for the respondent, even though pressed, was unable to cite any judgment which still holds the field in consonance with *Kanwar Jagat Bahadur Singh's case* (supra)

14. To conclude, it must now be held that *Kanwar Jagat Bahadur Singh's case* (supra), is no longer good law and the same is hereby over-ruled.

15. As a necessary consequence of the above, it would follow that all later Single Bench judgments of this Court, taking the view in line with *Kanwar Jagat Bahadur Singh's case* (supra), are erroneously decided. We would, therefore, over-rule *Union of India* v. *Virsa Singh,* (12), and, (*Kanwaljit Singh & Ors.* v. *The State of Punjab and Ors.*) (13).

16. In the light of the aforesaid discussion, the answer to the question posed at the out-set is rendered to the effect that the court-fee payable on a memorandum of appeal, under Section 11 of the Act has to be *ad valorem* in accordance with Section 8 read with Schedule—1 Article 1 of the Court-fees Act, 1870.

17. In view of the consistent stream of precedent in this Court, which we have now reversed, the cross-objector must obviously be afforded some time to make up the deficiency in the court-fee. We accordingly allow a period of two months to do the needful.

*N.K.S.*

FULL BENCH

*Before S. S. Sandhawalia, C.J., P. C. Jain, & M. M. Punchhi, JJ.*

RAM PURI,—*Petitioner.*

*versus*

THE CHIEF COMMISSIONER and others,—*Respondents.*

*Civil Writ Petition No.* 2830 *of* 1970.

February 18, 1982.

*Capital of Punjab (Development and Regulation) Act* (XXVII *of* 1952)—*Sections* 3 *and* 8-*A*—*Chandigarh (Sale of Sites and Buildings)*—*Rules* 1960—*Rules* 11-*D and* 12—*Constitution of India,* 1950—*Articles* 14 *and* 19(1) (f)—*Section* 8-*A*—*Nature and Scope of*—Word

(12) 1979 P.L.R. 340.

(13) F.A.O. 269/79 Decided on 3rd September, 1979.

*'resumption' used therein—Whether connotes divestiture of title on only a temporary divesting of possession—Power of resumption—Whether exercisable only where transferee fails to pay the consideration money or any instalment thereof—Such power—Whether can be exercised even for breach of any of the other conditions of the sale—Section 8-A—Whether violative of Articles 14 and 19(1)(f).*

*Held,* (per majority S. S. Sandhawalia, C.J. and P. C. Jain, J. M. M. Punchhi, J. contra) that the word 'resumption' designedly used by the legislature in section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 must be construed in the context in which it is placed for the larger purposes of the Act and not in obstruse isolation. In essence 'resumption' means that whatever right, interest or grant is given the same is taken back. As a term of art, it means the restoration of *status quo ante*. The use of the word 'resumption' therefore implies that the parties revert to the same position as existing at the time of the original giving away. It would thus follow that where initially only title has passed its resumption would involve a divestiture of title and on the other hand where only possession has passed, resumption would necessarily imply divestiture of possession. Again, an analysis of the provisions of section 8-A itself would show that the sanction of resumption was attracted only on the existence of three alternative pre-conditions, namely, (i) failure to pay consideration money for the sale of any site or building; (ii) failure to pay any instalment due of the aforesaid consideration money and (iii) breach of any other condition of the sale. Once any one of these conditions stood satisfied then an enabling power was conferred on the Estate Officer to resort to two district penalties, that is, the resumption of the site and building as such or secondly the forfeiture of the consideration money, interest and other dues payable in respect of the sale, but limited to only 10 per cent thereof. It is thus manifest that the statute provides for two distinct sanctions, namely, divestiture of title and possession of the transferee with regard to the site or building as such and the forfeiture up to 10 per cent of the consideration money paid. That these are and were meant to be separate penalties is manifest from the distinct terminology advisedly used by the legislature, namely, resumption on the one hand and the forfeiture on the other. It must, therefore, be held that resumption under section 8-A means clearly the divestiture of title of a building or the site, as the case may be. (Paras 27, 30, 31 and 32).

Amrit Sagar Kashyap *vs.* Chief Commissioner, 1980 P.L.R. 441.

OVER-RULED.

*Held,* (per majority S. S. Sandhawalia, C.J. and P. C. Jain, J. M. M. Punchhi, J. contra) that neither on principle nor on the language, the provisions of section 8-A give the least inkling of any distinction between transferees who have paid the whole of the consideration money due and those who have yet to pay some part of the consideration money or the instalment and other dues thereon. The power of resumption applies uniformly to all transferees in the happening of the three pre-conditions referred to in section 8-A. (Para 41).

*Held,* (per S. S. Sandhawalia, C.J. and P.C. Jain, J.) that by the legislative changes introduced in sections 3 and 8 of the Act as also by the deletion of section 9 altogether and its substitution by section 8-A of the Act, the charge on the transferred site has been abolished and similarly the clog on the transfer to the third party stands removed. Further, there are now in-built guarantees and safeguards provided in section 8-A itself by ensuring a reasonable opportunity to show cause against any proposed resumption or forfeiture. A further limitation that forfeiture in no case shall exceed 10 per cent of the total amount of consideration money has been itself laid down therein. The Estate Officer is obliged to record his reasons after giving adequate opportunity including the right to lead evidence to the transferee before passing an order adverse to his interest. The statute and the rules thereunder also provide for an appeal and revision against such orders. Therefore, it is now vain to contend that section 8-A suffers from the vice of discrimination or in any way violates the equality clause under Article 14 of the Constitution.

(Para 9).

*Held,* (per S. S. Sandhawalia, C.J. and P. C. Jain, J.) that a challenge to the constitutionality of a statute on the anvil of Article 19(1) (f) is not merely to be judged from the particular provisions of the section alone. It is permissible and, indeed, it is desirable for the Court to take judicial notice of the acts which lead to the enactment of the statute and the avowed objects and reasons thereof. Again, the preamble to the Act may provide a clue to its interpretation. Further, the provisions of the impugned sections along with the other supplementary provisions of the Act as also the statutory rules made thereunder, have all to be viewed as a whole for testing its constitutionality. Applying these guidelines it will be noticed that the entire Act was purposefully directed to provide a reasonable social control of the Urbanisation visualised by the creation of an altogether new Capital city for the State from a scratch. The three-fold pre-eminent ideas underlying the same were the need and incentive to create an altogether new town at a place where none existed and that too within

the shortest possible time and further to ensure that it conformed to an ideal concept of a planned city as against the haphazard urbanisation or the mushroom growth of slums which in the ultimate analysis can even strangulate an existing town to extinction. Adverting specifically to section 8-A, the restrictions for the exercise of the powers vested thereby exist not only in the express provision thereof, but are equally discernible from the larger purpose of the Act, its preamble as also the other sections thereof when read with the statutory rules framed thereunder. The larger purpose of the planned development and regulations of the new capital city, as spelled out in the preamble of the Act is the fixed polestar to which the ultimate exercise of the power of resumption under section 8-A is hitched. What deserves highlighting herein is that this power of resumption under section 8-A merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. To put it in plain language it is not mandatory for the authority to order resumption but only in extreme cases it enables it to do so when the other powers and sanctions to enforce the purpose of the Act have failed or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly. As section 8-A now stands, it mandatorily requires a notice to show cause to the person concerned whenever the exercise of this power is contemplated. Not only is such a person entitled to have a reasonable opportunity of contesting such a notice, but the law in terms confers on him the power to lead evidence in support of his stand. The mandate as laid on the Estate Officer is to record his reasons in case he orders resumption. Apart from these in-built safeguards under section 8-A it is the statutory rules which provide for an appeal against the order of resumption by the Estate Officer to the Chief Administrator. It is, thereafter that the rules zealously provide for a revision to the Chief Commissioner, who is the executive Head of the Union Territory. Again, sections 4, 5, 6, 13 and 15 of the Act provide a varigated armoury of sanctions and penalties against the violation of the Act, Rules or the conditions of allotment. It seems to be rather writ large in the statute itself that normally resort would be made to these provisions before applying the ultimate sanction spelled out in section 8-A. In the last analysis even if an order of resumption has been made, rule 11-D must be adverted to which tempers the rigour and softens the strictness of resumption by making it possible to offer the same property to the original transferee on certain liberal terms. To conclude, in the larger conspectus of the purposes of the Act itself, its preamble, specific provisions of section 8-A, the setting in which it is placed along with the supplementary sections of the Act and the rules framed thereunder, it

has to be held that the enabling power of resumption conferred thereby is only a reasonable restriction on the fundamental right to hold, acquire and dispose of property and is, therefore, in no way violative of Article 19(1) (f). (Paras 15, 21, 22, 23 & 24).

*Held,* (per M. M. Punchhi, J. contra.) that on the failure of the transferee to pay the consideration money or any instalment thereof, on account of the sale of the property, or on the committal of a breach of any other condition of such credit sale in which the consideration money etc. remains payable, the Estate Officer can exercise the right of resumption which is nothing but a right of re-entry over the property owned by the Government so as to quieten the title. As an appendage he has also to confiscate to the State, in the name of the forfeiture, a sum upto 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the property but from the sum already paid to him on account of the sale. Such resumption which may be called "statutory resumption" under section 8-A cannot cover up the situation of breaches of other conditions at a time when the entire consideration money etc. stands paid up and the transferee's title is prominently quietened. The words 'resume' & 'resumption' are confined within the boundaries of possession of the grant and does not touch title to the grant at all, for these work on the assumption that the title to the property, total or fractional, was with the grantor and he never parted with it ever. If, on the other hand, the transferor had conferred title on another but had reserved to himself, on the breach of the covenants in the transfer the right to resume the property, then it cannot cause divestiture of title, but only conferment of a right to recall possession on acts of omission or commission by the transferee and such resumption could be called covenental resumption. In covenental resumption, the title to the property cannot divest in favour of the Central Government by an order of resumption since the cause of resumption arises on breach of conditions of sale and not on breach of any provision of law allowing divestiture of title as specific punishment. Section 8-A is, thus, a complete code and provides two pronged weapon in the hands of the Estate Officer one pointing to a civil consequence of re-entry by resumption and the other sequestral or penal, as the case may be, dependent on the kind of resumption sought. It is a complete code for statutory resumption and conveyance deed is a complete document conferring a right on the Estate Officer for re-entry/resumption for breach of terms and conditions of the deed. (Paras 64, 66, 68 & 85).

*Case referred by a Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, and Hon'ble Mr. Justice S. P.*

*Goyal, to a Full Bench on 26th November, 1980 to consider* inter alia *the correctness of the view in Amrit Sagar Kashyap's case (supra). The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice P. C. Jain, and Hon'ble Justice M. M. Punchhi, again referred the case to the Division Bench on 18th February, 1982 after answering the relevant questions for disposal on merits in accordance with the answer to the aforesaid pristinely legal questions. The Hon'ble Mr. Justice M. M. Punchhi, however, gave dissenting judgment.*

*Amended Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari quashing the orders Annexures A, B, C, D and the order of auction by which site No. 20, shop-cum-flat, Sector 26, Grain Market Chandigarh, has been resumed, be issued. With a further prayer that the respondents be directed not to interfere with the rights and ownership of the petitioner which he has acquired in shop-cum-flat No. 20 after paying full price to the respondents. It is further prayed that section 8-A (1) and (2) of the Capital of Punjab (Development and Regulation) (Chandigarh Amendment) Act, 1973, be declared* ultra vires *Articles 19(1) (f) and Articles 14 and 31 of the Constitution of India.*

Kuldip Singh Advocate with R. S. Mongia, Advocate, *for the Petitioner.*

Anand Swaroop, Senior Advocate with M. L. Bansal, Advocate, *for the Respondents.*

JUDGMENT

*S. S. Sandhawalia, C.J.*

(45) (1) Whether the resumption designedly envisaged by the legislature inserting Section 8-A in the Capital of Punjab (Development and Regulation) Act, 1952, connotes in essence a divestiture of title, and not merely a temporary divesting of possession only is one of the significant question, which has necessitated this reference to the Full Bench. Before us, the very constitutionality of the aforesaid Section 8-A was also made the subject-matter of serious challenge. Equally in issue is the discordance of views in the Division Bench judgment in *Amrit Sagar Kashyap* v. *Chief Commissioner, U.T., Chandigarh and others,* (1), on one hand and the Full Bench decision in *Brij Mohan* v. *Chief Administrator,* (2) on the other.

(1) 1980 P.L.R. 441.
(2) 1980 P.L.R. 621.

(2) The issues aforesaid arise against the panoramic backdrop of the very concept and the subsequent rise of the planned city of Chandigarh (which now vies for the aesthetic claim of being the City Beautiful), now the joint capital of the sister States of Punjab and Haryana. In the broader perspective, the root question is, whether the ultimate sanction of the resumption of sites and buildings (including within its sweep the divestiture of title) can be made available to the authority for the larger purpose of the crying need of planned urban development in order to prevent the mushroom growth of slums, or the haphazard accumulation of what has been rightly termed as concrete jungles.

(3) As is manifest, the core questions herein are so pristinely legal that it may well be unnecessary to enter the thicket of facts of the two individual cases before us. This is the more so, because I would propose that their ultimate decision be left to the referring Division Bench in the light of the reply to the questions before the Full Bench. Therefore a skeletal reference to the facts in *C.W.P. No.* 2830 of 1970 (*Shri Ram Puri* v. *Chief Commissioner, Chandigarh*) suffices. The petitioner, therein purchased a shop-cum-flat site in public auction way back on March 24, 1957 for a sum of Rs. 10,600 and after payment of the full price thereof, a deed of conveyance was executed four years later on July 11, 1961. The petitioner asserted that having paid the full price of the site, he had become the full owner in possession of the property irrespective of any condition, whilst the stand of the respondent—Chandigarh Administration was that these ownership rights were clearly subject to the covenants contained in the deed of conveyance, including that of raising a construction on the site within a prescribed time. The petitioner committed a breach of this condition by not building thereon. By his order dated July 13, 1965, the Estate Officer resumed the site and forfeited the whole of the money paid under Section 9 (since repealed) of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called 'the Act'), because there had been a breach of rule 12 of the Chandigarh Sale of Sites Rules, 1962, for the building not having been completed within time. The petitioner successfully appealed to the Chief Administrator, Chandigarh, who allowed the same on May 20, 1967 (annexure 'B') and set aside the order of resumption subject to the condition that the building be completed within a period of six months from that date. The

petitioner again failed to fulfil the condition imposed by the Chief Administrator and the building was not completed within the time allowed. The Estate Officer proceeded to resume the plot and listed it for public auction. The petitioner again approached the Chief Commissioner, but by his order dated January 29, 1970 (annexure 'D'), he declined to interfere with the orders of the Estate Officer or to grant any further time for construction, holding the revision petition to be time barred. Nevertheless, he granted a partial relief to the petitioner that out of the sum of Rs. 10,600 paid as price, he forfeited only an amount of Rs. 600 and ordered the balance of Rs. 10,000 to be refunded to the petitioner. It is to challenge these orders that the present writ petition has been preferred.

(4) It is not only apt but is indeed a pre-requisite herein to view both the constitutionality as also the construction of section 8-A of the Act against the background of its legislature history. When originally enacted in 1952, the Act did not contain this provision and its legislative parent was stction 9 of the Act. In *Messrs. Jagdish Chand Radhey Sham* v. *The State of Punjab and others*, (3, section 9 of the Act was challenged as being *ultra vires* of Article 14 of the Constitution of India but this contention was repelled and the appeal dismissed. However, on further appeal their Lordships in *Messrs. Jagdish Chand-Radhey Shyam* v. *The State of Punjab and others*, (4), reversed the High Court judgment and struck down section 9 as being violative of Articles 14 and 19 (1) (f) of the Constitution of India. It was, thereafter, that the legislature effected the necessary statutory changes by amending section 3 of the Act and inserting section 8-A in its present form whilst altogether deleting section 9 therefrom. That a conscious attempt to conform to the final Court's dictum was made in order to remove the defects which had attracted the vice of unconstitutionality is patent from the following statements of objects and reasons for Act No. 17 of 1973:—

> "The Supreme Court in *Messrs. Jagdish Chand-Radhey Sham* v. *The State of Punjab and others* (5), declared section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act XXVII of 1952), as in force in the Union Territory of Chandigarh, as being violative of

(3) L.P.A. 218/65 decided on 21st February, 1966.
(4) AIR 1972 S.C. 2587.
(5) C.A. 1099/67.

Articles 14 and 19 (1) (f) of the Constitution and held that the Central Government is not entitled to resume the site or building transferred under section 3 of the Act, or to forfeit the money paid in respect of such transfer under the said section 9. The main ground on which the Supreme Court had based its conclusions was that there is nothing in the Act to guide the exercise of power by the Government as to when and how any of the methods for recovering the amount of consideration in arrears specified in sections 3, 8 and 9 of the Act, will be chosen.

2. The decision of the Supreme Court has created several practical difficulties in administering the provisions of the Act. Further, the situation created by the decision of the Supreme Court is already having an adverse effect on the regulation and development of the entire city of Chandigarh, which has been planned and developed with great care and at considerable expense over the past several years. It is, therefore, essential to remove the objections pointed out by the Supreme Court by amending the Act retrospectively from the 1st of November, 1966, being the date on which the Union Territory of Chandigarh was formed and to validate the actions taken under the impugned provisions of the Act.

3. The Bill seeks to achieve the aforesaid objectives."

In conformity with the above the requisite changes were made in the statute and it is apt to juxta-pose the earlier and the later provisions of the Act:—

| *Earlier provisions* | *Later provisions* |
|---|---|
| S.3. (1) The State Government may sell, lease or otherwise transfer, whether by auction, allotment or oterwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be | S.3. (1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such |

| *Earlier provisions* | *Later provisions* |
|---|---|
| made under this Act, think fit to impose. | terms and conditions as it may, subject to any rules that may, be made under this Act, think fit to impose. |
| (2) The consideration money for any transfer under sub-section (1) shall be paid to the State Government in such manner and in such instalments and at such rate of interest as may be prescribed. | (2) The consideration money for any transfer under sub-section (1) shall be paid to the Central Government in such manner and in such instalments and at such rate of interest as may be prescribed. |
| (3) The unpaid portion of the consideration money together with interest or any other amount, if any, due to the State Government on account of the transfer of any site or building under sub-section (1) shall be a first charge on that site or building, as the case may be; and notwithstanding anything contained in any other law for the time being in force, no transferee shall, except with the previous permission in writing of the Estate Officer be entitled to sell, mortgage or otherwise transfer (except by way of lease from month to month) any right, title or interest in the site or building transferred to him under sub-section (1) until the amount which is a first charge under this sub-section has been paid in full to the State Government. | (3) Notwithstanding anything contained in any other law for the time being in force until the entire consideration money together, with interest or any other amount, if any due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government. |
| S.9. In the case of non-payment of consideration money or any | 8-A. (1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and |

| *Earlier provisions* | *Later provisions* |
| --- | --- |
| instalment thereof an account of the transfer of any site or building under section 3 or of any rent due in respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer or breach of any rules made under this Act, the Estate Officer may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money if any, paid in respect thereof. | forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both should not be made.<br><br>(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale." |

(5) In the wake of the aforesaid historical backdrop one must first inevitably advert to the challenge raised against the constitutionality of section 8-A of the Act. Learned counsel for the petitioner had pressed the same primarily on the anvil of Article 19(1)(f) of the Constitution. However, since some veiled rumblings on the basis of Article 14 were also sought to be raised, it is best to dispose them of at the outset.

(6) It is manifest that the attack on section 8-A on the basis of Article 14 is only a hang over of the striking down of the earlier

section 9 of the Act by their Lordships of the Supreme Court in *Messrs. Jagdish Chand-Radhey Shyam's case*. On the analogy of the observations made therein it was still sought to be suggested that the present provision of section 8-A continued to suffer from the same vice, despite the deletion of section 9 from the statute and the amendments made in sections 3 and 8 of the Act as also the insertion of the present provision therein.

(7) That the aforesaid tenuous submission is now wholly untenable is manifest from a bare reference to the observations of their Lordships in *Messrs. Jagdish Chand-Radhey Shyam's* case itself. Therein section 9 was struck down basically on the ground that there were two procedures available to the authority — the one being more drastic than the other and no guideline had been provided for resort to either one of them. It was observed—

> "....This feature that the Government can proceed either under the ordinary law of the land or under the 1952 Act shows that there is discrimination. There is nothing in the statute to guide the exercise of power by the Government as to when and how one of the methods will be chosen".

It is obvious that in essence the unconstitutionlity was plainly rested on the ratio of *Northern India Caterers (Private) Ltd. and another* v. *State of Punjab and another* (6), which still held the field.

(8) At the very outset it may be noticed that the *Northern India Caterers' case* was specifically overruled by their Lordships in *Maganlal Chhagranial (P.) Ltd.* v. *Municipal Corporation of Greater Bombay and others* (7). Consequently, that line of reasoning is no longer valid and the very corner stone on which the alleged unconstitutionality of the earlier section 9 rested has vanished.

(9) Now apart from the above the subsequent amendments introduced in sections 3 and 8 as also the deletion of section 9 altogether and its substitution by section 8-A of the Act was designed to and has undoubtedly cured the infirmities which their Lordships had discerned in the previous provisions in *Jagdish Chand-Radhey*

(6) AIR 1967 S.C. 1581.
(7) AIR 1974 S.C. 2009.

Shyam's case. By these legislative changes the charge on the transferred site has been abolished and similarly the clog on the transfer to the third party stands removed. Further there are now in-built guarantees and safeguards provided in section 8-A itself by ensuring a reasonable opportunity to show cause against any proposed resumption or forfeiture. A further limitation that forfeiture in no case shall exceed 10 per cent of the total amount of consideration money has been itself laid down therein. The Estate Officer is obliged to record his reasons after giving adequate opportunity including the right to lead evidence to the transferee before passing an order adverse to his interest. Further the statute and the rules thereunder provide for an appeal and revision against such orders. Therefore, it is now vain to contend that section 8-A suffers from the vice of discrimination or in any way violates the equality clause under Article 14 of the Constitution.

(10) In fairness to Mr. Kuldip Singh, the learned counsel for the petitioner, it must be noticed that in the ultimate analysis he candidly conceded his inability to raise any meaningful challenge to the vires of section 8-A on the basis of Article 14. The contention which he ultimately pressed in all seriousness was with regard to the violation of Article 19(1)(f) of the Constitution. Though counsel shrank from the brink of contending that every resumption (in the sense of being a divestiture of both ownership and possession) would necessarily be violative of the right of property because of its rigour, he nevertheless contended that normally such a power of resumption must be construed as irrational or unreasonable when the evil sought to be corrected could be prevented by a milder remedy. It was pointed out that the Act gives a wide variety of sanctions against the infringements of the Act and the Rules to the authorities ranging from a mere fine under sections 13 and 14 on the one hand as against the ultimate power of resumption of title and possession of the property itself. Such an amplitude of unguided powers in the authority, according to the learned counsel, was unreasonable and violative of the right to property. In nut-shell the argument is that the resumption of title and possession was a sanction so rigorous that the courts must presume it to be violative of the fundamental rights under Article 19(1)(f) of the Constitution.

(11) At the very threshold Mr. Anand Swaroop, the learned counsel for the respondent—Chandigarh Administration took up the

stand that the fundamental right to property both under Article 31 and under Article 19(1)(f) having now been taken away in view of the repeal of the aforesaid provisions by the Forty-Fourth amendment, it was no longer permissible to permit a challenge to the vires of section 8-A on the basis of the aforesaid provision. With considerable plausibility it was contended that the constitutionality of the provision has to be tested on the anvil of the Constitution as it exists at the time of the challenge. The submission was that it would be incongruous today to strike down section 8-A on the basis of Article 19(1)(f) of the Constitution which was no longer on the statute book. Counsel also went to the extreme length of contending that in the peculiar context the repeal of the fundamental right to property under Articles 31 and 19(1)(f) must be deemed to be retrospective.

(12) In fairness to Mr. Anand Swaroop, it must be conceded that his stand is not devoid of plausibility on principle despite the fact that learned counsel for the parties were unable to cite any precedent for or against the proposition. However, because of the fact that I am of the considered view (for reasons which appear hereafter) that section 8-A is in no way violative of Article 19(1)(f) it is both unnecessary and academic to finally pronounce on the merits of this stand taken by Mr. Anand Swaroop on behalf of the respondent—Chandigarh Administration.

(13) Coming to grips to the challenge under Article 19(1)(f) it seems plain that the issue must be viewed within the authoritative guidelines in this context laid way back by the final Court itself in *Jyoti Pershad and others* v. *Administrator for the Union Territory of Delhi and others*, (8). Therein also the analogous provisions of the Slum Areas (Improvement and Clearance) Act, 1956 intended for the planned development of the National Capital were pointedly assailed on the basis of the fundamental right to property. Repelling the attack and upholding the constitutionality of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, their Lordships spelt out the following two guidelines (amongst others) for approaching the issue of constitutionality in this context:—

(i) It is manifest that the above rule would not apply to cases where the legislature lays down the policy and indicates the rule or the line of action which should serve as a

(8) AIR 1961 S.C. 1602.

guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of a violation of Art. 14, but as really being beyond its power.

(ii) It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself."

Further elaborating the matter in the particular context of Article 19(1)(f) it was observed as follows :—

"... Where the legislature fulfils its purpose and enacts laws, which in its wisdom, are considered necessary for the solution of what after all is a very human problem the tests of 'reasonableness' have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and particularly in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters, functioning as it were in vacuo, but as parts of a society which is trying by enacted law to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole."

and again.

"... But if, as we have held earlier, the Act by its preamble and by its provisions do afford a guidance to the 'competent authority' by pointing out the manner in which the

discretion vested in him should be exercised, the provision as to an appeal assumes a different significance. In such cases, if the 'competent authority' oversteps the limits of his powers or ignores the policy behind the Act and acts contrary to its declared intention, the appellate authority could be invoked to step in and correct the error. It would, therefore, be a provision for doubly safeguarding that the policy of the Act is carried out and not ignored in each and every case that comes up before 'the competent authority'. The procedure laid down by the Act for the hearing by the 'competent authority' and the provision for enquiry, renders the 'competent authority' a quasi-judicial functionary bound to follow fixed rules of procedure and its orders passed after such an enquiry are to be subject to appeals to the Administrators. We consider these safeguards very relevant for judging about the reasonableness of the restriction. In considering these matters one has to take into account the fact — a fact of which judicial notice has to be taken — that there has been an unprecedented influx of population into the capital, and in such a short interval, that there has not been time for natural process of expansion of the city to adjust itself to the increased needs."

(14) At the very threshold one has to remind oneself that the fundamental right under Article 19(1) (f) to acquire, hold and dispose of property is not an absolute right. It can be hedged in by the imposition of reasonable restrictions on its exercise in the interest of general public. Apart from this express limitation imposed by the Constitution itself, binding precedents of the Final Court have authoritatively highlighted that in this context considerations of larger, social and public purpose are germane to the construction of this Article. The crux of the matter, therefore, is whether the restrictions spelled out by Section 8-A of the Act on the right of property are reasonable and in public interest?

(115) Now it seems plain from the ratio of *Jyoti Parshad's case* (supra) that the challenge to the constitutionality of a statute on the anvil of Article 19(1)(f) is not merely to be judged from the particular provisions of the Section alone. It is permissible and indeed desirable for the Court to take judicial notice of the facts which led

to the enactment of the statute and the avowed objects and reasons thereof. Again the pre-amble to the Act may provide a clue to its interpretation. Further, the provisions of the impugned Section alongwith the other supplementary provisions of the Act as also the statutory rules made thereunder, have all to be viewed as a whole for testing its constitutionality.

(16) Applying the aforesaid guide lines one cannot lose sight of the backdrop against which the present Act and its predecessor provisions were enacted. The partition of the country in 1947 led to the severance of the erstwhile province of Punjab into East Punjab in India and West Punjab in Pakistan. The human holocaust that followed this division resulting in uprooting of millions of people on either side of the border is indeed too well known and recent to need any great elaboration. Not only very large sections of the people in East Punjab were thereby rendered homeless, but the State also lost its famed and legendary capital of Lahore, whose origin went back to times immemorial. The city of Lahore had always been to the province of Punjab what Paris has been to France. It was against this background of the State of East Punjab being without a permanent capital of its own, that the idealist statesman and first Prime Minister of India conceived his favourite dream child of an altogether new capital for the State of East Punjab. The choice of any of the existing cites was deliberately avoided, and a wholly virgin site against the backdrop of Shivalik foothills was chosen. This idea was concretised by an equally great mind in the field of architecture Monsieur Le 'Carbousier. All this is a pointer to the fact that the larger purpose was to create a model capital city unshackled by any existing construction or constructions and what was more to create it quickly. Both the urge and the urgency of a capital city are writ large in the Capital of Punjab (Development and Regulation) Act, 1952 (President's Act No. 5 of 1952). The brief objects and reasons thereof underscore the aforesaid facts in the following terms :—

> "The construction of the new Capital of the Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to *regulate the sale of building sites and to ensure that the purchasers construct buildings in accordance with bye-laws and generally*

*observe the conditions of sale.* It is necessary also to provide for the maintenance of the amenities provided in the Capital before a properly constituted local body takes over the administration of the City. The Capital of Punjab (Development and Regulation) Act, 1953, seeks to carry out the above objects."

(17) On December 19, 1952, the President's Act was repealed and its provisions were re-enacted with some modification in the present Capital of Punjab (Regulation and Development) Act, 1952. The concern of the legislature for the planned development and regulation of the new capital of the city is again manifest from the following objects and reasons of the supplementary legislation in the shape of the Punjab New Capital (Periphery) Control Act, 1952:—

"The Punjab Government are constructing a New Capital named "Chandigarh." The Master Plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far, for the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new City. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present."

(18) It is obvious from the above as also from the provisions of the Punjab New Capital (Periphery) Control Act, 1952, that not only was the legislature deeply concerned about the regulated planned development within its new capital city, but with a large foresight had sought to prevent any haphazard growth or the creation of slums and ramshackle construction even on the periphery of the new town extending to a distance of five miles on all sides from the outer boundary of the capital.

(19) Reference in the context is again called to the preamble of the Act, which is in the following terms :—

"An act to make certain provisions in respect of the development and regulation of the Capital of Punjab."

(20) It is in the above setting alongwith the other supplementary provisions of the Act as also the Punjab Capital (Development and Regulation) Buliding Rules, 1952, framed thereunder, that the constitutionality of Section 8-A has to be viewed in the larger perspective.

(21) In repelling the attack or the constitutionality of Section 8-A Mr. Anand Swaroop, learned counsel for the Chandigarh Administration rightly highlighted the fact that the entire Act was purposefully directed to provide a reasonable social control of the urbanisation visalised by the creation of an altogether new capital city for the State from scratch. The threefold pre-eminent ideas underlying the same were the need and incentive to create an altogether new town at a place where none existed and that too within the shortest possible time, and further to ensure that it conformed to an ideal concept of a planned city as against the haphazard urbanisation or the mushroom growth of slums which in the ultimate analysis can even strangulate an existing town to extinction. The counsel submitted that it was to effectuate these purposes that the ultimate civil sanction by way of resumption of sites and buildings in case of the grossest violation of the provisions of the Act or the rules framed thereunder has to be viewed in a broader perspective and this is nothing but a reasonable restriction on the right of property.

(22) Adverting specifically to Section 8-A the restrictions for the exercise of the powers vested thereby exist not only in the express provision thereof, but are equally discernable from the larger purpose of the Act, its pre-amble as also the other Sections thereof when read with the statutory rules framed thereunder. The larger purpose of the planned development and regulation of the new capital city, as spelled out in the preamble of the Act, is the fixed polestar to which the ultimate exercise of the power of resumption under Section 8-A is hitched. What deserves highlighting herein is that this power of resumption under section 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. In sub-section (1) thereof it is first in the discretion of the Estate Officer that he may issue a notice to show cause why an order of resumption of site or building may not be made. Equally under sub-section (2) after considering the cause shown against such a notice it is optional for the Estate Officer to order such resumption

or not the word used in both the sub-sections is 'may' and not 'shall'. Mr. Anand Swaroop rightly pointed out that this power of resumption is indeed the last arrow in the quiver of a number of sanctions to enforce the planned development and the regulation of the capital and to be only restorted to in a situation commensurate with its necessary exercise. To put it in plain language it is not mandatory for the authority to order resumption, but only in extreme cases it enables it to do so when the other powers and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly. As Section 8-A now stands (in sharp distinction to the deleted section 9) it mandatory requires a notice to show cause to the person concerned whenever the exercise of this power is contemplated. Not only is such a person entitled to have a reasonable opportunity of contesting such a notice, but the law in terms confers on him the power to lead evidence in support of his stand. The mandate as laid on the Estate Officer is to record his reason in case he orders resumption. Apart from these in built safeguards under section 8-A, it is the statutory rules which provide for an appeal against the order of resumption by the Estate Officer, to the Chief Administrator. It is thereafter that the rules zealously provide for a revision to the Chief Commissioner, who is the executive head of the Union Territory. Obviously in a proper case the right to approach the Court under Article 226 of the Constitution of India is equally open.

(23) Reference must also be made to the provisions of Sections 4, 5, 6, 13 and 15 of the Act, which provide a variegated armoury of sanctions and penalties against the violation of the Act rules or the conditions of allotment. It seems to be rather writ large in the statute itself that normally resort would be made to these provisions before applying the ultimate sanction spelled out in Section 8-A. In the last analysis even if an order of resumption has been made, rule 11-D which has been recently added to the rules must be adverted and is in the followings terms:—

> "11-D. (1) Where a site has been resumed under Section 8-A of Act No. XXVII of 1952 for any reasons, the Estate Officer may on an application, retransfer the site to the

outgoing transferee, on payment of an amount equal to 10 per cent of the premium originally payable for such property or one-third of the difference between the price paid and its value at the time when the application for transfer is made whichever is more:

It is obvious that this rule tampers the rigour and softens the strictness of resumption by making it possible to offer the same property to the original transferee, on certain liberal terms. It is well settled that the taint of unconstitutionality does not attach to a provision of law merely because there may be remote possibilities of the abuse of power conferred thereby. In such a situation it is only the arbitrary or the wrongful exercise of the power which can be struck down but not the statute itself.

(24) To conclude, in the larger conspectus of the purposes of the Act itself, its preamble; the specific provisions of section 8-A; the setting in which it is placed along with the supplementary sections of the Act and the rules framed thereunder; it has to be held that the enabling power of resumption conferred thereby is only a reasonable restriction on the fundamental right to hold, acquire and dispose of property and is, therefore, in no way violative of Article 19(1)(f).

(25) Before parting with this aspect of the constitutionality of the provision it is necessary to recall that soon after the insertion of section 8-A in the Act its vires were the subject-matter of strenuous challenge in *Shri S. P. Gandhi* v. *The Union of India and others* (9). The Division Bench, however, concluded as follows.—

> "....There is no infringement of the right to hold property by Ujagar Singh, respondent, section 8-A of the Act is not violative of Article 19 of the Constitution of India and the contention of the learned counsel for the petitioner is rejected as devoid of force."

> "....In view of the law laid down in *Maganlal Chhagganlal (P.) Ltd.* v. *Municipal Corporation of Greater Bombay and*

(9) C.W. 2649/74 decided on 13-8-75.

*others* (7) (supra) the provisions of section 8-A are not violative of Article 14 of the Constitution and, therefore, the contention of the counsel for the petitioner is rejected."

For the relatively elaborate reasons recorded in the earlier part of the judgment we are in respectful agreement with the aforesaid ratio in *S. P. Gandhi's case*, which is hereby affirmed.

(26) Having upheld the constitutionality of section 8-A one must now advert to its true nature and scope. Here in the core question is the import of the word 'resumption' which indeed has primarily necessitated this reference to the Full Bench. Does it connote in essence a divestiture of title ? or, does it mean (as convassed on behalf of the petitioner) only a temporary divesting of possession in favour of a trustee who is obliged to restore the same if the default is later rectified.

(27) Before one examines the aforesaid issue critically on principal and the specific language of section 8-A it appears to me at the very threshod that the matter is covered by authoritative precedent. Judicial discipline, therefore, demands that the question being not *res-integra* the same must be viewed in the light of existing precedent. Reference in this connection, therefore, must first be made to the Full Bench judgment in *Brij Mohan* v. *Chief Administrator and others* (2) (supra). Therein also the width of section 8-A of the Act had specifically fallen for consideration. The long standing view in this Court earlier was that resumption in assence involved a divesture of title so much so that the person aggrieved thereby was only the owner in whom such title vested and not the tenant or any other person who may have some possessory rights with regard thereto. This view was challenged on the ground that resumption under the statute in essence involved both a divestiture of title and equally of possession and, therefore, both the owner and his tenant in lawful possession would be affected by the same and, therefore, would be entitled to a hearing. The Full Bench reprodued section 8-A *in extenso* and adverted in depth to its true ambit both on principle and the existing authorities and then conclude as follows:—

"The proposed order of resumption has dual consequences;

(i) the depriving of ownership right in the site or building

which concerns only the owner of the site or building; and (ii) the deprivation of the lessee of his lawful possession thereof. Such being the consequence of the order of resumption, both lessee and his lessor would be affected by the order and would thus be entitled to be heard before such an order is passed."

The aforesaid conclusion appears to me as both clear and categoric. That being so it is not justifiable to presume that the words of the Full Bench do not mean that they specifically say in terms. As already noticed the question was squarely before them and their adjudication thereon is clearly one of the ratio *deci dendi* therein. Before us no meaningful challenge to the correctness of the above view could be raised. Apart from being bound by the said judgment I am equally and unreservedly in agreement with the said view. In existing precedent, therefore, it is authoritatively settled that presumption under section 8-A means clearly the divestiture of title of a building of the site as the case may be.

(28) However, there is direct discordance with the aforesaid view in the following observations of the later Division Bench in Amrit Sagar Kashayap's case (supra).

"....The stoppage of user contemplated by resumption will have the effect of the Estate Officer entering upon possession of the property, and to hold it, for and on behalf of the owner till such time that the alleged misuser was stopped and the consideration money reimbursed to the extent of the forfeiture caused therefrom. It appears to us that the power of resumption conferred on the Estate Officer is somewhat akin to that of a caretaker or trustee, to hold, and use the property on behalf of the owner, till such time that the penalty is paid and the site or building is restored to its permitted use. It is only on this reasoning that section 8-A can be called as a measure in furtherance of the Development, regulation and maintenance of the planned city of Chandigarh."

It seems to be clear that the aforesaid view is in direct and head long conflict with what the Full Bench had earlier laid down in *Brij*

*Mohan's case.* This line of reasoning, therefore, cannot hold the field and must give way to the weight and authority of the Full Bench dictum. In *Jai Kaur* v. *Sher Singh,* (10), their Lordships have unequivocally laid down as follows in such a situation:—

> "....It is trut that they did not say in so many words that these cases were wrongly decided, but when a Full Bench decides a question in a particular way every previous decision which had answered the same question in a different way cannot but be held to have been wrongly decided. We had recently occasion to disapprove of the action of a Division Bench in another High Court in taking it upon themselves to hold that a contrary decision of another Division Bench on a question of law was erroneous and stressed the importance of the well-recognised judicial practice that when a Division Bench differs from the decision of a previous decision of another Division Bench the matter should be referred to a larger Bench for final decision. If, as we pointed out there, considerations, of judicial decorum and legal propriety require that Division Benches should not themselves pronounce decision of other Division Benches to be wrong, such considerations should stand even more firmly in the way of Division Benches disagreeing with a previous decision of the Full Bench of the same Court."

In the light of the aforesaid authoritative enunciation it has necessarily to be held that on the doctrine of precedent itself *Amrit Sagar Kashyap's case* does not lay down the law correctly.

(29) Despite the above it nevertheless becomes necessary to examine (*de hors* any precedent) the observations in *Amrit Sagar Kashyap's case* because the specific point of reference to the Full Bench is with regard thereto and further because of the exhaustive adherence to that view (albeit with considerable modification) by my learned brother Punchhi, J.

(30) Now what is the true import and width of the word 'resumption' designedly used by the legislature in section 8-A ? It

(10) A.I.R. 1960 S.C. 1118.

goes without saying that the same must be construed in the context in which it is placed for the larger purposes of the Act and not in abstruse isolation. The tyrany of an overly literal construction has to be avoided and it is well to remind oneself of the following picturesque words of Krishna Iyer, J., in *Subhash Chandra and others* v. *State of U.P. and others* (11).

> "So, dictionary versus dictionary leaves the matter at large, apart from the plain function of the court to gather the meaning, not under the dictatorship of distionaries but guided by the statutory purpose without being deflected by logomachic exercises, the mischief to be countered and the public interest to be advanced."

(31) Nevertheless some reference to the authoritative dictionary meaning of the word is inevitable though bainery enough it cannot be conclusive. The Webster's Third New International Dictionary traces the origin of the word 'resumption' from its latin parents of 're' meaning 'back' and 'sume' — 'to take, i.e., to take back' whatever has been given:

> Resume: to take up again, take back, to take back to oneself (on default, the granter does not automatically resume title); go back to using; to take possession again.
>
> Resumption: the taking again by the Crown or other authority of lands or tenements previously granted (as on the ground of false suggestions or other errors.).

Similarly in the Corpus Juris Secundum 77 the undermentioned meaning is given:—

> "To begin anew, to take again; to take back; to take up again after an interruption."

It would thus be plain that in essence 'resumption' therefore, means that whatever right, interest or grant is given the same is taken back. As a term of art, therefore, it means the restoration of *status qua ante*. The use of the word 'resumption'; therefore, implies that the parties revert to the same position as existing at the time of the

(11) 1980 S.C.C. 324.

original giving away. Therefore, it would follow that where initially only title has passed its resumption would involve a divestiture of title and on the other hand where only possession has passed, resumption would necessarily imply a divestiture of possession.

(32) Again an analysis of the provisions of section 8-A itself which is relevant for the purpose would show that the sanction of resumption was attracted only on the existence of three alterative pre-conditions:—

(i) the failure to pay the consideration money for the sale of any site or building;

(ii) failure to pay any instalment due of the aforesaid consideration money; and

(iii) breach of any other condition of the sale.

Once anyone of these conditions stood satisfied (it bears repetition that the use of this power is not mandatory) then an enabling power was conferred on the Estate Officer to resort to two distinct penalties, that is, the resumption of the site and building as such, or secondly the forfeiture of the consideration money, interest and other dues payable in respect of the sale but limited to only 10 per cent thereof. It is thus manifest that the statute provides for two distinct sanctions, namely, the divestiture of title and possession of the transferee with regard to the site or building as such and the forfeiture up to 10 per cent of the consideration money paid. That these are and were meant to be separate penalties is manifest from the distinct terminology advisedly used by the legislature, namely, resumption on the one hand forfeiture on the other. on this aspect there appears to be little dispute and in fact this was virtually the common stand of the parties.

(33) That resumption both under the original section 9 and its successor provision of section 8-A connoted the divestiture of title was the consistent view from the original enactment in 1952 right up to the final seal of approval set thereon by the Full Bench in *Brij Mohan's case*. Equally it is worth recalling that a similar power to resume was also conferred by section 10 of the Punjab Urban Estates Development and Regulation Act, 1964. Under the statute also the meaning attributed to that section invariably was that it took away clearly the title of the owners. No earlitr judgment under anyone of

these provisions could be cited which had ever taken a contrary view. In this unbroken line of precedent extending over three decades the discordant note was struck for the first time in *Amrit Sagar Kashyap's* case where the view has been taken that resumption under section 8-A means only the divestiture of possession without affecting the title or ownership of the transferee and further that even the resumption of such a possession was merely akin to that of a caretaker or a trustee to hold and guard the property on behalf of the owner till such time the penalty is paid and the site or building is restored to its permitted use.

(34) Frontally assailing the ratio in *Amrit Sagar Kashyap's* case Mr Anand Swaroop contended that it was an error to construe section 8-A in isolation. Both the section and the concept of resumption therein has to be considered in the light of the amended section 3 and the other provisions of the Act as also the recently inserted rule 11-D and the covenants in the prescribed sale deed forms. Highlighting the anamolous results which would flow from the construction placed on section 8-A in *Amrit Sagar Kashyap's* case it was pointed out that thereby the title would continue to vest in the transferee and merely a possessory right as a trustee would arise in favour of the Estate Officer. How is even this possessory right to be exercised or effectuated? No procedure for obtaining possession from the transferee or his lessees or sub-lessees in such a situation is provided by law. If the Estate Officer were to choose to make resort to the obvious provisions of the Public Premises Act he would strightaway be faced by the insurmountable hurdle, that the same applies only to premises which are under public or State ownership. Therefore, if the ownership does not vest in the State resort would not be possible to obtain possession under the aforesaid statute and in effect even the tenuous possessory right in favour of the Estate Officer would remain an ethereal one and incapable of actual execution or enforcement.

(35) Equally it was forcefully pointed out that on the ratio of Amrit Sagar Kashyap's case the moment the Estate Officer takes possession for the misuser of the property in violation of the conditions of sale, the same would obviously be discontinued with the result that he would be obliged to restore possession immediately with all the obligations laid on him as a care-takes or a trustee. Assuming that the possession is delivered back, the transferee or his

lessees may again revert to the same mis-use or even a more grievous one with the result that another futile exercise of securing possession may be resorted to by the Estate Officer and the moment he does so he would be forthwith under the obligation of restoring it to the transferee. This process could go on *ad infinitum*. Therefore, it was rightly argued that so construed the sanction under the statute far from being in any way effective would render the same totally futile and the misuse sought to be prohibited could be made with absolute impunity.

(36) Another aspect which particularly calls for highlighting is the fact that one of the avowed objects of the Act was not only to have a planned city but of creating its capital within the shortest possible time. This was sought to be effectuated by making it a necessary condition of purchase that the site sold would be built upon within a prescribed period. Rule 12 of the Chandigarh (Sale of Sites) Rules, 1952 was in the following terms:—

> "The transferee shall complete the building within Five years from the date of issue of allotment order, in accordance with the rules regulating the erection of buildings, unless otherwise it is mutually agreed upon that the construction shall be completed within any period less than five years. This time limit may be extended by the Estate Officer if he is satisfied that the failure to complete the building within the said five years of the period mutually agreed upon, was due to causes beyond the control of the transferee."

Now if a violation of the aforesaid rule is made and the transferee recalcitrantly refuses to build thereon then the Estate Officer by taking possession of such a vacant site merely becomes a gratuitous caretaker of the same till the transferee choses to exercise his option of building thereon. There is no manner of doubt that in a situation of this kind the very purpose and the spirit of the Act of creating a new capital speadily would be totally frustrated. Equally it would render the authorities powerless against the terrible evil of profiteering in developed urban sites by unscrupulous transferees who could defiantly bide their time till prices escalated sky high whilst the Estate Officer gratuitously guarded their unbuilt sites.

(37) The recently inserted rule 11-D has already been referred to and quoted above in para 21 of the judgment. It deserves recalling

that it makes it permissible to re-transfer the resumed sites or building to the original owner with certain penalties. Mr. Anand Swaroop submitted that no challenge has been raised to either the vires or the plain purpose of this provision. Therefore, to consider resumption as a mere divestiture of possession without in any way affecting title would render the whole of rule 11-D as totally otiose and utterly meaningless. It was rightly pointed out that rule 11-D was a clear pointer to the basic intent and assumption of the legislature that the power of resumption provided for in section 8-A involves a clear divestiture of title and consequently this rule provided for retransfer of the title of such a resumed property in favour of the original transferee. The canon of harmonious construction, therefore, also requires that resumption under section 8-A must be construed as a clear divestiture of title so as to give a meaning, content, and practical effect to rule 11-D as well. Equally, it has to be noticed that this later provision would considerably tamper the rigour of section 8-A in appropriate cases and yet leave a meaningful sanction in the hands of the Estate Officer which is necessary in the larger interest of social control and as an ultimate safeguard for the object of a planned and regulated urban development.

(38) It is a well-settled canon of construction that even where two constructions of a provision are possible, an interpretation which leads to glaringly anomalous results and would tend to frustrate the basic object of the statute, must be avoided. On the basis of this larger principle also, the view expressed in *Amrit Sagar Kashyap's case* (supra), has to be necessarily deviated from.

(39) For arriving at the conclusion, which he has, my learned brother Punchhi, J., has proceeded from the premise that the title to a site can never be distinct or separate from the building constructed thereon. He has relied on three hoary latin maxims and accepted them as axiomatic and prying emanations of the eternal wisdom. With the greatest respect I am unable to agree that the hoary wisdom of Roman law still governs this field completely in view of the following authoritative dictim of their Lordships to the contrary in *Dr. K. S. Dhairyawan & Ors.* v. *J. R. Thakur and others* (12):—

> "There was no absolute rule of law in India that whatever was affixed or built on the soil became part of it, and was subject to the same rights of property."

(12) 1959 S.C.R. 799.

The aforesaid view has been recently elaborated by the Full Bench of this Court in *Hari Parshad Gupta* v. *J. K. Kaushik* to hold that the law in India does expressly sanctify a separate title in the site as against the building or super structurt constructed htereon.

(40) Again it is plain from the very exhaustive judgment of my learned brother Punchhi, J., that he has himself found the ratio of *Amrit Sagar Kashyap's case* (supra) as unsupportable in its totality, In paragraphs 39 and 40 of his judgment, he has clearly opined (in direct contradictions to the earlier view) that the Estate Officer would not hold the resumed property for and on behalf of the transferee and further that he would neither be a caretaker nor a person akin to a trustee. To sustain the remaining part of the ratio (as partially modified and explained and affirmed by him) in *Amrit Sagar Kashyap's case* (supra) my learned brother with great erudition has resorted to an altogether fresh classification of statutory and convential resumption and thereafter sought to import the doctrine of 'quietening the title.' With the greatest respect I have not been able to persuade myself to subscribe to that line of reasoning.

(41) With great deference I am compelled to conclude that both on the existing precedent of the Full Bench in *Brij Mohan's case* (supra) as also on principle, and the construction of the language of section 8-A, *Amrit Sagar Kashyap's case* (supra) does not lay down the law crrectly and is hereby overruled.

(42) I have above upheld both the constitutionality of section 8-A and subscribed to the view of a wider scope of the power of resumption conferred thereby. However, there is no manner of doubt that resumption in the sense of a divestiture of title would be the ultimate civil sanction in the armoury of the authorities to effectuate the twin purpose of a regulated and planned development as also the expeditious creation of the capital city in the State. However, once it is held that such a power is within the four-corners of the Constitution, it is then entirely for the legislature or the executive to determine whether as a matter of policy they wish to assume such a power and invoke its use. Nevertheless, learned counsel for the Chandigarh Administration highlighted the fact that such a

12-A. C.R. 2298 of 1980 decided on 30th Novembtr, 1901.

power was not only desirable but a necessary one for a planned and regulated urbanization which is the crying need of the hour as against the mushroom growth of slums and haphazard growth of ramshackle towns. The creation of the City Beautiful of Chandigarh was pointed out as a notable example in this field with the judicious exercise of such a power. Mr. Anand Swaroop appeared to be on a firm ground in contending that perhaps in the absence of this ultimate sanction, the twin object of the Act to urgently create a capital city from scratch and to have a planned and regulated development where not only whole sectors but sometimes each building site, etc., was allocated for specific purposes, would not have been possible. It was pointed out that because of the need for the early and immediate building of a viable capital town, it had to be invariably provided that the transferred sites should be built upon within a specific time and even a clog on their transfer had to be imposed in order to prevent a mere profiteering in urban land in the interest of the large social necessity. The Master Plan of the town provided for residential, industrial, commercial and educational zoning and even within these zones specific buildings were ear-marked for specific purpose. If such a planned city (the idea whereof was rather new in the country) was to be translated into reality, it was inevitable and necessary to give the ultimate sanction in the hands of the authorities to resume the sites and buildings if the transferees recalcitrantly refuse to conform to the ideal of a well-palnned and well-regulated development, especially with regard to the need of quick urbanization. Even learned counsel for the petitioner had to half-heartedly concede that this object cannot be achieved but by resuming the sites on which the transferees either refuse or are unable to build within the prescribed time. It would thus appear that the ultimate sanction of resumption (though it should be one of last resort) is a necessary power in the hands of the authority to achieve the larger social purpose. It appears that, in essence, the conflict herein is between the individualistic property rights and the larger public weal of planned and regulated urbanization. The head-on clash is between the doctrine of *laissex faire* against the somewhat urgent need of the welfare State to provide a planned and regulated urbanization for its citizenry. Inevitably private interest must give way to public weal and the larger interest of social control must override the out-moded theories of *laissex faire*. I am inclined to the view that the ultimate sanction of the resumption may well be a necessary

power for sound and planned urbanization and its selective use undoubtedly advances that purpose.

(43) I must, however, sound a sharp note of caution. It bears repetition that the power of resumption is the ultimate civil sanction and must, therefore, be a weapon of last resort. Inevitably it should be used with great caution and circumspection. The Act and the Rules framed thereunder vest the authority with a variety of wide ranging powers to effectuate and regulate the planned development of the city. Reference in this connection may be made to section 4 which empowers the Central Government or the Chief Administrator to issue directions in respect of the erection of buildings and also to section 5 which bars the erection of buildings in contravention of the Building Rules. Again section 6 empowers the authority to require a proper maintenance of sites and buildings. Section 8 then confers the power to impose penalties and prescribes the mode for the recovery of arrears. More specifically sections 13, 14, and 15 provide for penalties for the contravention of directions and the violation of the Trees Preservation Order and the Advertisement Control Order as also for the breach of Rules. Section 17 then warrants an entry into building and land after notice for purposes of survey and verificaion that the construction thereon is in conformity with the law. A violation of the statutory provisions and the directions given thereunder can also be visited by Criminal prosecutions and section 18 prescribes the procedure therefor. Without pretending to be exhaustive, other sanctions are also spelt out in the Rules framed under the Act. From all this it seems to follow that normally resort would be first made to the lesser sanctions aforesaid and it is only when they are ineffective, or in the extreme cases where resumption may rightly seem to be the only appropriate sanction to the authority, that recourse will be made thereto. I see no genuine basis for the needless apprehension expressed by the learned counsel for the petitioner that the administration would use a hammer to swat a fly or in other words resort to resumption for relatively insignificant infraction of the conditions of sale or the payment of consideration money. Equally it is well to remember that even where resumption has necessarily to be resorted to it should be liberally tampered with the provisions of the recently inserted rule 11-D which empowers the authority to retransfer the site to the original transferee in specified situations. I would, therefore, hold that though the judicious and lawful exercise of the powers of resumption must be

upheld and in certain situations may be both necessary and desirable, yet any arbitrary or discriminatory applications thereof would at once attract the ever vigilant power of the Court under the writ jurisdiction.

(44) Before parting with this judgment (despite its relative prolixity) it is necessary in fairness to Mr. Kuldip Singh to notice his last ingenious submission on the applicability of section 8-A. He attempted to devide this provision into two sharply distinct compartments. It was submitted that the power of resumption is attracted only in case where the transferee has as yet not paid the whole consideration due for the site or building. The core of the argument was that section 8-A was applicable only to such transferees who because of the non-payment of the total consideration had not perfected their title of ownership which remained contingent under sub-clause (3) of the section 3 of the Act. According to him only in such a context resort could be had to resumption because under the later provision such a property continues to belong to the Central Government.

(45) I am wholly unable to agree. The provisions of section 8-A give not the least inkling of any distinction between transferees who have paid the whole of the consideration money due and those who have as yet to pay some part of the consideration money or the instalments and other dues thereon. The power of resumption thereunder as analysed by me earlier applies uniformly to all transferees in the happening of the three pre-conditions referred to in para 30 above. Neither on principle nor on the language of section 8-A is it possible to draw any distinction betwixt transferees who have paid the full consideration money and those against whom same amounts are lawfully outstanding in accordance with the contract. On the aforesaid argument of the learned counsel he was necessarily and logically pushed to take the stand that once the whole consideration has been paid then section 8-A would have no application whatsoever whatever may be the breach of the conditions of sale or however gross the misuse of the site or the building faced with a problem of a transferee of an unbuilt site who after payment of full consideration money blatently refuses to conform to the condition of constructing a building thereon within a specified period counsel had to say that no resumption under the statute was either possible

or conceivable. Similarly he had to take the stand that in case of a building where the transferee flagrantly violated the specified use of the building, that is, converting a residential, building into a factory or a shop into a residence then the Administration was powerless to resort to section 8-A against him. It was sought to be submitted that this gross mischief may perhaps be corrected by an amendment of the law only.

(46) Learned counsel for the petitioner even when pressed could cite no authority for his stand that after the full payment of consideration money the power of resumption would be danuded against such a transferee. I have already noticed that neither principle nor the language of section 8-A warrants such an interpretation. The anomalous results that flow therefrom have already been noticed and it is hardly any satisfaction to hold that the legislators should now intervene to remedy the mischief. In view of the exhaustive discussion in the earlier part of this judgment this contention of the learned counsel for the petitioner is also to be rejected.

45. To conclude, for the detailed reasons recorded above, I would hold that—

(1) Section 8-A is not violative of either Article 14 or Article 19(1) (f) of the Constitution;

(2) In conformity with the earlier Full Bench view in **Brij** *Mohan's case*, the resumption under Section 8-A of the Act, in essence, connotes a divestiture of the title of the transferee; and

(3) *Amrit Sagar Kashyap* v. *Chief Commissioner* (1 supra) does not lay down the law correctly on this point and is hereby overruled.

The case would now go back to the Division Bench for disposal on merits in accordance with the answer to the aforesaid pristinely legal questions.

*Prem Chand Jain, J.*

(47) I have gone through the judgments of the learned Chief Justice and brother M. M. Punchhi, J., I agree with the view taken by the learned Chief Justice.

*M. M. Punchhi, J.*

(48) In *Amrit Sagar Kashyap* v. *Chief Commissioner, U.T., Chandigarh and others,* (supra), a Division Bench of this Court (the judgment of which was prepared by me and concurred by D. S. Tewatia, J.) had the occasion to interpret section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (for short the Act) and in particular the meaning of the words "resume" and "resumption" occurring prominently therein. The view thus taken came to be doubted very often necessitating its re-examination by a Full Bench, on these two matters being referred to it, being Civil Writ Petitions Nos. 2830 of 1970 and 1149 of 1979, which await disposal at our end. Amusingly, it has again fallen to my share to prepare the judgment, be it a case of reorientation or refurbishing the earlier view or one of substitution or reversal. A fresh look on the subject becomes essential uninhibited of the view taken by the Division Bench.

(49) A small legislative history would not be out of place. The town of Chandigarh, where the seat of this Court is established, found its way on the geographical map as a capital of the then State of Punjab, towards realisation of a dream of its people, who had lost their capital in the wake of the partition of the country. It was incidentally the first planned city of free India which ultimately came to be called — "THE CITY BEAUTIFUL". To ensure its proper planning and regulate its development as a State measure, the Punjab Legislature enacted the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act No. XXVII of 1952) which was a substitute to the earlier statute, the President's Act No. V of 1952 which was thereby repealed.

(50) Certain broad features of the said Act may be noticed. The Government under section 3 of the Act had power to sell by auction, allotment or otherwise any land or building. The consideration money was to be paid in such a manner as the Government may prescribe. The unpaid portion of the consideration money was to be first charge on the site or building. The transferee except with the previous permission in writing of the Estate Officer was prohibited to sell, mortgage or otherwise transfer any right, title or interest in the site or building until the amount which was a first charge had

been paid in full. Section 8 of the Act permitted the Government to proceed against the transferee to realise the amount due on consideration money or on instalment or any other due as an arrear of land revenue. Section 8 further provided for imposition of penalty for default in payment of money and the recovery of the same as an arrear of land revenue. Besides this provision providing statutory security for the unpaid portion of the consideration money etc., section 9 of the Act gave power to the Estate Officer to cause resumption of the site or building sold under section 3 in the case of non-payment of consideration money, or any instalment thereof, or in the case of breach of any other condition of such transfer, or breach of any Rules made under the Act. Section 9 further gave the power to the Estate Officer that he could in his discretion forfeit the whole or any part of the money, if any, paid in respect of the transfer of any site or building under section 3.

(51) The vires of section 9 of the Act came to be questioned in (*Messrs. Jagdish Chand-Radhey Shyam* v. *The State of Punjab*) (3 supra) decided by a Division Bench of this Court. In that case, the then petitioner had purchased a commercial site on instalments and being permitted to assume possession thereon had raised a construction and installed machinery therein. On his defalcation to make timely payments of instalments, the site was resumed and the sum paid towards consideration money was forfeited. The appellate order, which was left uninterfered with in revision, allowed the resumption to be set aside subject to payment of arrears with interest, penalty to the extent of ten per cent of the amount in arrears in cash, and to the execution of a conveyance deed in respect of the site. The then petitioner's contention before this Court, firstly in the writ petition and then before the Letters Patent Bench, that he having become the owner of the site making him immune from any action of resumption under the Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was repelled. Though the formal deed of conveyance was not executed in that case, yet the relevant statutory form thereof provided in the Rules was taken aid of in order to interpret the scope of sections 8 and 9 of the Act and to their constitutionality. D. K. Mahajan, J. with whom D. Falshaw, C.J. concurred observed as follows :—

> "It appears to me that sections 8 and 9 do not provide for the same set of circumstances in each case. There would be

no question of resumption of property in cases where the title has passed to the transferee, nor could the legislature be considered to have vested that power with the executive, because the exercise of such a power would be violative of Article 31 of the Constitution. If a citizen cannot be deprived of his property except in accordance with law, any confiscatory provision would be hit by Article 31 of the Constitution. If this broad consideration is kept in view, it will be seen that an order under section 9 can only be passed in cases where the title still vests in the Government and the transferee has only got the right to remain in possession of property till he has paid the full consideration for the transfer. Moment he pays the full consideration, the title will pass on to the transferee and in that event, no necessity will arise to act under section 9. Section 9 will only come into play where the transferee has been handed over the possession subject to certain conditions and he has violated one or more of those conditions. In this situation, Government has been given the power to resume possession of its property. In cases, where title has passed and part of the consideration is still due, Government has been given the power to act under section 8 and recover the same as arrears of land revenue. Only in one case, action could simultaneously be taken under sections 8 and 9 and that is where the title in property has not passed to the transferee and for the use and occupation of the premises, something is still due to the State Government for the period of that use and occupation. In this class of cases, the Estate Officer can act both under sections 8 and 9, otherwise I can visualize no other case where proceedings under sections 8 and 9 could be initiated simultaneously."

As would be plain from the dictum of the Letters Patent Bench, section 9 was specifically held to be inoperative in cases where title had passed to the transferee. It remained applicable so long as the title had not passed to the transferee and part of the consideration was still due. In that case proceedings could be undertaken simultaneously under sections 8 and 9. But the Letters Patent Bench cautioned that the Estate Officer would not take proceedings under

section 9 necessarily when he could recover the sale consideration by proceedings under section 8. And in case of abuse of power or *mala fide* exercise, this Court's jurisdiction to rectify the mischief was asserted. In that view, section 9 was held to be *intra vires*. The Supreme Court, however, on appeal in *Messrs. Jagdish Chand-Radhey Shyam* v. *The State of Punjab and others*, (4 supra), reversed the view of the Letters Patent Bench with regard to the deferred ownership aspect on the plain reading of section 3 of the Act. It observed as follows:—

> "Section 3 totally repels the conclusion arrived at by the High Court that the Government remains the owner until the entire consideration money is paid. A charge is created for the unpaid portion of the consideration money. The prohibition against sale, mortgage or transfer by the transferee except with the previous permission of the Estate Officer of any right, title or interest in the site or building establishes the ownership and rights of the transferee. If the Government were the owner it could not be said that the transferee could sell, mortgage or transfer any right, title or interest. The statute speaks of payment of consideration money by sale to the transferee. The Government cannot after sale remain the owner. The statute forbids such construction. If the Government is the owner the Government cannot at the same time be entitled to a charge on the property for the balance of the consideration money. A charge on a property is under the Transfer of Property Act enforced by instituting a suit and bringing the property to sale. If the property yields a higher price than what the charge represents, the owner is entitled to the excess sum."

With regard to section 8 of the Act, the Supreme Court observed as follows :—

> "14. Under the ordinary law of the land it is open to the Government to enforce the charge and to recover the due on consideration money, instalments or any other due from the transferee. It is also open to the Government under section 8 of the Act to proceed against the transferee to realise the amount due on consideration money or on

instalment or any other due as an arrear of land revenue. Section 8 provides penalty for default in payment of money and the recovery of the same as an arrear of land revenue. These remedies are deterrent and drastic."

And in regard to section 9 of the Act, the Supreme Court clearly discerned two concepts which were pivotal in it, one of resumption and the other of forfeiture. Dealing with them separately with regard to forfeiture, it was observed as follows :—

"15. Section 9 of the 1952 Act empowers the Government to forfeit the whole or any part of the money in case of non-payment of consideration money or instalments or other dues for breach of convenants. Under the ordinary law of the land there is relief against forfeiture for breach of covenant or provisions. Section 9 does not offer any relief against forfeiture. This feature that the Government can proceed either under the ordinary law of the land or under the 1952 Act shows that there is discrimination. There is nothing in the statute to guide the exercise of power by the Government as to when and how one of the methods will be chosen".

With regard to the concept of resumption the Supreme Court observed as under :—

"16. Section 9 confers power to resume the site. There is a charge on the land for the unpaid consideration money. This charge can be enforced by instituting a suit in Court of law. The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand when the Government proceeds under section 9 of the Act to resume the land or building the Government proceeds under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. There is no guidance in the Act as to when the Government will resort to either of the remedies.

17. Again in all these cases of recovery of money or resumption of land or building and forfeiture of moneys paid the

Government may choose and discriminate in proceeding against one person in one manner and another person in another manner."

The Supreme Court then finally while striking down section 9 of the Act and reversing the decision of this Court observed as follows :—

"18. The Act creates a charge on the property. The Act forbids creation of a third party right by the transferee until the amount represented by the charge is paid in full. In the teeth of statutory security and enforceability it is totally unreasonable restriction on the enjoyment of property by resuming the site for defaults in payments of money and forfeiting the moneys paid by the transferee.

19. For these reasons, we are of opinion that the Government is not entitled to forfeit the moneys paid and resume the site under the provision contained in section 9 of the 1952 Act. These provisions violate Articles 14 and 19(1)(f). These provisions are unconstitutional."

(52) Decision in *M/s. Jagdish Chand Radhey Shyam's case* (supra) came at a time when Chandigarh had ceased to be the capital of Punjab. It had become under the Punjab Reorganisation Act, 1966, a Union Territory with effect from 1st November, 1966. The Parliament by Act No. XVII of 1973 caused amendment to the Act by virtue of which section 3 was amended, section 8 was substituted, section 8-A was introduced and section 9 was omitted from the Act. The broad features of the amendment brought about can well be gathered from the statement of objects and reasons published in the Gazette of India Extraordinary dated the 18th December, 1972 :—

"That Supreme Court in *Messrs. Jagdish Chand Radhey Shyam* v. *The State of Punjab and others* (5 supra), declared section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act XXVII of 1952), as in force in the Union Territory of Chandigarh, as being violative of Articles 14 and 19(1)(f) of the Constitution and held that the Central Government is not entitled to resume the site or building transferred under section 3 of that Act, or to

forfeit the money paid in respect of such transfer under the said section 9. The main ground on which the **Supreme** *Court had based its conclusions was that there is nothing in the Act to guide the exercise of power by the Government as to when and how any of the methods for recovering the amount of consideration in arrears specified in sections 3, 8 and 9 of the Act, will be chosen,* (Emphasis supplied).

2. The decision of the Supreme Court has created several practical difficulties in administering the provisions of the Act. Further, the situation created by the decision of the Supreme Court is already having an adverse effect on the regulation and development of the entire city of Chandigarh, which has been planned and developed with great care and at considerable expense over the past several years. *It is, therefore, essential to remove the objections pointed out by the Supreme Court by amending the Act retrospectively from the 1st of November,* 1966, *being the* date on which the Union Territory of Chandigarh was formed, and to validate the actions taken under the impugned provisions of the Act. (Emphasis supplied).

3. The Bill seeks to achieve the aforesaid objectives."

The emphasised language reveals the concern of the Government. It was mainly directed towards recovery of consideration money. The substratum on which the judgment of the Supreme Court was based had necessarily to be shaken. Thus section 8 was substituted. The deterrent and drastic procedure provided therein to realise the amount due on consideration money as arrears of land revenue, with or without penalty, was totally abandoned and it came out of the pale of the newly substituted section. Thenceforth section 8 was made to confine only in respect of arrears of rent or defaulted payments of fees or taxes levied. Sub-sections (1) and (2) of section 3 in substance remain the same. However, sub-section (3) of section 3 was substituted. The old sub-section (3) providing prohibition imposed on the transferee with regard to sale, mortgage etc. of any right, title or interest in the property, except with the permission in writing of the Estate Officer, was abandoned. Section 9 was omitted and in its

place section 8-A was introduced. Broadly speaking, it provided for resumption of a site or building or both, as the case may be, which had been sold under section 3. The concept of sale was preserved therein retentively. Significant change was brought by the newly added sub-section (3) of section 3 providing that notwithstanding anything contained in any other law for the time being in force, until the entire consideration money etc. was paid, the site or building sold under sub-section (1) thereof shall continue to belong to the Central Government. Thus by the amendment, the basis of the Supreme Court decision in *Messrs. Jagdish Chand Radhey Shyam's case* (supra) with regard to the ownership aspect stood displaced. The concept of sale of property on price promised to be paid, as provided in section 54 of the Transfer of Property Act was preserved in section 8-A and its language was kept at that level. On the other hand, section 3(3), with the non abstante clause, brought the legal fiction that the Central Government, despite the sale, would remain the owner of the property sold till the entire consideration money etc. was paid. Thus instead of holding a charge over the property, the amendment fictionally provided that the Central Government would be the owner thereof. The amendment seemingly brought the situation of the law to the level as understood by this Court in Letters Patent Appeal No. 218 of 1965 aforementioned with regard to the ownership aspect,—*vide* objects and reasons afore-quoted and emphasised.

(53) To appreciate the above deductions better, let sections 3 and 8-A of the Act be reproduced one after the other : —

> "*Sec-c. Power of Central Government in respect of transfer of land and building in Chandigarh.*—(1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.
>
> (2) The consideration money for any transfer under sub-section (1) shall be paid to the Central Government in such manner and in such instalments and at such rate of interest as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government.

*Sec. 8-A Resumption and forfeiture for breach of conditions of transfer.*—(1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under sections 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.

(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale."

(54) It is plain from the reading of language of section 8-A that both the concepts of resumption as also of forfeiture was retained as of old section 9, since repealed. The newly added section is deemingly operative from 1st November, 1966. Under the repealed section 9, causing forfeiture of the whole or any part of the money, if any, paid in respect of a sale under section 3 or paid in

respect of a transfer of any site or building under section 3 was discretionary. Now it is mandatory for the Estate Officer under section 8-A to cause forfeiture, in addition to resumption; forfeiture of the whole or any part of the money, if any, paid in respect thereof subject to the outer limit that it cannot exceed 10 per cent of the total amount of the consideration money etc. payable in respect of the sale of the site or building or both.

(55) In *Amrit Sagar Kashyap's case* (supra), the Division Bench too highlighted the difference between the concepts of 'resumption' and 'forfeiture' and came to hold as follows :—

> "Now it is patent that section 8-A employs both the words 'resumption' and 'forfeit'. Resumption is tagged to the site/building, or both, and forfeit is tagged to a percentage of the consideration money etc. It is plain and suggestive that the converse is not true. The site cannot be forfeited and the requisite percentage of consideration money etc. cannot be resumed. Obviously, there is no power with the Estate Officer to forfeit the site under the garb of resumption and treat accomplished thenceforth to have divested of the title to the site of building, or both. On reimbursement of the forfeited amount of consideration money etc. the site or the building or both have to be restored to the owner for enjoyment of its possession and user, whether directly or indirectly, but if the act of misuser complained of is attributed to the tenant, then the tenant would be required to reimburse the forfeited consideration money etc. before he can be restored possession of the resumed tenanted premises."

(56) With regard to the incidence of resumption, the Division Bench in *Amrit Sagar Kashyap's case* (supra) held that the same was only confined to taking of possession of the site or the building, as the case may be, by the Estate Officer, unaffecting the title to the property vesting in the transferee. The Bench held as follows :—

> "Thus the order of resumption will carry with it a dual consequence—(1) deprival of user of the site or building, or both and (2) the added adjudged penalty in the form of forfeiture out of the already paid consideration money

etc. The stoppage of user contemplated by resumption will have the effect of the Estate Officer entering upon possession of the property, and to hold it, for and on behalf of the owner till such time that the alleged misuser was stopped and the consideration money reimbursed to the extent of the forfeiture caused therefrom. It appears to us that the power of resumption conferred in the Estate Officer is somewhat akin to that of a caretaker or trustee, to hold and use of the property on behalf of the owner, till such time that the penalty is paid and the site or building is restored to its permitted use. It is only on this reasoning that section 8-A can be called as a measure in furtherance of the development, regulation and maintenance of the planned city of Chandigarh."

(57) The correctness of the aforesaid views of the Division Bench stands challenged by the Chandigarh Administration on the ground that the view that resumption affects only the possessory aspect of ownership, and not the title, runs counter to the Full Bench decision in *Brij Mohan* v. *Chief Administrator and others*, (2 supra). Particular emphasis has been laid that the said judicial precedent clearly holds that resumption has the incidence of deprival of ownership rights concerning the transferee. Challenge further has been made to the meanings given to the words 'resume' and 'resumption' which according to the Administration's counsel are not sound in the context as these tended to affect the development, regulation and maintenance of Chandigarh as a modern city which was carefully planned. To be precise, the objection was that the deterrence and sanction behind section 8-A stood dilluted with such an interpretation. It was maintained that the concepts of 'resumption' and 'forfeiture' in reality and in essence were one and the same and interchangeable. It was asserted that the law framers had intended in fact forfeiture of the site and forfeiture of the consideration money etc. to the extent indicated in section 8-A. Thus section 8-A, according to learned counsel, envisaged forfeiture and forfeiture alone and the sense was to divest title and impose penalty. The intention of the Legislature was conveyed by the employment of two suitable but relative words conveying the same meaning. A buttressed policy argument was put forth that the threat of confiscation of property and divestiture of title alone could

compel the builders and users of property in Chandigarh to disciplined constructive activity and disciplined living. And for these purposes, as contended, the sanction spelled out in *Amrit Sagar Kashyap's case* (supra) placing it at the level of deprivation of user of the property alone was likely to be ineffective and lead to indiscipline. Some examples were cited in support of the view canvassed. One was the case of a nefarious anti-social activity like brothel keeping which would evade being controlled if after resumption of the site or the building, or both, as the case may be, where such activity was carried on, it was to be restored to the owner or the occupier, as the case may be, on the payment of the adjudged penalty, called the sum forfeited, as the nefarious activity could well be resumed again and the repetitive process of resumption rendered a complete waste and menacingly ineffective. Another example of another kind cited was of a transferee failing to build over the site within the time allotted hurdling the growth of the planned town and retaining the site for speculative purposes. And questioningly it was put what better caretaker could the transferee have than the Estate Officer, and that too a free one, who on resumption was to hold the property for the transferee as the Division Bench dictum goes.

(58) The learned counsel for the Chandigarh Administration cautioned us not to go into dictionaries but see the intendment of the Legislature. He projected that selling of sites and houses was a major activity of the State and housing was a problem which was receiving the State's foremost attention. He maintained that in giving meaning to the words 'resume' and 'resumption', we must bear in mind public interest. In support thereof, he referred to *Subhash Chandra and others* v. *State of U.P. and others,* (11 supra). On the strength of *Baleshwar Dass and others* v. *State of U.P. and others* (13), he projected that the underlying idea and root thought of the legislation must be discerned. On the strength of *Life Insurance Corporation of India* v. *D. J. Bahadur and others,* (14) he cautioned about the tyranny of literality. He cited *Ishwarlal Girdharilal Joshi etc.* v. *State of Gujarat and another,* (15), to say

(13) (1980) 4 S.C.C. 226.

(14) 1981—1 Labour Law Journal 1.

(15) A.I.R. 1968 S.C. 870.

that the dictionaries are not safe guides. He asserted that the preamble of the Act was the key to discover the intendment and that was development and regulation of Chandigarh as a planned city. All these aspects will be borne in mind.

(59) On the other hand, learned counsel for the petitioners in the first instance have taken the other extreme view. They have maintained that the amendments caused by Parliament Act No. XVII of 1973 have not taken away the applicability or efficacy of the law settled by the Supreme Court in *M/s. Jagdish Chand Radhey Shyam's* case (supra). It was asserted that the concepts of 'resumption' and 'forfeiture' as reintroduced in section 8-A of the Act retentively still suffer from the same vice of being violative of Articles 14 and 19(1)(f) of the Constitution, despite the latter Article not being now in force, but when the cause arose was operative. In the alternative it was contended that section 8-A was confined only up to a stage when consideration money, or the instalments due thereon, or any other sum due on account of such sale under section 3 remains unpaid. And so in the event of the entire arrears being cleared and the Central Government ceasing to be the owner thereof the site or the building, as the case may be, was beyond the scope of resumption. With regard to the breach of any other conditions of such sale, it was contended that these pertain to those conditions which are germane to the incidence of sale and the breach of other covenants/conditions of the sale deed or breach of rules cannot attract the resumptory process. It was also argued in the second alternative that the view taken by the Division Bench in *Amrit Sagar Kashyap's case* (supra) was sound and unexceptionable as deprivation of title to the property for a default affecting the development and regulation of Chandigarh City, a default which could easily be remedied, was unthinkable in a welfare state fully conscious of the fundamental rights of property to its citizens at the time when the Act came on the statute book. Additionally it was maintained that the property-holders and property-users of Chandigarh had not invited on themselves a perpetual overlordship of the State as if property in their title and possession was a mere grant resumable at the pleasure of the sovereign or the overlord. And it was emphatically asserted that the words 'resume' and 'resumption' can project no semblance or character to confiscation or penal forfeiture in the context of section 8-A as

these notions are repugnant to those words found in English diction and reason.

(60) It may be recalled that in *Messrs Jagdish Chand Radhey Shyam's case* (supra), the transferee had not paid the full consideration money. The Estate Officer had resumed the site and forfeited whatever consideration money was paid in the form of instalments, for failure of complete and timely payments. In *Amrit Sagar Kashyap's case* (supra), the total consideration money etc., had been paid. In the later case, misuser of the site/building was attributed to the tenant of the transferee. It is noteworthy that the aforesaid two cases arose out of different set of facts; the former under section 9 since repealed and the latter under section 8-A now subsisting. Now it is time to take note of the facts of the two cases presently in hand.

(61) Broad facts of Civil Writ Petition No. 2830 of 1970 are that the petitioner therein purchased a shop-cum-flat site in public auction on 24th March, 1957, for a sum of Rs. 10,600 and paid the full price. He got the deed of conveyance executed on 11th July, 1961, which facts are admitted by the Chandigarh Administration. Rather copy of the deed of conveyance dated 11th July, 1961, has been appended as Annexure R. 1. The petitioner asserted that having paid the full price of the site, he had become full owner in possession of the property. The respondents assert that the ownership rights were subject to conditions contained in the deed of conveyance. The petitioner apparently committed a breach of the conditions embodied in the conveyance deed by not raising construction in time. Vide order date 13th July, 1965, Annexure 'A', the Estate Officer resumed the site and forfeited whole of the money paid under section 9 since repealed as, according to him, there was a breach of rule 12 of the Chandigarh (Sale of Sites) Rules, 1962 by the building not being completed within time. The petitioner successfully appealed to the Chief Administrator, Chandigarh, who allowed the appeal on 20th May, 1967, (Annexure 'B') and set aside the order of resumpion subject to the condition that the building be completed within a period of six months from that date. It appears that the petitioners could not fulfil the condition as imposed by the Chief Administrator and the building was not completed within the time allotted. The Estate Officer,—vide his letter dated 17th December, 1969, forebade the petitioner from proceeding with the construction as it stood resumed. Pursuant thereto, the plot in question was listed for auction. The petitioner then approached the Chief Commissioner, Chandigarh,

with a prayer in the forefront that he be allowed further time. The Chief Commissioner,—*vide* his order, dated 12th January, 1970, Annexure 'C', declined to interfere or grant further extension for construction holding the revision petition to be time-barred. Yet, he granted partial relief to the petitioner that out of the sum of Rs. 10,600 paid as price, he kept Rs. 600 as forfeited money and ordered the balance to be paid to the petitioner. It is to challenge these orders that the petitioner approached this Court under Articles 226 and 227 of the Constitution. During the pendency of the petition, the Supreme Court judgment in *Messrs Jagdish Chand Radhey Shyam's case* (supra), came about, as also the consequential amendment to the Act. As said before, section 8-A was deemingly applied from 1st November, 1966 and not from a date before.

(62) In Civil Writ Petition No. 1149 of 1979, the broad facts are that the petitioner purchased a residential site from the Estate Officer and executed a conveyance deed on 10th December, 1962. He constructed a house thereon. Since the petitioner was an Army Officer and on his toes at various places of his posting, it came to be that he rented out the house to respondent No. 4 with a specific condition that the house would be used by him as his residence. Later he learnt that respondent No. 4 had started using a portion of the house as a Guest House. It seems that the Estate Officer initiated proceedings to resume the site (since that alone was sold) and on 18th December, 1973, he passed an order of resumption. Annexure P. 1. The petitioner lamented that no notice was ever served on the petitioner despite his address available with the Estate Officer and in any case the stamped address of an Army Officer which is care of 56 A.P.O., Army Headquarters, New Delhi. Having learnt in June, 1977, that the house was resumed, he made enquiries and learnt that prior to the passing of resumption order, a notice was pasted on the wall of the tenanted house when he was not living there. The order of resumption proceeded on the short ground that the tenant, respondent No. 4, was misusing it as a Guest House, a user other than residential. The petitioner unsuccessfully appealed before the Chief Administrator. The appellate order, dated 27th September, 1977 is Annexure P. 3. His revision too was rejected on 2nd September, 1978 by the Chief Commissioner. This gave occasion to the petitioner to approach this Court under Articles 226 and 227 of the Constitution of India.

(63) Analytically, as it appears to me, the following features and questions prominently emerge from section 8-A in the light of the amendment :—

(1) Under section 8-A, the Government through its Estate Officer resumes its own property in the case of a credit sale. Section 3(3) is a pointer in that direction to title still vests in it. I would earmark this incidence as 'statutory resumption' to facilitate reference.

(2) On title being with the transferee on complete payment of consideration money, etc., section 3(3) becomes inoperative. Resumption on breach of conditions of sale is thus a separate category. I would earmark it as 'covenantal resumption'.

(3) Section 8-A confines itself exclusively to sales (whether accomplished by a formal deed or otherwise) and not to any other kinds of transfer conceived of in section 3. Section 9 since repealed was more comprehensive as it enveloped all transfers conceived of in section 3.

(4) The breach of Rules made under the Act attracted section 9 but now section 8-A is not attracted for breach of Rules but only to breach of conditions.

(5) It is not merely the non-payment of consideration money or any instalment thereof which attracts section 8-A but the failure to pay such money. Non-payment of the said money or instalment thereof can be shown cause to and adequately atoned but the failure to pay such money, is an extreme situation, irremediable, calling for the drastic action of passing an order of statutory resumption, but after providing to the transferee a hearing.

(6) The failure of the transferee to pay the consideration money, or any instalment thereof, is *on account of the sale of property under section* 3 (emphasis applied) and committal of a breach of any other conditions is also of *such sale* (emphasis again supplied). If it is stipulated as a condition of sale (whether accomplished by way of regular deed or not) that payment of consideration money was

deferred to be paid by a particular date, or by way of periodic instalments on due dates, then these conditions are plainly imposed *on account of the sale* (emphasis again, supplied) of the property under section 3. *Prima facie*, committal of the breach of any other condition of *such sale* (contradistinct to other terms etc.) attracts section 8-A only to a sale in which payment of consideration remains payable or instalments and dues are outstanding, and not after their clearance.

(7) While making an order of resumption of the site or building or both, as the case may be, the Estate Officer under sub-section (2) of section 8-A passes orders in relation to property which was 'so sold'. In other words, the order of resumption can only be attracted in the case of a sale which carried deferred payment of consideration money or in instalments. Negatively, as it appears, the section seems not attracted where the entire consideration money together with interest and other dues payable in respect of the sale of the site or building or both has been made. Were it otherwise, the expression 'payable in respect of the sale' would be misfitted and it should have read 'paid in respect of the sale'.

(8) Then, is section 8-A invocable by the Estate Officer for covenantal resumption ? Is the breach of conditions on which the sale took place under section 3, contradistinct to the breach of other terms, limitations and covenants embodied in the document of sale ?

(9) Did the Legislature intend that the breach of all and every condition of sale would attract the powers of the Estate Officer under section 8-A ? If so, why the words '.... has failed to pay ....' occur in the opening of the section ? Are they mere surplusage ? Is it a situation which the Legislature in its wisdom was alive to ? Why has the section not used all pervasive language ?

**(64)** The above deductions require thorough examination but in a broader light. The non-obstante clause in section 3(3) be recalled. It has been observed earlier that section 8-A proceeds on the basis of a sale accomplished, a sale as conceived of in section 54 of Transfer of Property Act, to mean transfer of ownership

in exchange of price paid or promised or part paid and part promised. But section 3(3) creates a legal fiction that notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due on account of the transfer of any property sold under sub-section (1) is paid, the same shall continue to belong to the Government. Now here is a complex situation. The transferee has been sold the site or building or both, as the case may be, but the property sold yet belongs to the Government. The transferee is the owner of the property and yet it does not belong to him. This fictional situation is required to subsist till he pays up the entire consideration money together with interest or any other amount, if any, due on account of the sale. The payment of such sum which would otherwise be a condition precedent to the sale before it is entered, has by conduct of parties been made a condition subsequent, the failure to perform which requires, if I may use the expression, occasion to quiet the title *qua* the estate. It appears to me that had section 3(3) been not there for the purpose, the present section 8-A would still attract the dictum of *Messrs. Jagdish Chand Radhey Shyam's case* (supra) and be within the mischief of Article 19(1)(f) as also within the mischief of Article 31 and provide an unreasonable restriction on the freedom to acquire, hold and dispose of property. These Articles were in the Constitution till 20th June, 1979, from which date they were deleted under the Constitution (Forty-fourth Amendment) Act, 1978. But section 3(3) only saves the vice that despite the sale, the Government fictionally continues to be the owner of the property sold subject to the vendee quietening his title by making up all due payments on account of the sale. Now what are the other conditions of the sale as conceived of in section 8-A ? Does necessarily all what is stipulated in the transaction come up to conditions of sale? To my mind, it is not so. Under the well known rule of equity, the Court reads a written instrument in its entirety and considers it from all four corners in order to discover the true intention of the parties in harmony with this rule. Each and every part of the instrument must be considered in relation to each other part. No portion of the instrument can be disregarded or treated as surplusage and technical terms and provisions cannot prevail as against the apparent intention of the parties. The known instruments by which transfers come about under the Act are by means of allotment letters, statutory conveyance deeds, correspondence, terms of auction and the like. And transferee under section

2(k) means a person (including a firm or other body of individuals whether incorporated or not) to whom a site or building is transferred in any manner whatsoever under the Act and includes his successors and assignees. All what are reflective of the sale, be it from a regular sale deed or other writing, are not necessarily conditions, they could well be covenants, exceptions, reservations and limitations, though they could also be loosely called terms. Sometimes words may be employed to create either a covenant/term or a condition, but the legal responsibility for non-fulfilment is not the same. Where there is a breach of covenant, the remedy is by way of damages; but where there is a breach of condition, a forfeiture usually, though not always, results. But this forfeiture, under the civil law is nothing but the exercise of a right of re-entry. But in the context of section 8-A, the only forfeiture mentioned is not civil in nature but sequestral, as it tends to forfeit to the State ten per cent of the total amount of the consideration money, interests and other dues payable in respect of the sale of the property. But if the words 'resumed' and 'resumption' used in the context of section 8-A are understood to mean the right of re-entry, then it might well legitimately be in the nature of forfeiture, but only on the plane of re-entrance and never on the platitude of confiscation or forfeit. Thus, when on the failure of the transferee to pay the consideration money, or any instalment thereof, on account of the sale of the property, or on the committal of a breach of any other condition of such credit sale in which the consideration money etc., remains payable, the Estate Officer can exercise the right of resumption which is nothing but a right of re-entry over the property owned by the Government so as to quieten the title. But that is not alone. As an appendage, unwaveringly, he has to confiscate to the State, in the name of the forfeiture, a sum up to ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the property, but from the sum already paid to him on account of the sale. The Chandigarh (Sale of Sites and Buildings) Rules, 1952 (now substituted by the same Rules of 1960) provide that before he enters upon any business under section 3, the Estate Officer requires some percentage of the reserved price of the site/building paid to him as a pre-condition. He adequately safeguards what would be forfeit money of the eventuality under section 8-A. The subsequent event having happened by the transferee's failure to pay the consideration money, or any instalment thereof,

on account of the sale, or on a breach of one or more conditions of such sale, and the Central Government fictionally under the law being the owner thereof under section 3(3), an order of resumption thus partakes the character of nothing but an order of re-entry, the fictional title in the Government being quietened in the event, which could otherwise be quietened in favour of the transferee on timely payments of the aforesaid sums. Thus, it appears to me, that 'statutory resumption' under section 8-A cannot cover up the situation of breaches of other conditions at a time when the entire consideration money, etc., stands paid up and the transferee's title is prominently quietened. That also was the view of the Letter Patent Bench in L.P.A. No. 218 of 1965.

(65) The aforesaid reasoning can also find support from English diction. It is noteworthy that neither the words 'resume' or 'resumption' nor 'forfeiture' have been assigned definitions, dictional, unreal or superficial in the statute. *Per necessitus*, we have to open dictionaries and take notes therefrom.

*Corpus Juris Secundum*, 1952 *Edition*.

'Resume' : To begin anew; to take again; to take back; to take up again after an interruption.

*Webster's Third New International Dictionary* :

'Resume': To take up again; take back; to take back to onestlf (on default, the grantor does not automatically resume title); go back to using; to take possession again.

'Resumption': The taking again by the Crown or the authority of lands or tenements previously granted (as on the ground of false suggestions or other error).

*The Oxford English Dictionary*, 1933 *Edition* :

'Resume': To take back to oneself (something previously given or granted); to return to the use of, to resume possession'.

'Resumption' : Law. The action, on the part of the Crown or other authority, of reassumping possession of lands, rights,

etc., which have been bestowed on others; a case of instance of this.

*Wharton's Law Lexicon* :

'Resumption': The taking again by the Crown of such lands or tenements, etc., as on false suggestion had been granted by Letters-patent; by agricultural landlord, before legal tenancy ended, of the tenant's land (generally in part only) for building, etc., purposes, making an abatement or rent and giving compensation for damage to crops.

*The Law Lexicon, 1940 Edition* :

'Resumption': (1) Resumption is nothing more than an unequivocal demand for possession so as to operate as a final election by the landlord to re-enter = A.I.R.. 1924 Patna, 449.

(2) 'Resumption' is a word used in the statute of 31 H. 6 C. 7, and is there taken for the taking again into the King's hands such lands or tenements as upon false suggestion or other error he had made livery of to an heir; or granted by patent upto any man.

*Words and Phrases, Permanent Edition* :

'Resume': 'Resumption': The word 'resume' as used in reference to the act of taking by the public of a road from its owners being a resumption, is used as an allusion to one of the rules of public right to take private property, whether held in fee or otherwise, and not as a suggestion that the owner's title is exceptionally defeasible. In re Opinion of the Justice, 33 A, 1076, 1089, 68 N. H. 629.

*Corpus Juris Secundum, Volume XXXVII* :

'Forfeiture': As divestiture of specific property without compensation resulting from failure to comply with the law.

*Webster's Third New International Dictionary* :

'Forfeit': To lose or lose the right to by some error, fault, offence, or crime; to subject (as property) to confiscation as a forfeit.

'Forfeiture': The divesting of the ownership of particular property of a person on account of the breach of a legal duty and without any compensation to him; something (as property or money) lost as a forfeit: loss of some right, privilege, estate, honor, office, or effects in consequence of a crime, offence, breach of condition, or other act.

(66) Although the word 'forfeit' is often used synonymously with the term 'fine', it has also been observed that there is a distinction between the two inasmuch as 'forfeiture' means sequestration of property while the term 'fine' does not necessarily have this meaning. Forfeiture of property is resorted to as a means of punishment for non-compliance with statutory requirements so as to cause 'loss' of the property in favour of the State as confiscated to it. It is also plain from the above diction that the words 'resume' or 'resumption' have been known in English language to operate in a sphere where the title to the property, total or fractional, remains with the grantor, be it a sovereign or a landlord, as the case may be, who is entitled under the law or covenant to resume back possession of the grant. In particular, the legal definition given to the word 'resumption' in the Oxford English Dictionary above-quoted terms it an action on the part of the crown or other authority of re-assuming possession of lands. Read with the negative example given of the word 'resume' in Webster's Third New International Dictionary above-quoted 'resumption' does not involve automatic resuming of title by the grantor on default committed. Thus it appears to me that the kingdom of the words 'resume' and 'resumption' are confined within the boundaries of 'possession' of the grant and does not touch title to the grant at all, for these work on the assumption that the title to the property, total or fractional, was with the grantor and he never parted with it ever. If, on the other hand, the transferor had conferred title on another but had reserved to himself, on the breach of the covenants in the transfer, the right to resume the property, then it cannot cause divestiture of title, but only conferment of a right to recall possession on acts of omission or commission done by the transferee. It is in this sense that I referred to 'covenantal resumption'. Then again the terms 'fine', 'forfeiture' and 'penalty' are often found used loosely and confusedly. When discrimination is made however, the word 'penalty' in its strict sense is found to be generic in its character including both fine and forfeiture. Generally speaking, the term 'penalty' is a pecuniary charge for the violation of a

statute. Such forfeiture is also a penalty. In common parlance, the term 'forfeiture' strongly implies penalty. Strictly speaking, a penalty denotes a punishment by way of a pecuniary exaction from the offender collected through an action *in personam*. The term, however, is fairly elastic in meaning. Viewed from a contractual context, penalty is generally a certain sum agreed upon in consequence of a failure to perform exactly all the stipulations or terms contained is a contract. However, a forfeiture is, in its strict sense, a divestiture of property without compensation in consequence of a default or offence, such action of forfeiture being against the *res*, property itself, and the effect of forfeiture being to transfer the title to that specific thing from the owner to the sovereign power by means of sequestration of the property. In *Amrit Sagar Kashyap's case* (supra), the Division Bench had spelled out forfeiture of the sum as the adjudged penalty in the generic sense since it was plainly a case of covenantal resumption and not statutory resumption. The forfeiture strictly is to be caused from the sum already in hand of the Estate Officer kept as part payment of the consideration money, etc., and not that any fresh sum is to be exacted from the transferee. Thus it appears to me that the legislature deliberately avoided using terms like 'fine' and 'penalty' in section 8-A and put it at the plane that the forfeit money was lost, yet with some elasticity. In case of statutory resumption, forfeiture is used in the strict sense as punishment and in case of covenantal resumption in the generic sense, so as to provide penalty and its measure for breach of conditions enjoined by contract. Thus section 8-A, as it appears to me, provides a two pronged weapon in the hands of the Estate Officer — one pointing to a civil consequence of re-entry by resumption and the other sequestral or penal, as the case may be, dependent on the kind of resumption sought.

(67) The afore-pointed distinction with regard to the colour what forfeiture takes has support of authority. Admirably the United States Supreme Court has explained the concept of 'forfeiture' in the context of statutory construction. Chief Justice Taney in the *State of Maryland* v. *The Baltimore & Ohio RR C.*, (16), observed.

> "And a provision, as in this case, that the party shall forfeit a particular sum, in case he does not perform an act required by law, has always, in the construction of statutes, been

(16) (1846) 11 L ed 714 at P. 722.

regarded not as a contract with the delinquent party, but as the punishment for an offence. Undoubtedly, in the case of individuals, the word forfeit is construed to be the language of contract, because contract is the only mode in which one person can become liable to pay a penalty to another for breach of duty, or the failure to perform an obligation. In legislative proceedings, however, the construction is otherwise, and a forfeiture is always to be regarded as a punishment inflicted for a violation of some duty enjoined upon the party by law; and such, very clearly, is the meaning of the word in the Act in question."

The same connotation has been imparted by the Supreme Court in *Bankura Municipality* v. *Lalji Raja & Sons* (17).

"According to the dictionary meaning of the word 'forfeiture' the loss or the deprivation of goods has got to be in consequence of a crime, offence or breach of engagement or has to be by way of penalty of the transgression or a punishment for an offence. Unless the loss or deprivation of the goods is by way of a penalty or punishment for a crime, offence or breach of engagement, it would not come within the definition of forfeiture."

The aforesaid two views of high authority were attractingly quoted in *R. S. Joshi* v. *Ajit Mills Ltd. and another* (18), by a Bench of seven Judges.

(68) Plain English words have to be understood in their plain meaning. We as Judges cannot give them a meaning different than the one understood in the English speaking world. We cannot translate or coin English words to suit Indian fancies. We cannot in the name of interpretation indianise English words. And we as Judges are not mere translators, paraphrasers, grammarians or linguists. Had we been so, we were expected to be elsewhere. Justicing as an art practised by us is not abstract, but a live one, integrated with humanism. In dealing with people's lives and more so with their rights and properties, we have to, when called upon, to interpret words used in the context of a particular statute and have to promote

(17) AIR 1953 S.C. 248, 250.

(18) AIR 1977 S.C. 2279.

clarity by giving a purposive meaning in accordance with the intent of those that made the law. Legislation in our country by and large uptil day is produced in the English language foreign to our masses. It is for this reason that the interpreting process of the Court, in a welfare state like ours, does not always lean towards the approach which is known as literal, conservative, pragmatic or ultra-legalistic. Trend has been set in this country in the post-independence era towards intention-seeking and constructive approach in the interpretation of statutes. The built-up aura is discernable from the judicial verdicts handed down by the highest Court of the country. The approach is parallelly available from judicial dictums in other democracies all over the world. But liberality and constructiveness in approach does not give us the power to give an out of shape meaning to a word and to destroy the artful meaning it has come to acquire in all conceivable annals. I cannot thus, for the foregoing reasons, under the garb of interpretation, give to the words 'resume' and 'resumption' in section 8-A the colour of penal forfeiture and equating it with the other forfeiture, hold them both as two descriptions of the same phenomenon and read in section 8-A of the Act as if the site or building or both, as the case may be, by pronouncement of the order of resumption be held confiscated to the State, causing divestiture of its title from the transferee to the State, with the addition of confiscation in terms of money. I would rather, as the Supreme Court did in *Messrs. Jagdish Chand Radhey Shyam's case* (supra), preserve the distinction between the two and let the word 'resumption' stand at the level as it is commonly understood and on the other hand forfeiture to stand at the level also so understood, without causing any fusion. And if I may pose the question why has the Parliament not removed the distinction in the two concepts as separately dealt with by the Supreme Court in *Messrs. Jagdish Chand Radhey Shyam's case* (supra) when effecting amendment,—*vide* Act No. XVII of 1973, as also the clear view of this Court in L.P.A. No. 218 of 1965 that the Government only resumes what it owns and not what it does not own. But in a sense the learned counsel for the Chandigarh Administration is not altogether wrong. From the point of view of the transferee, his title is divested in the case of 'statutory resumption' on his failure to quienten it timely. But from the point of view of the Central Government, it is not so since the property sold keeps belonging to it under section 3(3) till the dues etc. are cleared. But in covenantal resumption, the title to the property

cannot-divest in favour of the Central Government by an order of resumption, since the cause for resumption arises on breach of conditions of sale and not on breach of any provision of law allowing divestiture of title as specific punishment.

(69) To revert to the quotations above extracted from *Messrs Jagdish Chand Radhey Shyam's case* (supra), it is noticeable from paragraph 16 of the Report, as also from section 9 since repealed, that to exercise the power to resume the site or building, the Estate Officer had to take recourse to the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. This was a step in one direction to be fructified in a legal forum. The step on the other side was to enforce the charge created by instituting a suit in a Court of law. In that forum, the transferee/owner could have the opportunity of paying the money and clearing the property of the charge. Both these procedures were twins in the opposite. The aim of both of them, diametrically opposite in essence, was the one to quieten the title. Guidance not being there in the unamended Act as to when the Government would resort to either of the courses, the Supreme Court struck down section 9 being violative of Articles 14 and 19(1)(f) of the Constitution. The sting of Article 14 appears to have been taken away by the amendments to sections 3, 8, 8-A and 9 of the Act. The emerged concept is that there is no charge over the property transferred and thus no statutory security for the unpaid sums. Though the transferee obtains the property by way of sale on partial credit and becomes the owner, but fictionally the property belongs to the Government till the entire credit and dues on account of sale stand paid up. Thus both the opposite forums i.e. the civil Court for enforcement of the charge and the authority under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1958 for resuming the property have been closed. In its place, the Estate Officer has been authorised under section 8-A to be the forum to pass an order of resumption within its ambit, supported by reasons, after giving an opportunity to the transferee of being heard. The order is appealable to the Chief Administrator and revisable by the Central Government under section 10 of the Act. So a self-contained hierarchy is available to operate for purposes of section 8-A without having to look for relief elsewhere. Instead of being a litigant, as hithertofore, the Estate Officer has now become the arbiter of the cause. One being the forum, Article 14 of the Constitution cannot now obviously be attracted in the situation. But, as expressed earlier,

if the transferee has been sold the property and he has paid all dues on account of the sale to the Government, then he being the owner thereof cannot be deprived of the title to the property as such action would be violative of Articles 19(1)(f) and 31 of the Constitution as applicable till 20th June, 1979. A contrary interpretation to the section would immediately attract the dictum of *Messrs. Jagdish Chand Radhey Shyam's case* (supra) and section 8-A would be unconstitutional. I would vie with that idea and rather preserve constitutionality of the provision in the light of the interpretation given by me earlier to section 8-A.

(70) With regard to forfeiture, paragraph 15 of the Report in *Messrs. Jagdish Chand Radhey Shyam's case* (supra) noticed violation of Article 14 of the Constitution in the matter of forfeiture for breach of covenant or provisions. It was noticed that under the ordinary law of the land, there is a relief against forfeiture for breach of covenant and provisions but section 9 does not offer any relief against forfeiture. Despite the repeal of section 9, forfeiture, which was optional thereunder, is now obligatory under section 8-A. The two concepts now work together. The Legislature, it appears, has offered relief against the forfeiture contemplated to minimise it to the extent up to ten per cent of the total sum of consideration money etc. payable. The relief is inbuilt in section 8-A by providing a discretion to the Estate Officer to cause sequestration (or to cause exaction by way of penalty in the other context to be explained later) of even a lesser sum. It can even be imposed as a token to satisfy the requirement of law. The discretion so exercised can be corrected in appeal or revision. Thus, by the amendment, vice of discrimination and the attractability of Article 14 of the Constitution stand removed by providing now only one forum and a fair amount of discretion to the measure of forfeiture. At the same time the amendment has barred,—*vide* section 19, the jurisdiction of any Court to entertain any suit in relation to the forfeiture of any money under section 8-A. Thus section 8-A on the foregoing interpretation cannot be held to be unconstitutional.

(71) All the rules which are made, or are capable of being made under the Act, to carry out purposes of section 3, provide guidance towards settlement of terms and conditions of the sale envisaged thereunder. But the imposition of the terms and conditions of a sale are within the discretion of the Central Government.

That discretion can vary from deal to deal or to classes of deals. The only fetter is that those terms cannot violate any rules that may be made under the Act. Thus the mere existence of rules on the Statute Book do not have universal applicability. One becomes a transferee of some property from the Central Government under section 3(1) of the Act, and has to come to terms and subject himself to conditions as the Central Government has chosen fit to impose. This appears to me the reason why the amendment took out the breach of Rules from the ambit of section 8-A of the Act and kept it confined to breach of conditions of sale to individual cases.

(72) As said a moment earlier, violation any more of the Rules framed under the Act do not attract the applicability of section 8-A. It is noticeable that under section 22 of the Act, which provides for making of rules for carrying out the purposes of the Act, two important sets of Rules have been framed. These are the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (a substitute of 1952 Rules). These provide the procedure in which the sale of sites and buildings would take place. Those sales can be by auction or allotment and also by hire purchase agreement. In either situation before the deal starts, the proposed transferee has to tender some percentage of the price. The balance is payable either in lumpsum or in instalments. The transferee is entitled after the bargain to delivery of possession and to erect the building, if any, within the time allotted and in any case within less than five years, but the time limit is extendable. The transferee is forbidden to fragment any site or building or to carry on any obnoxious trade without the permission in writing of the Chief Administrator. The transferee is required not to use the site or building for a purpose other than that for which it has been sold to him. The transferee is further required to execute and bear and pay all the expenses in respect of execution and registration of deed of conveyance (including the stamp duty and registration fees payable thereof). These Rules also prescribe the statutory forms of the deeds of conveyance applicable to variety of deals. These contain all the terms of the sale. These would be dealt with in a later part of the judgment. These Rules carry out the purposes of section 3 of the Act. A parallel set of Rules are the Chandigarh Leasehold of Sites and Buildings Rules, 1973, but with these we are not concerned. The second set of Rules are the Punjab Capital (Development and Regulation) Building Rules, 1952. These are a complete Code as to how the structure over a site is to be built and how the buildings are

to be kept and maintained. Section 5 of the Act provides that no person shall erect or occupy any building at Chandigarh in contravention of Building Rules made under the said section and the aforesaid Rules have been made to carry out the said purpose. Now if any person commits any contravention of any of the Rules, section 15 of the Act provides penalty for breach thereof. It is in these terms:—

"15. *Penalty for breach of rules.*—Except as otherwise provided for in this Act, any contravention of any of the rules framed thereunder shall be punishable with fine which may extend to five hundred rupees, and in the case of a continuing contravention, with an additional fine, which may extend to twenty rupees, for each day during which such contravention continues after the first conviction, and the Court while passing any sentence on conviction of any person for the contravention of any rule, may direct that any property or part thereof in respect of which the rule has been contravened, shall be forfeited to the Central Government).

*Illustration.*—Where an unauthorised structure has been constructed or any obnoxious material or substance is collected or heaped on a site in any unauthorised manner, or where an advertisement board has been set up in contravention of the Advertisements Control Order, such structure, material, substance or board shall be liable to forfeiture, and not the site or building on which the same may be located or fixed :

Provided that if a building is begun, erected or re-erected in contravention of any of the building rules, the Chief Administrator shall be competent to require the building to be altered or demolished by a written notice delivered to the owner thereof within six months of its having begun or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the Chief Administrator shall be competent to demolish the said building at the expense of the owner:

Provided further that the Chief Administrator may, instead of requiring the alteration or demolition of any such building

accept by way of compensation, such sum as he may deem reasonable."

It is plain from the illustration that the offending material or substances and the like which stand as eye-sores to the regulation and development of the planned town are liable to forfeiture and not the site or building on which the same may be located or fixed. It is indicative that the Legislature was conscious that the sites or buildings are not to be forfeited for violation of rules. Violation of building rules can be compounded by payment of compensation as the proviso to section 15 suggests. Section 18 prescribes the procdure for prosecution for offences punishable under the Act or any rule made thereunder. That is the realm of criminal law which acts in terroram to ensure obedience to rules.

(73) Directions can be issued in respect of erection of buildings under section 4(2) of the Act on the matter, provided in section 4(1), which *inter alia* provides for directions with regard to restrictions of the use of site for purposes other than erection of buildings, Directions can also be issued under section 6 with regard to the condition or use of any site or building if it is prejudicially affecting the proper planning or the amenities in any part of Chandigarh or in the interest of the general public there. Procedure is provided therein of issuance of notice to the transferee or the occupier. Any person contravening the provisions of section 4(2) or section 6 can on prosecution be convicted and punished under section 13 on a complaint filed under section 18. This too is a sphere of the criminal law. Orders have been issued to preserve trees and control advertisements. Any person contravening any provision of those Orders can be tried and punished under section 14 read with section 18. This again is the sphere of criminal law. In the teeth of these sanctions and criminal prosecutions, the attempt of the Chandigarh Administration is futile in hunting for sanctions for proper maintenance, development and regulation of the city from the provisions of section 8-A. If the measure of punishment provided for the contravention of Rules, directions and orders punishable under the Act is inadequate, since it is mostly in terms of money and inflation has eroded its relevance, the Legislature can, and then may, raise the measure of punishment. But what is available specifically and plainly as a sanction in other sections cannot dubiously be sought in section 8-A for the breach of Rules, directions or orders.

(74) It was also canvassed on behalf of the Chandigarh Administration that the forfeiture money, being barely up to ten per cent of the total sum of consideration money etc. payable, works no terror on the transferee in view of the high rise in prices in recent times. It was pointed out that the measure of forfeiture is measurable only on the sums involved in the deal between the Central Government and the transferee which of old was far too less with the prices now prevailing. This argument deserves outright rejection being one in despair. For this, the Chandigarh Administration has to seek relief elsewhere.

(75) It was also elaborated, when asked, on behalf of the Chandigarh Administration that the event of resumption visits a building, if the building was sold by the Government, and a site, if the site was sold by the Government. When asked to explain what happened to the site which was built upon by the transferee at the time when the process of resumption was started, the learned counsel appearing on its behalf gave out to us a practice which was prevailing in the Administration. He maintained that on resumption of the site, the site and the building constructed thereon was put to auction and the price received of the structure was paid to the transferee. But with regard to the price of the site at which the deal was struck between the State and the transferee, he was somewhat evasive. At times he maintained that when the full price had been paid of the site, the Government only deducted its ten per cent towards the sum forfeited. On the other hand, he maintained that when the price was not fully paid, the Government would again deduct its forfeit money and pay the balance due to the transferee. Now this kind of practice prevalent in the Chandigarh Administration runs counter to the stance now taken by the learned counsel that the site or building sold, as the case may be, stands confiscated to the State in the even of resumption. The practice afore-referred to is nothing but a step towards enforcement of charge in case of sums/dues left to be paid on account of the sale of site or building, as the case may be, by an executive fait. The concept of charge over the property sold, as said before, has been abandoned. That practice, to my mind, has no sanction of law. In the event of no due remaining and the sale getting out of the ambit of section 3(3) of the Act, it automatically goes out of the purview of statutory resumption under section 8-A of the Act, for nothing remains payable. But if it is

held that section 8-A kept applying, even after every paisa was paid, on the breach of other conditions of sale, even then the Estate Officer causing covenantal resumption cannot, in observance of the practice afore-referred to, effect sale of the property merely to recover the adjudged penalty. Under the ordinary law, as observed by the Supreme Court in *Messrs. Jagdish Chand Radhey Shyam's case* (supra), there is relief available against forfeiture, but there is none under section 8-A (old section 9). The vice of discrimination under Article 14 of the Constitution would immediately set in. The principle of *Maganlal Chhagganlal (P) Ltd.* v. *Municipal Corpn. of Greater Bombay,* (7 supra) cannot save the vice for these are not merely procedural matters where two paths are open to reach the same destination. The end results of both courses are different. Under ordinary law, the transferee can pay the forfeited money and avoid other consequences. But the stance of the Government under section 8-A is that it must sell the property and recover the forfeited money from the proceeds, refusing to have it directly from or on behalf of the transferee. Thus, to preserve its constitutionality, it must be held that the Estate Officer has to keep the property in tact and release it on the payment of the adjudged penalty in the case of covenantal resumption. That is what was held in *Amrit Sagar Kashyap's case* (supra) which has to be approved to this aspect of the case. For the aforesaid reasoning, the Estate Officer has no choice in the matter.

(76) On the other limb, the argument on behalf of the Chandigarh Administration that the title to the site is divested in its favour sans the building constructed thereon appears to me wholly chimerical and unworkable, besides being iniquitous. Three Latin maxims will convey the point :—

(i) *"Aedification solo, solo cedit"* (That which is built on land becomes part of the land).

(ii) *"Quicquid plantatur solo, solo cedit"* (Whatever is affixed to the soil belongs to the soil).

(iii) *"Omne quod solo inadedificator, solo cedit"* (Everything which is built upon the soil passes with the soil).

These maxims have the advantage of embodying the wisdom of many under each of the one who coined them. A [illegible]

as the law grows complex and involved, for they bring back the mind to the just principles. Now to say that the site vests in the Government and not the structure thereon, which becomes part and parcel of the site, is begging the question. Such a construction put by the Chandigarh Administration to the effect of resumption causes destruction of an estate, the two ownerships attempting to pull apart, but vainly. Thus interpreting section 8-A, I would refrain from an odious construction which would lead to the destruction or dissipation of an estate, and as was done in *Amrit Sagar Kashyap's case* (supra) settle the term 'resumption' to a right of re-entry on the property resumed.

(77) Another difficulty which the Chandigarh Administration expressed was that unless it acquires title on resumption, it cannot invoke the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. Before proceedings under that Act can be undertaken, the property must belong to the Government. Fear was expressed that if resumption cannot divest title, then the provisions of that Act would become uninvokable. Let me allay those fears. In the first place, till the entire dues are paid on account of sale, the property sold belongs to the Central Government under section 3(3) of the Act. Now belonging is not necessarily owning. The term 'belong' is a relative term which establishes a connection between one and his possessions. Be that apart, the provisions of the aforesaid Act, as long as section 3(3) is operative, can be invoked. But I fail to see the reason why the provisions of that Act have to be invoked for the purpose in the presence of the inbuilt power under section 8-A of the Act to cause re-entry over the property resumed, unless the Government intends to bypass section 8-A. Once section 3(3) becomes inoperative, section 8-A, as said before, too becomes inoperative for statutory resumption. But if it remains operative for covenantal resumption, the order of resumption passed by the Estate Officer in that case is also capable of enforcement to effectuate his re-entry. He is the self-enforcing agency of his own orders and has not to seek elsewhere to get another order enforcing it. Prior to the amendment of Parliament Act No. XVII of 1973, he was obliged to, since he could not pass an order. After the amendment, he has been given the powers to pass an order of resumption and enforcing it is a logical consequence. Habit bound, the Estate Officer has not to invoke the Punjab Public

Premises and Land (Eviction and Rent Recovery) Act, 1959. Even otherwise, it is noticeable that the said Act is not so much concerned with the title as with the possessory rights vested in the Government and not so much to the origin of, that makes any premises a public premises under the Act. See in this connection a Division Bench judgment in *S. R. B. Gaikwad* v. *The Union of India and others* (19).

(78) In the realm of precedents, attention must be invited to *Brij Mohan* v. *Chief Administrator and others*, 2 (supra), which was a case to which the principles of covenantal resumption would be attracted. In that case, the Full Bench held that one of the dual consequences of resumption was the depriving of ownership right in the site or building which concerns only the owner of the site or building. Approvingly it can safely be said that it did not connote that title to property or right stood wiped out by resumption. Deprivation of ownership right there would be an important right of property '*jus possedendi*' is to be assumed by the Estate Officer in exercise of powers under section 8-A. Thus there is no conflict between *Brij Mohan's case* (supra) *and Amrit Sagar Kashyap's case* (supra) in which the concept of resumption was so spelled out. Some assistance can also be sought from the fact that had there been any conflict, the judgment of the Division Bench normally was not expected to be concurred by D. S. Tewatia, J. who was also the author of the Full Bench judgment in *Brij Mohan's case* (supra). Thus it is crystal clear that there is no conflict as was feared by the learned counsel for the Chandigarh Administration. The other case worth noticing is Civil Writ Petition No. 2649 of 1974 decided on 13th August, 1975 in which the vires of section 8-A were upheld by a Division Bench of this Court. What precisely was resumption was never mooted in that case. Tewatia, J. was a party to that judgment also. This case was put to the shelf in *Amrit Sagar Kashyap's case* (supra) obviously for reasons that the said Division Bench had to cover a different field. There is no apparent conflict between the two Division Bench judgments aforesaid and none was pointed out. Moreover, in the realm of legal knowledge, nothing is finite or absolute. What can be canvassed in one context before a Court of law cannot be prohibited to be canvassed in a similar context in another instance before a Court of law. The

(19) AIR 1977 Bombay 220.

doors of the Court are not merely open, but are kept widely open to perform its fundamental duties. Now since I have upheld the vires of section 8-A but on grounds not dealt with by the said Division Bench, I would leave that case to its own facts without expressly approving or disapproving it.

(79) At one stage, an idea was about to be toyed with that if statutory resumption under section 8-A was operatable when the entire consideration money etc. had been paid, then could it possibly be interpreted to mean that by order of resumption and of the requisite forfeiture, the total price paid would fall short of the sum forfeited and thus possibly the legal fiction under section 3(3) of the Act would revive. The idea did not catch the imagination either at the bar or the Bench. On closer scrutiny, the hypothesis is a castle of sand. Section 3(3) talks of 'until the total consideration money etc. is paid'. Once it is paid, then section 3(3) is rendered inoperatable and so does section 8-A for the purpose. Neither any forfeiture therefrom is permissible nor can it revive the legal fiction under section 3(3) of the Act. Such a construction is obviously odious and impermissible.

(80) Now it is time to enter the sensitive field of 'covenantal resumption'. It is worthwhile to recall that the Central Government has been given the power to sell any land or building belonging to it on such terms and conditions as it may think fit to impose. Rule 8 of the Chandigarh (Sale of Sites) Rules, 1952 provided that on receipt of atleast 25 per cent of the sale price, whether the sale is effected by allotment or by auction, the transferee shall execute a deed of conveyance in the form annexed to these Rules, Schedule-B, in such manner as may be directed by the Estate Officer. Clause 11 of Schedule-B conferred the right on the Estate Officer to effect re-entry in the event of non-payment of any instalment and for such resumption neither the transferee was entitled to a refund of the purchase money nor to any compensation. The 1952 Rules were substituted by the Chandigarh (Sale of Sites and Buildings) Rules, 1960 with effect from 8th March, 1980. Here again, rule 8 provided for the execution of a conveyance deed in a suitable form. Rule 8 was substituted on 1st July, 1969 and along therewith rule 8-A was added. These covered varied forms 'B', 'C', 'D' and 'E' suited to the deal. Right from the inception, the statutory forms of conveyance

deeds have been kept substituted, added to or clauses therein modified from time to time to carry out the purposes of the Act. Details apart, however, in some form or the other, the right of the Estate Officer to cause re-entry and resumption on one event or the other has been kept preserved therein. Thus in cases where conveyance deeds come to be executed, the terms and conditions of the sale have been found embodied therein varying from transferee to transferee dependent on the time factor. In none of the respective conveyance deeds, which have so far remained as statutory forms, was ever any mention of section 8-A or about any forfeiture. Be that apart, in the present two cases, the terms and conditions of the deed have specifically been relied upon by the Chandigarh Administration to justify its action.

(81) In Civil Writ Petition No. 2830 of 1970 in Annexure R. 1, the copy of the conveyance deed, clause 11 preserves the right of resumption which is as under :—

> "In the event of non-payment of any instalment on due date by the transferee it shall be lawful for the Estate Officer notwithstanding the waiver of any previous cause or right for re-entry, to enter into and upon the said site or building thereon or any part thereof and to repossess, retain and enjoy the same as to his former estate and the transferee shall not be entitled to a refund of the purchase money or any part thereof or to any compensation whatsoever on account of such resumption."

Similarly in Civil Writ Petition No. 1149 of 1979, the Chandigarh Administration in its reply has relied on clause 10 of the conveyance deed which is as under :—

> "In the event of the breach by the transferee of any of the terms and conditions contained in this deed and to be performed and observed by him, it shall be lawful for the Estate Officer notwithstanding the waiver of any previous cause or right for re-entry to enter into and upon the said site or building thereon or any part thereof and to repossess, retain and enjoy the same as to his former estate and the transferee shall not be entitled to a refund of the purchase money or any part thereof or to any compensation whatsoever on account of such resumption."

In the Rules now in force, the statutory forms have a condition akin to the aforesaid clause 10 of the conveyance deed in Civil Writ Petition No. 1149 of 1979. The resumption contemplated in the deed is on breach of terms and conditions of the deed contra-distinct to only breach of conditions on which section 8-A is operatable.

(82) So far as the case of Civil Writ Petition No. 2830 of 1970 is concerned, the resumption clause is rendered otiose because the total money stands paid. There is thus no right reserved for resumption on the breach of terms and conditions of the conveyance deed.

(83) So far as Civil Writ Petition No. 1149 of 1979 is concerned it is pertinently noticeable that neither in clause 10 is any reference made to section 8-A nor is there mention of any forfeiture. Clause 10 embodying only covenantal resumption permits the Estate Officer to cause re-entrance over the property for breach of the terms and conditions, and obedience is covenanted of rules and orders issued under the Act. Now the statutory deed itself has a clause widening the term 'transferee'. It is expanded in this way that the transferee includes his lawful heirs (permitted) successors, representatives, assigns, transferees, lessees and any person or persons in occupation of the said building with the permission of the Estate Officer. In *Brij Mohan's case* (supra), the Full Bench had brought the tenant to the level of an assign and thus a transferee as defined in the Act. It is unnecessary to touch that view. Sufficedly, the tenant comes within the term "transferee" in the statutory deed and premises in his possession can be subjected to covenantal resumption. For that matter, any occupier, authorised or unauthorised, comes within the term 'transferee' under the deed. Thus the occupier of a property in Chandigarh, the title of which, whether in a site or a building, passed out to a citizen under written covenants and more so under the statutory deeds, is a transferee for purposes of such written instruments, and the instrument permiting, can be coerced to disciplined living as initially cevenanted. The threat is two-fold. For breach of Rules, directions or orders— criminal prosecution, and for breach of covenants — deprival of user of the property by resumption. It is a glaring fact that housing, whether in building process or inhabiting, is a problem and more so

in Chandigarh town. Deprival of possession of a property by way of such resumption, even for a brief moment, carries with it adequate sanction for disciplined construction activity and disciplined user. For such breach, as is patent, there is no authority under the deed for the imposition of any forfeiture, penalty or fine.

(84) It is also noticeable that assuredness to the peaceful enjoyment of the rights and privileges conveyed under the statutory deed are dependent on a given state of circumstances to exist. When there is occurrence of change in such circumstances, the assuredness, by covenant, is subject to be withdrawn. It cannot even remotely terminate title automatically. It just gives to the Estate Officer (who by himself is not the vendor in his own designation) a right of re-entry as a corrective measure. To recall the dictum, the Supreme Court in *M/s. Jagdish Chand-Radhey Shyam's case* (supra) the employment of the terms 'sale' and 'consideration money' in the deed settles the doubt that the transferee is the owner of the property so sold. But if the statutory deed which, under the rules he is required to execute in order to have clear title, carries with it incidence of resumption on breach of terms and conditions mentioned in the deed, then it cannot go beyond the right of re-entry and have a different meaning.

(85) Now patently there has appeared a gap, As noticed earlier, section 8-A is complete code for statutory resumption. The conveyance deed is a complete document conferring a right on the Estate Officer for re-entry/resumption for breach of terms and conditions of the deed. All covenants stipulated in the sale deed are not necessarily conditions. A breach of a covenant as also of a condition confers right on the Estate Officer to cause re-entry under the terms of the deed. It is not required to be answered here how he will effectuate this right. The sensitive question is whether on a breach of condition of sale at a time when the title vests in the transferee, can be undertake proceedings under section 8-A and, while ordering resumption, impose penalty. As is easily discernable, the language of section 8-A of this aspect is at par with section 9 since repealed. The Letters Patent Bench in L.P.A. No. 218 of 1965 had said in so many words that an order under section 9 can only be passed in cases where the title still vests in the Government. The Supreme Court in **Messrs Jagdish Chand Radhey Shyam's case** (supra) while upsetting the said decision did not specifically

overrule the interpretation so put by this Court on section 9. Taking that as a precedent or even adopting it a new, I could have placed the same construction on section 8-A, the language of which is by now very familiar. But adopting such construction would mean that section 8-A would be short-lived and the Estate Officer is relegated to his civil remedies under the contract of sale on breach of terms and conditions of sale. This appears to me a glaring lacuna; an absurd and unjust situation. To say that nothing can be done about it is frustrating thepurposes of the Act, as suggestive from the preamble, that is, the development and regulation of the planned city. And I may quote the words of Lord Denning, Master of Rolls in *Northman* v. *Barnet Council* (1978) 1 WLR 220, advantageously:--

> "The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach'.....In all cases now in the interpretation of statutes we adopt such a construction as will 'promote the general legislative purpose' underlying the provision: It is no longer necessary for the judges to wring their hands and say: 'There is nothing we can do about it'. Whenever the strict interpretation of a statute gives rise to an absurd and unjust, situation, the judges can and should use their good sense to remedy it—by reading words in, if necessary—so as to do what Parliament would have done, had they had the situation in mind."

Famous Jurist Synder in his Preface Jurisprudence (1954) has also observed as under:—

> "In deciding between the alternative open to them within the contours of pre-existing laws, the judges try to make the just or the juster choice. Though it is more important that a rule of law should be settled than it should be theoretically correct, a trial is however a mere exercise in logical perfection and it should be unnecessary to remind ourselves that constitution and laws are designed to establish justice. If there were no rules, we would be governed by men and not law. Order is not only Heaven's first law, order is the essence of jurisprudence.

> But rules are not the ultimate and, the main thing; that main thing is justice itself, the very right of the matter. The rules are only in aid of that main thing—the working tools whereby it is attained."

Bearing the aforesaid principles in mind, I would at the cost of causing strain and stretch to the language of section 8-A facilitate covenantal resumption and read power for the Estate Officer to proceed thereunder. He would proceed under that section on a breach of one or more condition of such sale and not on breach of terms simpliciter. What would be a condition of sale need not be answered for the present. Since the event arises after the entire consideration money stands paid and the title vesting in the transferee, the forfeiture in the event would shed its colour and be read as penalty to the extent of ten per cent of the total consideration money etc. paid. And this penalty as adjudged would be an action in personam to be exacted from the transferee in the event of his seeking restoration of possession of the property resumed. It is in this light that in *Amrit Sagar Kashyap's case* (supra); where the distinction between statutory and convenantal resumption did not arise, did the Bench proceed on the plane that the order of resumption was to visit the possessory aspect of ownership and for payment of the adjudged penalty. Such course is necessary and reasonable restriction on the right to property—a sacrifice at the altar of THE CITY BEAUTIFUL. The Division Bench, it seems to me, arrived at the correct conclusion on this aspect of the matter but without having to expand the discussion as done herein.

(86) In *Amrit Sagar Kashyap's case* (supra), the Division Bench had also held that the Estate Officer, after entering upon possession of the property, was required to hold it for and on behalf of the owner till such time that the alleged misuser was stopped and the consideration money reimbursed to the extent of forfeiture caused therefrom. It was held that the Estate Officer's powers were somewhat akin to a caretaker or a trustee to hold and use the property on behalf of the owner till such time that the penalty is paid and the site or building is restored to its permitted use. In the light of the foregoing discussion, as also the covenants of the statutory deed, this view of the Division Bench needs rectification. In statutory resumption under 8-A, the Estate Officer quietens the title in his favour and disengages the Central Government from the deed. In that case he

becomes the owner of the property resumed having been led to the wall to take the drastic action on the failure of the transferee to clear up the dues or observing other conditions of such sale. In that event, he is an owner in his own right. He resumes the site for the Central Government absolutely. The quint-essence of this power is nothing else but again a right of re-entry since the property still remained belonging to the Central Government under section 3(3) of the Act which made section 8-A operatable. In covenantal resumption, no title is involved, but the Estate Officer effects the right of re-entry Under the deed, he withdraws assurances and uses the property resumed as part of his former estate and retains it as such. In this situation as well, the Estate Officer possesses the property by himself and is not to keep it held on behalf of the transferee. So in the case of both the resumptions, the Estate Officer does not hold the resumed property for and on behalf of the transferee and as a necessary corollary, he is neither a caretaker nor a person akin to a trustee. This view of the Division Bench should stand rectified.

(87) On account of the foregoing discussion, the concept of resumption and interpretation of section 8-A of the Act as done now is super-imposed on the view taken by the Division Bench in *Amrit Sagar Kashyap's case* (supra) which should be taken to be partially modified, explained and affirmed to the extent and manner afore-dealt with. For the view now taken, neither are the examples quoted by the Chandigarh Administration in an earlier part of the judgment supportive of its view towards resumption worth being dealt with nor the numerous counter-examples which arise from the infraction of numerous rules and orders suggestedly attracting the process for resumption under the statutory deeds as conditions. A single swallow does not make a summer. Examples and counter-examples though amuse, yet can be no effective guides in the interpretation of statutes. Those are apt food for the Legislature.

(88) Now let us revert back to the facts of Civil Writ petition No. 2830 of 1970. Despite the life given to the resumption orders by the validation clause in section 7 of the Parliament Act No. XVII of 1973, the provisions of the amending Act became retrospectively applicable from 1st November, 1966, but section 7 at once with effect from 9th April, 1973. It was provided in section 7 that whatever had been

under the principal Act shall in so far as it is consistent with the provisions of the Principal Act as amended by the Amendment Act, be deemed to be as valid and effective as if such thing or action was done or taken under the principal Act as amended by the amending Act. Applying the principles above-noted and enunciated, as also section 7 of Parliament Act No. XVII of 1973, the Estate Officer had no jurisdiction to pass an order of resumption resuming the site and forfeit the whole of consideration money on 13th July, 1965. That order has to be treated as *non est* on the basis of *Messrs. Jagdish Chand Radhey Shyam's case* (supra) and the amendment. The basic order having gone and not being one under section 8-A even deemingly, the same cannot merge in the appellate order of the Chief Administrator dated 20th May, 1967, Annexure 'B', or even validate it. It cannot in isolation stand without the foundation of an order under section 9 of the unamended Act deemingly to be one under section 8-A of the amended Act. On the same reasoning, order dated 29th January, 1970, Annexure 'C', by the Chief Commissioner cannot be sustained. No right was alive under the conveyance deed for resumption on breach of certain conditions. Thus, this petition has necessarily to be allowed quashing the impugned orders, Annexures 'A', 'B' and 'C' respectively.

(89) In Civil Writ Petition No. 1149 of 1979, a number of grounds were raised in the petition, yet the ones which surfaced were whether the resumption of the house of the petitioner was in violation of his fundamental rights under Articles 14 and 19 of the Constitution of India as also the ambit of section 8-A of the Act. A procedural point whether the impugned orders were passed in utter violation of rules of natural justice without affording an opportunity of being heard to the petitioner and whether the service was sufficient in the eye of law were also mooted. The respondents, on the other hand, maintained that the service on the petitioner was legal and he was provided for an opportunity of being heard which he failed to avail. It was maintained that the resumption of the house did not violate the fundamental rights of the petitioner guaranteed under the Constitution.

(90) It is noteworthy that this petition came up for consideration before the Motion Bench on 11th April, 1979. Notice of motion was issued. Finally it was admitted on 9th May, 1979. As noticed in an earlier part of the judgment, fundamental rights under Articles

.9(1)(f) and 31 of the Constitution were available to the petitioner upto 20th July, 1979. Had the case been heard and decided on 9th May, 1979, the day on which it was admitted, it is undisputable that the petitioner could invoke the applicability of those Articles. Can he to so now is the moot question. It is only of academic interest to answer this question for the way in which section 8-A of the Act has been interpreted. All the same, the deletion of these Articles during the pendency of writ petition would not have an adverse effect to his cause on the assumption that we have to see if the relief was available to the petitioner on the day he invoked the extraordinary urisdiction of this Court. Sustenance to the view is available n *Rameshwar and others* v. *Jot Ram and another*, (20), a decision rendered by the Supreme Court. It is held therein :—

> "The philosophy of the approach which commands itself to us is that a litigant who seeks justice in a perfect legal system gets it when he asks for it. But because human institutions of legal justice function slowly, and in quest of perfection, appeals and reviews at higher levels are provided from, the end product comes considerably late. But these higher Courts pronounce upon the rights of parties as the facts stood when the first Court was first approached. The delay of years flows from the infirmity of the judicial institution and this protraction of the Court machinery shall prejudice no one....*Actus curie nominem gravabit* ('Acts of the Court shall prejudice no one' Latin for lawyers Sweet & Maxwell)."

Clause 10 of the deed has specifically been relied upon by the Chandigarh Administration to justify the order of resumption. Now here, proceedings under section 8-A were undertaken by the Estate Officer whereby the site was resumed and ten per cent of the total amount of consideration money etc. was forfeited. The orders were maintained in the appellate and the revisional stages. Concededly, the entire price had been paid and the sale completed in the first instance. Thus for the view above taken, no proceedings under section 8-A could be initiated against the petitioner or his tenant towards statutory resumption and causation of forfeiture. The plea taken up by the official respondents was that there were breach of conditions of the sale only, which only authorised them to initiate

(20) 1975 P.L.J. 454.

proceedings for covenantal resumption. Thus the present action and orders of the respondents are wholly without jurisdiction and thus deserve to be quashed, all the more when I am not satisfied about the opportunity granted to the petitioner to show cause, as also if availed of to what benefit. It may, however, be made clear that it would be open to the respondents to undertake covenantal resumption if permissible to them in accordance with the law laid down heretofore.

(91) For the foregoing discussion, both petitions (C.W.P. Nos. 2630 of 1970 and 1149 of 1979) are allowed and the respective impugned orders therein are hereby quashed. The re-examination of the view in *Amrit Sagar Kashyap's case* (supra) being intra-Court, there would be no order as to costs.

ORDER OF THE COURT

(92) In accordance with the view of the majority, it is held that—

(1) Section 8-A is not violative of either Article 14 or Article 19(1)(f) of the Constitution;

(2) in conformity with the earlier Full Bench view in *Brij Mohan's case*, the resumption under Section 8-A of the Act, in essence, connotes a divestiture of the title of the transferee; and

(3) *Amrit Sagar Kashyap* v. *Chief Commissioner*, (1 supra), does not lay down the law correctly on this point and is hereby overruled.

The case would now go back to the Division Bench for disposal on merits in accordance with the answer to the aforesaid pristinely legal questions.

S. S. Sandhawalia, C.J.
Prem Chand Jain, J.
M. M. Punchhi, J.

*N. K. S.*

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