The real victim of abuse of power or fraud on power was "public interest"; for furtherance of which the acquisition was sustained and appropriate directions were passed. This Court therefore severed that

part which was found to be bad but sustained acquisition to sub-serve “public interest”.

31. If we consider the established or crystallized facets of the matter as stated above, in the light of the principles emerging from the decisions rendered by this Court, in our considered view the decisions dated 24.08.2007 and 29.01.2010 were taken to confer advantages and benefits upon the builders/private entities rather than to carry out or effectuate public purpose. The record indicates that various entities including certain “middlemen” cornered unnatural gains and walked away with huge profits taking the entire process of acquisition for a ride. Substantial sums have exchanged hands in the form of settlement money. All the steps and stages show that the builders/private entities were well aware that the acquisition would not go through but the landholders were confronted with the smoke screen of acquisition and were cornered and persuaded in entering into transactions with the builders/private entities. The transactions so entered into between the landholders and the concerned builders/private entities could not be said to be voluntary and free from any influence. The unnatural and unreasonable bargain was forced upon the landholders by creating façade of impending acquisition. Public Interest was not the underlying concern or objective behind those decisions dated 24.08.2007 and 29.01.2010 but the motive was to confer undue advantage on the builders/private entities. It is clear that considerations other than those which were required to be bestowed, guided the exercise of power in arriving at decisions dated 24.08.2007 and 29.01.2010. The inescapable conclusion, therefore, is that there was an unholy nexus between the governmental machinery and the builders/private entities in devising a modality to deprive the innocent and gullible landholders of their holdings and jeopardize public interest which the acquisition was intended to achieve. Mr. Dhruv Mehta, learned Senior Advocate is right in his submission that the entire mechanism was deliberately employed so that gullible landholders could be deprived of their holdings by a set of builders/private entities and after having seen that the desired result was achieved, the acquisition was dropped and later completely withdrawn. The decisions on the part of the State arrived at on 24.08.2007 and 29.01.2010 were clearly a result of fraud on power and cannot be said to be bona fide exercise of power. In our view, the initiation of class action and filing of Writ Petition in the present matter was perfectly justified and we reject all the submissions made by the learned Counsel appearing for various builders/private entities.

32. We thus hold that:-

> a] The transactions entered into between the landholders and the concerned builders/private entities in the present case were not voluntary and were brought about by fraudulent influence. Certain ‘middlemen’ and builders enriched themselves at the expense of the landholders and public interest which was to be achieved by acquisition.
>
> b] The decisions dated 24.08.2007 and 29.01.2010 as well as entertaining of applications for grant of licence from those who had bought the lands after the acquisition was initiated, were not bona fide exercise of power by the State machinery. The exercise of power under the Act was guided by considerations extraneous to the provisions of the Act and as a matter of fact, was designed to enrich the builders/private entities. These decisions were nothing but fraud on power.

33. Having so found that the exercise of power in arriving at decisions dated 24.08.2007 and 29.01.2010 as well as entertaining of applications for licence from those who had bought the lands after the acquisition was initiated, to be fraud on power; we now have to consider what relief be granted in the present matter. The relief to be granted must depend upon who the real victim is and to what extent solace can be granted to such real victim. If the landholders are considered to be the real victim, Mr. Dhruv Mehta, learned Senior Advocate is absolutely right in his submissions. If the result of forcing land holders to enter into unnatural and unreasonable bargain was achieved by wrongful utilization of the power conferred under the Act, in its writ jurisdiction a superior court would be justified in granting the relief of invalidating such transaction as a consequential relief, while holding the State action to be bad and invalid. The law laid down by this Court is quite clear and the objection that instead of a class action in the realm of public law, each individual land holder must make good his submissions on individual facts and seek relief of annulment of transaction entered into by him has to be rejected. To the extent the unnatural and unreasonable bargain was forced upon the landholders, there would be justification in granting such relief. But in the circumstances, the public interest which the acquisition was intended to achieve will never be sub- served. It is nobody's case that public interest was adequately achieved and therefore the acquisition was required to be dropped. The fact that other acquisitions have been completed and have attained the required objective is a pointer in the direction that there was nothing wrong with the initiation but somewhere along while the process was on, it was completely hijacked by vested interests. We cannot, therefore, grant mere declaration invalidating the transaction and grant relief of restoring status ante. The real and substantial relief would be in restoring the situation where the process of acquisition is made free from such supervening vested interests and is enabled to achieve the objective that the acquisition was intended to sub- serve.

34. At this stage an aspect needs elaboration and clarification. In Uddar Gagan (supra) the proceedings for acquisition under the Act had culminated in passing of an award. After the declaration of award, the lands were withdrawn from acquisition under the provisions of Section 48 of the Act. In terms of the directions issued by this Court in paragraph 33 in Uddar Gagan (supra) the withdrawal under Section 48 of the Act was set aside and the acquisition and award were sustained by this Court. In essence therefore, the lands in question continued to be under acquisition and appropriate directions were thereafter passed by this Court adjusting the competing claims of the concerned parties. In the present case, unlike Uddar Gagan (supra) the acquisition was dropped just two days before the day the award was to be pronounced. It is true that the entire process right upto publishing the date for pronouncement of award was validly undertaken, every possible submission was placed on record and all contentions were taken by the persons or parties interested. It was not as if any person or any party was denied any chance of raising objections or making submissions. The acquisition was dropped for reasons, which in our considered view were not germane at all and the entire exercise of dropping the acquisition was fraud on power. If that fraud on power is to be invalidated, the real and substantial restoration would be to ensure that the acquisition proceeds in the logical direction and the public purpose is sub-served. In a way, the directions required in the present matter may go beyond what Uddar Gagan (supra) did.

35. In certain cases this Court, considering typical fact situation has passed directions to complete the process of acquisition, for instance:

(a) In Bhimandas Ambwani (Dead) through Lrs. V. Delhi Power Com-

pany Limited22 it was found, "there had been no proceedings regarding acquisition of the land in dispute". However, as the authorities had taken (2013) 14 SCC 195 over possession of the land and developed the same, this Court observed :

> "In such a fact situation, the only option left out to the respondents is to make the award treating Section 4 notification as, on this date i.e. 12.02.2013 and we direct the Land Acquisition Collector to make the award after hearing the parties within a period of four months from today."

(b) In K.B. Ramachandra Raje Urs(Dead) by L.Rs. V. State of Kar-

nataka and Others23, having held that the acquisition and allotment of 55 acres of land to respondent No.28- Society to be contrary to law, it was noted that a full-fledged campus had come up in an area admeasuring 40 acres of land out of said 55 acres. It was therefore observed:

> "Insofar as the remaining 40 acres of land allotted to Respondent 28 is concerned, we direct that compensation, in respect thereof, to the person/persons entitled to receive such compensation under the Land Acquisition Act, will follow the outcome of Writ Appeal No.1654 of 2008. The compensation under the Act will be paid by taking the date of the order of the learned Single Judge of the High Court i.e. 22-2-2001." Thus, in cases where there was no valid acquisition but the land was taken possession of and developed, restoration of land to the landholders was not found to be the appropriate, adequate and complete relief and this Court directed that process of acquisition be initiated taking or treating certain date to be the relevant date for initiation of the acquisition. If the power can go to the extent of directing acquisition in such manner, in a case (2016) 3 SCC 422 where an acquisition having been properly and validly initiated if the supervening circumstances show that there was complete fraud on power in dropping the acquisition, can the power of the superior court not extend to/not be extended for passing appropriate directions to complete the acqui-

sition and sub-serve the public interest. But for such fraud on power, the matter in the present case was ripe for pronouncement of award when the acquisition was dropped just two days before the date of pronouncement. All the steps leading to the publication of date for pronouncement of award having been validly and correctly undertaken, can a direction not be passed that there was a deemed award and completed acquisition.

36. Wherever there has been fraud on power, the duty of the Court is not only to set aside such exercise of power but to see that there is no unjust enrichment directly or indirectly as a result thereof and there is full and substantial restoration. Going by the principles laid down by this Court in Indian Council for Enviro-Legal Action (Supra) unjust retention of benefit would be completely against the fundamental principles of justice, equity and good conscience. It was observed therein

that so long as the deprivation of a party has not been fully compensated for, injustice to that extent continues. Having found that there was a clear case of fraud on power as a result of which unnatural and unreasonable gains have been derived by certain builders/private entities, we consider it our duty to grant full restitution. The restoration in real and substantial terms has to ensure that the public purpose, the acquisition was intended to achieve, stands sub-served. In our considered view, this is an appropriate case where this Court has to declare that there was a completed acquisition and the award deemed to have been passed on the date when it was supposed to be pro- nounced i.e. on 26.08.2007. The suggested relief by the learned Amicus Curiae is also on similar lines.

37. There are certain other elements which need attention at this stage. The Act now stands replaced by "The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013". In terms of Section 24(1)(b) of said 2013 Act, where an award had been made under Section 11 of the Act, the proceedings under the provisions of the Act would continue as if the Act had not been repealed. Thus, even if a direction is passed that an award be deemed to have been made on 26.08.2007, the provisions of the Act would still continue to operate in respect of such acquisition in question. There is however, one point which may pose some difficulty. Out of 688 acres of land which was covered by Declaration under Section 6 of the Act in the present matter, majority of the lands were taken over by builders/private entities and as such presently the concerned landholders are not in possession of their holdings. However, in case of certain other lands where no transactions were entered into, as a result of dropping of the acquisition, those land holders are presently in occupation without there being any cloud of acquisition. If we restore status ante where the entirety of 688 acres of land continues to be under acquisition, the interest of such landholders is bound to be put to some prejudice. Those landholders are not parties to this litigation, nor their interest in any manner, is represented in the proceedings. They would now be visited with the prospect of losing their holdings. Those who sold away their holdings to the builders/private entities after the acquisition was initiated, naturally would not be prejudiced at all nor can the builders/private entities who purchased the land after the land was initiated can put up a plea of prejudice. However those who had never sold the holdings and continued to face the prospect of acquisition will certainly be put to prejudice. It is possible that some such landholders may have sold away their holdings or may have applied and secured licences for construction. In cases, where third party interests have thus intervened, there would be some more concern.

38. The relief to be granted in the matter has therefore to take care of all the aforesaid aspects. On one hand, the real and substantial relief to be granted in the matter would be not just restoring the status ante and invalidating of the transactions but the relief ought to be that the process of acquisition is taken to its logical end and the objective that said acquisition was to achieve must be sub-served. On the other hand, even while passing appropriate directions in the nature that there was a deemed Award, the interest of those landholders who had not parted with their holdings and had faced the acquisition and had not participated in the proceedings ought to be secured. Further, the interest of purchasers of individual apartments is also required to be protected. It is axiomatic that wherever a superior Court finds that the exercise of power by the executive was mala fide or that there was fraud of power, the full and substantial relief must be granted. The principles of restitution and concept of unjust enrichment as explained in cases referred to hereinabove show that no person who directly or indirectly was a party to the fraud of power be allowed to reap or

retain any unjust enrichment. Though, it is through the acts on part of the landholders that the builders/private entities were brought on the scene, we don't hold them to be pari delicto alongwith builders/private respondents. But at the same time they cannot be given benefit of annulment of transactions and restoration of their holdings. The greater victim in the matter was the public interest. The land holders in any case had received considerations which were greater than what was awarded in Awards dated 09.03.2006 and 24.02.2007, which were the most proximate awards in terms of time. However, even when we propose to take the matter to its logical end and say that there was a deemed award, those who had not sold away their holdings and had not in any manner either directly or indirectly, tried to jeopardize the process of acquisition, cannot at this length of time be subjected to any prejudice. We will therefore have to exclude that body of landholders who had not transferred their holdings unlike the writ petitioners and similarly situated landholders, so also the purchasers of individual apartments from the width of our directions. Though fraud vitiates every resultant action and on that principle every beneficiary/ purchaser in subsequent transaction must restore such benefit, an exception has to be made in favour of individual purchasers of flats or apartments who are being left undisturbed while moulding the relief. Any payments made by them can be adjusted towards the amounts payable to the colonizer and their possession can be regularized by HUDA/HSIDC on suitable conditions by making allotment to them. This aspect will stand covered by directions issued hereafter.

39. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:

> (a) The decisions dated 24.08.2007 and 29.01.2010 referred to hereinabove are set aside as being brought about by mala fide exercise of power. In our considered view, those decisions were clear case of fraud on power and as such are annulled.
>
> (b) The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010.

The lands which were not transferred by the landholders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions.

(c) Subject to the directions issued hereafter, the lands covered under aforementioned direction (b) shall vest in the HUDA/HSIDC, as may be directed by the State of Haryana, free from all encumbrances. HUDA/HSIDC may forthwith take possession thereof. Consequently all licences granted in respect of lands covered by the deemed Award dated 26.08.2007 will stand transferred to HUDA/HSIDC.

(d) Since the dropping of acquisition on 24.08.2007 and subsequent decision dated 29.01.2010 have been set aside, the period between 24.08.2007 and upto the date of this judgment shall not be counted for the purposes of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(e) All transactions entered into during the period from 24.08.2007 till 29.01.2010, pursuant to which the original landholders transferred their holdings in favour of builders/private entities or third parties shall be subject to and the interest of the respective parties shall be governed by the directions issued hereafter.

(f) Consistent with directions issued in Para 33 of Uddar Gagan (Supra), the builders/private entities will not be entitled to recover the consideration paid by them to the landholders. The sale consideration paid by the builders/private entities to the landholders shall be treated towards compensation under the award and the landholders will not be required to refund any amount to such builders/private entities. The landholders will be at liberty to prefer Reference under Section 18 of the Act within a period of three months from today. For the purposes of maintaining such Reference the reasoning that weighed while passing Awards dated 09.03.2006 and 24.02.2007 shall be the basis. If the Reference Court were to enhance the compensation, the amounts received by the landholders by way of consideration from the builders/private entities shall be appropriated towards such sum awarded by the Reference Court. If the landholders are still entitled to something more than what they had received from the builders/private entities, the differential sum shall be made over to them by the State of Haryana towards acquisition of their interest in the lands in question. If however, what the landholders had received towards consideration from the builders/private entities is found to be in excess of what is awarded by the Reference Court, the remainder shall not be recovered from them.

(g) Consistent with the directions issued by this Court in Paragraphs 33.6 and 33.7 in Uddar Gagan (supra), the builders/private entities will be entitled to refund/reimbursement of any payment made to the landholders or the amounts that had been spent on development of the land, such payments shall be made by HUDA or HSIDC on being satisfied about the extent of actual expenditure not exceeding HUDA or HSIDC norms on the subject as the case may be. Refund will however be in respect of amount at which the landholders sold the land and not of subsequent sales. As regards subsequent transactions, the subsequent purchasers will have remedies against their respective vendors. Claims of builders/private entities entitled to refund will be taken up after settling claims of third parties from whom the builders/private entities had collected monies. No interest will be payable on such amounts.

(h) The third parties from whom money had been collected by the builder/private entities will either be entitled to refund of the amount from and out of and to the extent of the amount payable to the builder/private entities in terms of above direction, available with the State, on their claims being verified or will be allotted the plots or apartments at the agreed price or prevalent price, whichever is higher. Every such claim shall be verified by HUDA or HSIDC. In cases where, constructions have been erected and the entire project is complete or is nearing completion, upon acceptance of the claim, the plots or apartments shall be made over to the respective claimants on the same terms and

conditions. Except for such verified and accepted claims, the remaining area or apartments will be completely at the disposal of HUDA or HSIDC, as the case may be, which shall be free and competent to dispose of the same in accordance with the prevalent policy and procedure.

In order to facilitate such exercise all third parties who had purchased or had been allotted the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today.

(i) As found by us in the preceding paragraphs, substantial sums were made over to "middle men". In the pending investigation, the CBI may do well to unravel the truth. In any case, such hefty sums which were made over to "middle men" cannot be said to be rightfully earned by and belonging to them. In fact, this actually represents the return for being able to garner the lands in question and getting requisite licences under the provisions of the Haryana Act and a benefit derived out of fraud on power. In our view this money rightfully belongs to the State and none other. We direct the authorities of the State as well as the Central Government to reach the depths of such transactions and recover every single pie and make it over to the State Government. A complete investigation in the transactions including unearthing unnatural gains received by "middle men" shall be undertaken by the CBI.

(j) If CBI has filed charge sheet before the concerned Court, the same may be dealt with as per law.

(k) The State shall give benefit of "Rehabilitation and Resettlement of Land Acquisition Oustees" policy of the State/HUDA/HSIDC to the landholders. Area so required shall be reserved out of the acquired land itself.

(l) The State may revisit its policy of change of land use and giving colonization licence in respect of land which is subject matter of acquisition.

(m) We are given to understand that a Commission of Enquiry was appointed by the State of Haryana to enquire into certain facts concerning acquisitions in respect of lands in Gurgaon Manesar Urban Complex and that the matter is presently subject matter of challenge in a pending writ petition in the High Court of Punjab and Haryana on account of which further steps are held up. Without expressing any opinion on the merits or demerits of such challenge, we request the High Court to deal with and dispose of the matter as early as possible and preferably within two months from the date of receipt of a copy of this order so that public interest may not suffer by delay in such decision.

40. Before we close, we must record our sincere appreciation for the efforts put in and for the invaluable assistance rendered by the learned Amicus Curiae. His analytical approach and suggestions have helped us immensely in resolving the issues.

41. The appeals stand allowed in the aforesaid terms. There shall be no order as to costs.

.....J. (Adarsh Kumar Goel) .....J. (Uday Umesh Lalit) New Delhi March 12, 2018