

Before G. S. Singhvi & Iqbal Singh, JJ.

SUKHPAL SINGH KANG & OTHERS,—*Petitioners.*

versus

CHANDIGARH ADMINISTRATION & ANOTHER,—*Respondents.*

C.W.P. 3370 of 1992.

16th October, 1998

Constitution of India, 1950—Art. 226—Capital of Punjab (Development and Regulation) Act, 1952—S. 2 (b)—Chandigarh Lease Hold of Sites and Building Rules, 1973—Rls. 3 (A), 10, 12 & 13—Auction purchasers of commercial sites in Chandigarh on leasehold basis—Allotees after paying 20% premium constructing multi-storeyed buildings thereon—Writs filed praying for stay of payment of instalments of premium laid down in the conditions of allotment on the ground that civic amenities like approach road, street lights, parking places, water and electricity connections, sewerage connections etc. not provided by the Administration resulting in alleged deprivation of beneficial enjoyment of property—Charging of penal interest in terms of Rules 12 (3) and 3 (A) also challenged—Act and Rules found not to cast duty on administration to auction fully developed sites—Auction bid for sites not invited by making representations to the public that fully developed sites will be auctioned—Court finding that buildings/ premises meanwhile let out at market rent to third parties—Writ Jurisdiction—Writ proceedings are not meant for avoidance of contractual obligations voluntarily incurred—Stay vacated and writs dismissed and the right to levy penal interest in terms of Rules 12(3) and 12(3-A) upheld—No justification found in not making payment of instalments of premium & ground rent which caused loss to public exchequer and the administration in carrying out remaining development activities—Court in order to avoid further litigation directing administration to furnish statement of amounts due against the sites/buildings together with interest and ground rent within 3 months and thereafter directions issued to the petitioners to pay outstanding dues in three equated instalments—Liberty also given to the Administration to levy penalty under Rule 13(iii) in accordance with the Rules.

Held that Section 3 of the Capital of Punjab (Development and Regulation) Act, 1952 and Rule 4 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 do not speak of the transfer of the fully developed land/sites only. Thus, the statute does not cast duty on the respondents to undertake development so as to provide all the amenities specified in Section 2(b) of the Act before transferring the land/sites. We also do not find anything in the rules from which it can be inferred that the administration of Union Territory is under an implied obligation to auction fully developed sites. The auction notices and the general terms and conditions, which were made known to the bidders at the time of auction did not postulate transfer of sites with all amenities. As a matter of fact, by virtue of clause 12 of the general terms and conditions of auction and clause 20 of the letter of allotment, it was made clear to the prospective lessees that the government does not own the responsibility for levelling the uneven sites. It is, thus, clear that the respondents did not invite bids for the sites by making representations to the public that fully developed sites will be auctioned.

(Para 60)

Further held, that in view of the express provisions contained in Rule 6, the lease of the site will be deemed to have commenced from the date of auction and the petitioners were duty bound to pay the instalments of premium along with the amount of ground rent in terms of Rules 12 and 13 of the 1973 Rules and their failure to do so fully justified the initiation of proceedings under Rules 12 & 13 for recovery of the dues of instalments of premium and ground rent. The petitioners have not challenged the general terms and conditions of auction and the letter of allotment. Therefore, they are estopped from challenging the proceedings initiated by the respondents to recover the amount of premium and ground rent in accordance with clauses 1 & 4 of the general terms and conditions and clauses 4 & 5 of the letter of allotment.

(Para 62)

Further held, that the petitioners are bound to pay the instalments of premium and ground rent together with interest and they cannot refuse to fulfil their contractual obligation to do so on the spacious ground that the amenities were not provided by the administration. We also hold that the demand raised by the respondents requiring the petitioners to pay the dues of instalments, ground rent and interest are neither unreasonable nor unfair. Rather, these actions of the respondents are consistent

with the terms and conditions of auction as also the conditions subject to which the sites were leased out to the petitioners.

(Para 75)

Further held, that the argument of the learned counsel that the respondents should not charge penal interest under Rule 12(3-A) of the 1973 Rules also merits rejection in view of the admitted fact that the petitioners did not pay the amount of premium and ground rent. The mere fact that the petitioners obtained stay orders from the Court on the payment of instalments cannot absolve them from liability to pay interest in terms of Rule 12 (3-A).

(Para 76)

1. C.W.P. 3370 of 1992

Sukhpal Singh Kang & 19 ors. vs. Chandigarh Administration & 9 ors.

M. L. Sarin, Senior Advocate with Alka Sarin, Advocate, *for the Petitioners*.

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate, *for the Respondents*.

2. C.W.P. 15481 of 1992

Surinder Singh and 27 others vs. Chandigarh Administration and another.

Manish Jain, Advocate, *for the petitioners*.

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate, *for the Respondents*.

3. C.W.P. 1694 of 1993

Gurmukh Singh and 7 others vs. Chandigarh Administration and another.

P. S. Patwalia, Advocate, *for the petitioners*.

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate, *for the respondents*.

4. C.W.P. 4655 of 1993

Satwant Kaur and another vs. The Estate Officer, Chandigarh Administration.

Jasbir Singh Chahal, Advocate, *for the petitioners.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

5. C.W.P. No. 4721 of 1993

Kartar Singh *vs.* Chandigarh Administration and another.

Rajiv Atma Ram, Advocate *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

6. C.W.P. No. 5726 of 1993

Jagmohan Singh Brar *vs.* The Estate Officer, Chandigarh
Administration.

None *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

7. C.W.P. No. 7020 of 1993

M/s Talwandi Estates Pvt. Ltd. *vs.* Union of India through
Chandigarh Administration and another.

Hemant Kumar, Advocate, *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

8. C.W.P. No. 8052 of 1993

Sant Singh Brar and 19 others *vs.* Chandigarh Administration
and another.

R. S. Bajaj, Advocate, *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

9. C.W.P. No. 8899 of 1993

M/s Patiala Industrial Investment Co. Pvt. Ltd. *vs.* Union of India

through Chandigarh Administration and another.

S. M. L. Arora, Advocate, *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

10. C.W.P. No. 8984 of 1993

Smt. Charanjit Bhudiraja and another *vs.* The Estate Officer,
Chandigarh Administration.

None, *for the petitioners.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

11. C.W.P. No. 9824 of 1993

Smt. Satwant Kaur and others *vs.* Chandigarh Administration
and others.

R. S. Bajaj, Advocate, *for the petitioners.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

12. C.W.P. No. 1704 of 1994

Sukhbir Singh & 9 others *vs.* Chandigarh Administration and
another.

None, *for the petitioners.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

13. C.W.P. No. 3322 of 1994

Joginder Singh *vs.* Chandigarh Administration and another.

Gautam Dutt, Advocate, *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

14. C.W.P. No. 4438 of 1994

Jasbir Singh *vs.* Chandigarh Administration and another.

V. P. Sharma, Advocate, *for the petitioner.*

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate,
for the respondents.

JUDGMENT

G. S. Singhvi, J.

(1) Whether the jurisdiction of the High Court under Article 226 of the Constitution of India should be exercised for relieving the petitioners of their obligation to pay the amount of premium along with interest and ground rent in accordance with the provisions of Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as 'the Act') and the Chandigarh Lease Hold of Sites and Building Rules, 1973 (hereinafter referred to as 'the 1973 Rules') and the terms and conditions of allotment is the main issue which arises for adjudication in these petitions filed primarily for the purpose of restraining the respondents from realising the amount due from the petitioners although the drafting of petitions has been so articulated as to give an impression that the failure of the respondents to discharge their duty to provide amenities has deprived the petitioners of full use and enjoyment of the commercial properties of which they secured leases by agreeing to pay hefty premium and ground rent.

THE RELEVANT FACTS

C.W.P. No. 3370 of 1992

(2) On the basis of the highest bid of Rs. 44,00,000 given by them in the auction held by the Chandigarh Administration on 25th February, 1990 in pursuance of advertisement Annexure P. 1 dated 23rd February, 1990, commercial site (SCO No. 66-67), Sector 8-C was leased out to petitioners—Sukhpal Singh and 19 others for a period of 99 years.

(3) Clauses 1, 4, 6, 11, 12, 15, 16 and 22 of the general terms and conditions which were made known to all the bidders at the time of auction and which are common to all the cases read as under :

"1. The sites will be given on lease hold basis for 99 years. *In addition to the auction premium, rent at the rate of 2½%*

premium is payable every year for the 1st 33 years. The rent may be raised to 3-1/4% for next 33 years and 5% of the premium for the remaining 33 years of the lease period.

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4. 25% of the bid shall be accepted in cash or by means of Demand Draft at the fall of the hammer and remaining 75% premium may be paid either in lump sum within 30 days (including date of auction) from the date of auction without any interest or the balance 75% premium shall be payable in three equated annual instalments along with interest at the rate of 7% per annum. *The first instalment shall become payable after one year of the date of auction. In case the instalment of premium and ground rent are not paid on due date, interest at the rate of 12% per annum shall be payable from the due date to the date of actual payment.* The Estate Officer may in his absolute discretion, allow the successful bidder to deposit, in the prescribed mode of payment, not less than 10% of the bid, on the condition that the difference between the amount deposited and 25% of the bid shall be deposited in the same manner within 30 days of auction (including the date of auction).

PAYMENT BY CHEQUE WILL NOT BE ACCEPTED.

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6. The sale of sites/buildings shall be governed by the provisions of the Captial of Punjab (Development and Regulation) Act, 1952 and the Chandigarh Lease Hold of Sites and Building Rules, 1973 as amended from time to time and rules made thereunder.

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11. After making payment of 25% of the premium, the lessee shall execute a lease deed in the prescribed form in such manner as he may be directed by the Estate Officer within six months of the date of auction or within such extended period as may be allowed by the Estate Officer for sufficient

reasons, failing which the Estate Officer may cancel the lease and forfeit upto 10% of the premium. The lessee shall bear and pay all expenses in respect of execution of lease deed including the stamp duty and registration fee payable thereof in accordance with law for the time being in force.

12. Government do not own any responsibility for levelling the uneven sites.

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15. After the lessee has paid full premium of the site whether before or after constructing a building according to the sanctioned plan, he may also with the permission of Estate Officer transfer his rights in the site subject to the condition that 50% of the unearned increase in the value of the land at the time of the said rights in the site are sold or transferred shall be payable to the Chandigarh Administration before registering such sale of transfer. The value of the property for this purpose shall be assessed by the Estate Officer or any other authority which may be appointed by the Chief Administrator whose decision shall be final and binding on the lessee. The lessee shall be entitled to produce his evidence and of being heard.

16. The lessee shall complete the construction of the building and on the site within three years from the date of auction in accordance with the rules regulating the erection of building containing in the Punjab Capital (Development and Regulation) Building Rules, 1952. The date of completion will be the date of receipt of application for permission to occupy the building in form D annexed to Punjab Capital (Development and Regulation) Building Rules, 1952 accompanied by completion certificate from the Registered Surveyor/Qualified Architect who supervised the construction of the building provided the building is also certified to have been completed according to the sanctioned plan by the Chief Administrator.

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the date of auction. In former case, the following shall be the schedule of payment of instalments of premium:—

Sr. No. of due date Instalment payment	Date upto which payment should be made	Amount of equated instalment including 7% interest
1st Instalment 25-2-1991	10-3-1991	Rs. 12,57,465.00
2nd Instalment 25-2-1992	10-3-1992	Rs. Ditto
3rd Instalment 25-2-1993	10-3-1993	Rs. Ditto
Annual G. Rent, for 1st 33 years Rs. 1,10,100		

8-A. After considering the cause, if any, shown by the lessee in pursuance of the aforesaid notice, the Estate Office may either allow payment of instalment/rent with penalty which may extend to 100% of the amount due and interest at the rate of 12% p.a. for the delayed period, order cancellation of lease and forfeit the whole part of the amount already paid.”

(5) Other clauses of the allotment letter are not being reproduced because the same are identical to the general terms and conditions of sale reproduced herein above.

(6) The petitioners took possession of the site after paying Rs. 11,00,000 and erected the building in accordance with the sanction granted to their building plan by the competent authority on 18th July, 1990. The water connection was released in their favour on 26th July, 1990. Temporary electricity connection was provided to them on 6th March, 1992 and the permanent connection was released on 15th November, 1993. In the intervening period, the petitioners paid first instalment before the due date i.e. 10th March, 1991. But they did not pay the second instalment, the payment of which became due on 10th March, 1992. Instead they invoked writ jurisdiction of this Court for restraining the respondents from realising the amount of instalments of premium, ground rent etc. by contending that without providing basic amenities like sewerage, street lights, electric connection, water supply, the respondents cannot compel them to pay the amount of instalment etc. and obtained stay on the recovery of instalments of premium etc.

(7) During the pendency of the writ petition, the petitioner no. 1 filed an additional affidavit dated 5th May, 1996 along with 4 photographs to show that the public parking place and proper slow carriage way on the rear side of the market place had not been provided even upto that date and, therefore, they have not been able to put their premises to its maximum use and have not been able to get adequate rent.

(8) In the written statement filed by the respondents in the form of affidavit of Shri S. K. Sharma, Assistant Estate Officer, it has been averred that the basic amenities like street lights, parking lot and approach road have already been provided at the site. In paragraph 4 of his affidavit, the Assistant Estate Officer has made the following statement regarding the status of the site leased out to the petitioner:

“That the other details as supplied by the Electric Department and Sub Divisional Officer (Buildings), Union Territory, Chandigarh are as under :

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|--|---|
| (a) SCO site No. | 66-67, Sector 8, Chandigarh
CPL 4815 |
| (b) Date of Sanction of plans | Memo No. 2426,
dated 18-7-1990 |
| (c) Stage of building | Building is constructed upto
IInd floor with basement. |
| (d) Date of grant of sewerage connection | Vide No. 7658,
dated 7-5-1991 |
| (e) Date of application for occupation certificate | Not applied. |
| (f) Date of issue of occupation certificate | Not applied. |
| (g) Date of application for release of electric connection | 26-3-1991 |
| (h) Date of release of electric connection | 16-2-1992 |
| (i) Name of owner | Shri Sukhpal Singh Kang
and others. |

(j)	Date of auction	25-2-1990
(k)	Total outstanding dues with interest upto 31-7-1998	Principal Rs. 10,84,930 Interest Rs. 30,06,376

Total Dues Rs. 41,91,306

(9) The petitioner No. 1 has also filed affidavit dated 16th August, 1998 to controvert the assertion made in the affidavit of the Assistant Estate Officer. In paragraph 2 of his affidavit, he has averred that more than 50% due amount had been paid before the filing of the writ petition and even though the High Court had stayed the recovery of instalments etc. on 11th March, 1992, the petitioners have paid the second instalment of Rs. 11,00,000 on 14th October, 1994 and another sum of Rs. 11,00,000 on 10th July, 1998 and nothing is due from them. He has also referred to the averments made in paragraph 9 of the written statement filed on behalf of Chandigarh Administration in C.W.P. No. 11996 of 1997 *Mandeep Singh v. Union Territory* who is a lessee of SCO Nos. 32-33 and 34-35 in Sector 8-C to show that the respondents have not provided the amenities.

C.W.P. No. 15481 of 1992

(10) Petitioners—Surinder Singh and others were granted 99 years lease in respect of commercial site no. 339-340 on the basis of highest bid of Rs. 6,25,000 given by them in the auction held on 25th February, 1990. The general terms and conditions, subject to which lease of 99 years was granted to them, are identical to those incorporated in the letter of allotment issued in favour of the allottees who are petitioners in Civil Writ Petition No. 3370 of 1992. The only difference between the two letters of allotment is with regard to the amount of premium and the ground rent and the date of payment of instalments. The petitioners took possession of the site after paying 25% of the instalment and erected multi storeyed building after obtaining sanction of the plan. However, the instalment of premium and ground rent were not paid by them. Instead, they sought intervention of the Court by filing writ petition for restraining the respondents from making the recovery of ground rent etc. on the ground that the basic amenities have not been provided by the respondents and succeeded in getting interim stay order which has remained operative till this day.

(11) In the written statement dated 11th March, 1993 filed

by the respondents through Shri P. S. Aujla, Assistant Estate Officer, it has been averred that the parking/road and sewerage have been provided and the work relating to parking in front side and street lights is in progress. The respondents have also averred that the petitioners did not pay the first and second instalments of premium and ground rent which fell due on 25th February, 1991 and 25th February, 1992 and a sum of Rs. 21,00,000 was outstanding on the date of filing of the writ petition. The respondents have pleaded that the petitioners cannot avoid payment of dues on the specious plea of lack of amenities.

(12) In paragraph 2 of the affidavit dated 28th August, 1998 filed by Shri S. K. Sharma, Assistant Estate Officer, Union Territory, Chandigarh, the following statement has been made regarding the status of the site allotted to the petitioners :

“That given below is the information in respect of the site in question relevant for the purpose of disposal of the present writ petition:

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| 1. SCO Site No. | 339-340, Sector 34, Chandigarh (CPL-4865) |
| 2. Date of sanction of plans | Order No. 1929-34/12-6-1990. |
| 3. Stage of Building | Upto 4th Floor |
| 4. Date of sewerage connection. | Owner has not applied for sewerage connection. |
| 5. Date of application for occupation certificate | Not applied |
| 6. Date of issue of occupation certificate | Not obtained. |
| 7. Date of application for release of electric connection. | 21-1-1991 |
| 8. Date of release of electric connection | 14-7-1995 |
| 9. Name of owner | Shri Surinderjit Singh and others. |

10. Date of auction	25-2-1990
11. Total outstanding dues with interest upto 31-7-1998	
Principal	Rs. 58,31,516
Interest	Rs. 78,86,199
Total	Rs. 1,37,17,715
12. Date of sanction of water connection.	18-6-1990
13. Details of occupiers	<i>Basement, Ground Floor and First Floor lying vacant. 2nd, 3rd and 4th Floor have been occupied by Design Office, Irrigation Department, Punjab."</i>

C.W.P. No. 1694 of 1993

(13) Petitioners—Gurmukh Singh Dhillon and 7 others were granted lease of commercial site No. 44-45, Sector 9-D after the highest bid of Rs. 7,27,000 given by them was accepted by the competent authority of the Chandigarh Administration. In terms of the letter of allotment Annexure P. 2, dated 18th March, 1992, they were required to pay 25% of the premium as a condition precedent to the delivery of possession. They were also required to pay the remaining amount in 3 equated instalments of Rs. 21,92,505 on 10th March, 1993, 10th March, 1994 and 10th March, 1995 respectively and the annual ground rent for first 30 years at the rate of Rs. 1,81,750. They constructed the building upto second floor with basement but did not pay the due instalments on the premise that the amenities like approach road, parking place, electricity lines, rain water disposal and public lighting have not been provided and thus they were deprived of their right to lease out the premises to the prospective businessmen. Along with the writ petition, the petitioners have annexed 7 photographs in the form of Annexure P. 7 to show that the facilities have not been provided by the Chandigarh Administration.

(14) In paragraph 2 of the written statement filed by the Assistant Estate Officer, Shri S. K. Sharma, the following details regarding the status of the property of the petitioners have been given:—

1. SCO Site No.	44-45, Sector 9-D, Chandigarh (CPL-5127)
2. Date of sanction of plans	Order No. 840-45, dated 29-4-1992.
3. State of Building	Building is completed upto IIInd Floor with basement.
4. Date of sewerage connection.	Illegal sewerage connection has been done at the site.
5. Date of application for occupation certificate	Not applied
6. Date of issue of occupation certificate	Not obtained.
7. Date of application for release of Electric connection.	29-3-1993
8. Date of release of electric connection	15-11-1993
9. Name of owner	Shri Gurmukh Singh and others.
10. Date of auction	5-2-1992
11. Total outstanding dues with interest upto 31-7-1998	Principal Rs. 60,41,015.00 Interest Rs. 88,47,210.00 Total Rs. 1,48,88,225.00
12. Date of sanction of water connection.	24-5-1992
13. Details of the occupiers	Basement, and Ground Floor Punjab National Bank.

Ist Floor

- (i) S. K. Publishing Co.
Prop. J.C. Arora.

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- (ii) Advance Video System,
Arop Ram.
 - (iii) Business Bytes Prop.
Puneet Arora.
 - (iv) Komicreation Miss Komi
 - (v) Prompt Travels.
- Total Rs. 36,000 per month.

Second Floor

Daber India Ltd.
Rs. 35,000 per month.

(15) Smt. Satwant Kaur and Smt. Raghbir Kaur have prayed that the respondent—Estate Officer, Chandigarh Administration be restrained from making recovery of second instalment of premium because basic amenities like metalled road giving direct access from main road to the shop in question, street lighting and parking have not been provided by the Administration. The petitioners have also averred that even the approach road is full of pot holes making it impossible to utilise the site in question for doing business. They have also alleged that the action of the Chandigarh Administration to permit temporary shops in the nearby areas has also considerably diminished the value of their site.

(16) In the counter affidavit filed through Shri R. S. Doon, the then Assistant Estate Officer, the respondent has averred that the pucca road cannot be provided before the completion of the construction in the area, else the same would be damaged by heavy vehicles like trucks carrying construction material. Regarding the running of temporary shops, it has been averred that the Housing Board has taken steps against the mis-use of premises.

(17) In paragraph 2 of the additional affidavit dated 31st August, 1998 filed by Shri S. K. Sharma, Assistant Estate Officer of the Union Territory, the following statement has been made regarding the status of SCO No. 32 allotted to the petitioners along with Inder Pal Singh Doabia son of T. S. Doabia, Man Preet Singh son of

T. S. Doabia and T. S. Doabia son of Harbans Singh Doabia:—

1. SCO Site No.	32, Sector 41-D, Chandigarh (CPL-5182)
2. Date of sanction of plans	26-6-1992.
3. State of Building	Constructed upto IIInd Floor with basement.
4. Date of sewerage connection.	Not applied
5. Date of application for occupation certificate	Not applied
6. Date of issue of occupation certificate	Not applied
7. Date of application for release of Electric connection.	22-7-1997
8. Date of release of electric connection	11-9-1997
9. Name of owner	Smt. Satwant Kaur and others.
10. Date of auction	24-3-1992
11. Total outstanding dues with interest upto 31-7-1998	Principal Rs. 27,500.00 Interest Rs. 447956.00 Total Rs. 475456.00
12. Date of sanction of water connection.	27-5-1993
13. Details of the occupiers	Building lying vacant."

(18) The general terms and conditions of the lease as well as the various clauses of the letter of allotment dated 7th May, 1992 issued in favour of the allottees are similar to those contained in the letter of allotment issued in favour of Satwant Singh, etc. with the only difference that the petitioners were required to pay 75% of the balance price in three equated instalments of Rs. 3,31,741 payable on 10th April, 1993, 10th April, 1994 and 10th April, 1995 along with annual ground rent for first 33 years at the rate of Rs. 27,500.

C.W.P. No. 4721 of 1993

(19) Petitioner—Kartar Singh has 6.66% share in the 99 years lease granted by the Chandigarh Administration of Shri Gurjit Singh and 17 others in respect of SCO No. 50-51, Sector 9-D, in view of the highest bid of Rs. 65,25,000 given by them in the auction held in the year 1992. The lessees completed construction of two floors of building with basement after obtaining possession of the site and leased out the property to various tenants. However, they did not pay the instalments of premium and ground rent in accordance with clause 5 of the letter of allotment. Instead, they filed writ petition on 27th April, 1993 and persuaded the Court to stay the recovery of instalments of premium, ground rent etc. on the strength of their plea that the respondents have not provided adequate amenities like approach road, parking place, electricity line and lights etc. Their contention is that the building cannot be put to adequate use due to the lack of basic amenities which the respondents are bound to provide in accordance with the contractual obligation incurred by them. Along with the writ petition, the petitioner enclosed 5 photographs to show that the amenities have not been provided at the site in question.

(20) In the written statement dated 1st September, 1993 filed through the Assistant Estate Officer, the respondents have controverted the averments made in the writ petition except those relating to the amenities like roads, parking etc. They have also averred that the building constructed by the allottees is not as per the sanctioned building plan.

(21) Petitioner Kartar Singh filed additional affidavit dated 7th May, 1996 in which he made the following statement.

“1. That in S.C.O. No. 50-51, Sector 9, Chandigarh position is that :—

- (i) Sewerage connection has not been released till date.
- (ii) Water connection was given on 26th July, 1993.
- (iii) Electricity connection was given on 24th January, 1994.
- (iv) Front approach road and parking was commenced in or about August, 1994.

“The same was constructed by October, 1994. However, the road and parking has not been finished till date and final layer of premix has not been put till date.

- (v) That no approach road has been made till date to the back side service entrance. Photographs attached.”

In paragraph 2 of the additional affidavit dated 28th August, 1998 filed by the Assistant Estate Officer, the respondents have furnished the following details regarding the status of the property of the petitioner and other allottees :—

1. SCO Site No.	50-51, Sector 9-D, Chandigarh (CPL-5130)
2. Date of sanction of plans	25-1-1993
3. Stage of Building	Constructed upto IIInd Floor with basement.
4. Date of sewerage connection.	22-2-1993
5. Date of application for occupation certificate	22-2-1993
6. Date of issue of occupation certificate	Sewerage connection and occupation certificate refused on 2nd August, 1993 due to building violation.
7. Date of application for release of Electric connection.	21-4-1993
8. Date of release of electric connection	24-1-1994
9. Name of owner	Shri Kartar Singh & others.
10. Date of auction	5-2-1992
11. Total outstanding dues with interest upto 31-7-1998	Principal Rs. 1239728.00 Interest Rs. 42,52,668.00 Total Rs. 54,92,396.00

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12. Date of sanction of water connection. 13-7-1993
13. Details of the occupiers
 -Basement and Ground Floor found locked.
- First Floor has been occupied by—**
1. Modgones Marketing Prop. Naresh
Rs. 2942 per month.
 2. Enerby dis Teh Pot Ltd., Prop. Sandeep
Rs. 3600 per month
 3. Asha Parmaceuticals, Prop. Sandeep
Rs. 3000 per month
 4. Goldwaves Forest Ltd., Prop. Man Singh Rs. 4700
 5. Video Craft Ashwaw Sood, Rs. 3100
 6. Attantic Buildings, Prop. Vijay Suri, Rs. 2835
 7. Corporate Couriers Ltd., Prop. Rajinder Singh,
Rs. 2000
 8. Rahi Trading Rakesh & Mohinder Pal, Rs. 3500
 9. T. M. T. India Ajay Sharma, Jasdeep Sodhi Rs. 2900

Second Floor:

1. I. C. R. A. Ltd. Rs. 16250
2. H. P. M. C. Rs. 9732.”

(22) During the course of hearing of the writ peition, Shri Rajiv Atma Ram produced 6 photographs showing the non-construction of complete parking in the front and the service road on the back of the SCO.

(23) Shri Ashok Aggarwal made a statement that at one stage the SCO was resumed on account of mis-use by running of Whimpy Restaurant in it but, later on the resumption order was set aside because of the vacation of mis-use.

C.W.P. No. 5726 of 1993

(24) This is a petition to quash the notice dated 23rd April, 1993 issued by the Assistant Estate Officer under Rule 12(3) and Rule 13(iii) of 1973 Rules read with Section 8 of the Act requiring

the petitioner to deposit the amount of first instalment of the premium and ground rent along with interest at the rate of 15% per annum and also to show cause as to why penalty upto 10% of the due amount of instalment and penalty upto 100% of due amount of ground rent be not imposed upon him. The petitioner has also prayed for issuance of a writ directing the respondents to provide basic amenities like parking places, street lights, approach road etc. The facts which are discernible from the record produced by the respondents show that the lease of commercial site No. 36, Sector 41-D was granted to petitioner Jagmohan Singh Brar and 4 others in the year 1992 on the basis of highest bid of Rs. 13,50,500 given by them in the auction held by the Chandigarh Administration on 24th March, 1992. In terms of clauses 4 and 5 of the letter of allotment, they were required to pay 25% of the premium within 30 days and the remaining amount in three equated instalments of Rs. 4,07,136 payable on 10th April, 1993, 10th April, 1994 and 10th April, 1995 but instead of paying the amount in spite of the notice issued by the respondents, one of the lessees has instituted this petition for restraining the respondents from realising the amount etc. on the ground that the amenities have not been provided at the site and obtained stay order against the recovery of dues.

(25) In the written statement, the respondent has averred that the petitioner cannot avoid payment of instalment etc. in the garb of lack of so-called amenities. It has also been averred that Sector 41 is in the initial stage of development and the necessary amenities are likely to be provided within 3 years. In paragraph 2 of the additional affidavit dated 28th August, 1998, the Assistant Estate Officer has made the following statement regarding the status of the site in question :—

- | | |
|---|--|
| 1. SCO Site No. | 36, Sector 41-D, Chandigarh |
| 2. Date of sanction of plans | Memo No. 1374, dated 6-7-1992 |
| 3. Stage of Building | Constructed upto IInd Floor with basement. |
| 4. Date of sewerage connection | 2-9-1996 |
| 5. Date of application for occupation certificate | 22-7-1996 |

6.	Date of issue of occupation certificate	2-9-1996
7.	Date of application for release of electric connection	12-8-1994
8.	Date of release of electric connection	28-9-1994
9.	Name of owner	Shri Jagmohan Singh Brar & others.
10.	Date of auction	24-3-1992
11.	Total outstanding dues with interest upto 31-7-1998	Principal Rs. 1065158.00 Interest Rs. 1260404.00 Total Rs. 2325562.00
12.	Date of sanction of water connection.	27-5-1993
13.	Details of the occupiers	Ground Floor: lying vacant Ist Floor : 1. M/s Chief Medical Agency 2. M/s Homeopathic Medicine Clinic. Second Floor M/s Saraswati Vidya Mandir.”

C.W.P. No. 7020 of 1993

(26) On acceptance of highest bid of Rs. 61,80,000 given by the petitioner, lease of commercial site No. 196-197, Sector 34 was given to the petitioner for a period of 99 years on the terms and conditions embodied in the letter of allotment dated 27th March, 1992. After obtaining possession of the site by paying 25% of the premium, the petitioner constructed four storeyed building. First and second floor thereof were leased out to Life Insurance Corporation in September, 1993. Third floor has been leased out to M/s Capital Markets Ltd., M/s Wipro Consumers and Lighting and Instromedix (India) Pvt. Ltd. However, the petitioner did not pay any of the three instalments of Rs. 18,63,780 payable in terms of clause 5 of the letter of allotment alongwith annual ground rent of

Rs. 1,54,500 on the ground that basic amenities like roads, streets lights, place of parking, have not been provided. It has relied on representations dated 15th June, 1992 and 20th January, 1993 addressed to the Estate Officer for providing basic amenities. Annexure P. 4, is the notice issued by the Assistant Estate Officer under Rule 12(3) and Rule 13(iii) of the 1973 Rules requiring the petitioner to pay first instalment along with ground rent and interest at the rate of 15% and to show cause why penalty be not imposed on it. It filed reply Annexure P.5 (dated nil) and immediately thereafter filed this petition for restraining the respondents from realising the amount of instalments.

(27) On 21st July, 1993, the Court admitted the writ petition and stayed the recovery of instalment on the basis of interim order passed in C.W.P. No. 3370 of 1992.

(28) In addition to the common written statement filed on 5th July, 1993, the Assistant Estate Officer has in paragraph 2 of the affidavit dated 28th August, 1998, made the following statement regarding the status of the property of the petitioner :

- | | |
|--|--|
| 1. SCO Site No. | 196-197, Sector 34, Chandigarh
(CPL-5140) |
| 2. Date of sanction of plans | 10-4-1992. |
| 3. Stage of Building | Constructed Upto 4th Floor |
| 4. Date of sewerage connection. | Not applied |
| 5. Date of application for occupation certificate | Not applied |
| 6. Date of issue of occupation certificate | Not obtained. |
| 7. Date of application for release of electric connection. | 26-2-1993 |
| 8. Date of release of electric connection | 23-7-1995 |
| 9. Name of owner | Talwandi Estates |

10. Date of auction	5-2-1992
11. Total outstanding dues with interest upto 31-7-1998	Principal Rs. 6518340.00 Interest Rs. 65,96,286.00 Total Rs. 13114626.00
12. Date of sanction of water connection.	23-4-1990
13. Details of occupiers	Basement, lying vacant. Ground floor has been occupied by (i) Photostat (ii) M/s A.B.C. Communication (India) Pvt. Ltd. from February, 1996 1st and 2nd floor LIC of India from September, 1993 3rd floor M/s Capital Markets Ltd. from 2 years. M/s Wipro Consumers and Lighting Instromedix (India) P. Ltd. 4th floor vacant."

C.W.P. No. 8052 of 1993

(29) Commercial site No. 18-19, Sector 9 was leased out to the petitioners on 28th May, 1991 after the Administration of the Union Territory accepted the highest bid of Rs. 56,00,000 given by them in the auction held on 23rd March, 1991. The petitioners secured possession of the site by paying 25% of the premium and completed the construction of the building within the period stipulated in the letter of allotment. However, they did not pay single penny towards the instalments and ground rent payable on 10th April, 1992, 10th April, 1993 and 10th April, 1994 on the ground that the Administration has not provided amenities. On 7th July, 1993 they filed the present petition for restraining the respondents from recovery of the instalments of premium and ground rent and got the stay order on payment of instalments of premium and annual ground rent.

(30) In the additional affidavit dated 28th August, 1998 filed

by Shri S. K. Sharma, Assistant Estate Officer, the following details have been given regarding the status of the site of the petitioners :

1. SCO Site No. 18-19, Sector 9-D, Chandigarh (CPL-5030)
2. Date of sanction of plans 4706, dated 26-6-1991.
3. Stage of Building Constructed Upto IIInd Floor with basement.
4. Date of sewerage connection. 3896, dated 7-7-1992
5. Date of application for occupation certificate Not applied
6. Date of issue of occupation certificate Not obtained.
7. Date of application for release of electric connection. 28-9-1992
8. Date of release of electric connection 15-11-1993
9. Name of owner Shri Sant Singh and others
10. Date of auction 25-3-1991
11. Total outstanding dues with interest upto 31-7-1998
Principal Rs. 2091586
Interest Rs. 2880561
Total Rs. 4972147
12. Date of sanction of water connection. 25-7-1991
13. Details of occupiers
Basement, Ground floor
The Weaver (Govt. Departmental)
1st Floor
Lakshmi Overseas Industries Ltd.
2nd Floor
(a) Chandigarh Computer Centre,
Prop. Kuldeep, Rs. 25000
(b) Asap Solution, Prop.
Parti Pal Singh
(c) Physics Coaching Centre.

(31) This statement shows that Rs. 4972147 are due from the petitioners which they have not paid although the building consisting of basement, ground floor, first floor and second floor has been leased out to various tenants on hefty rents.

C.W.P. No. 8899/1993

(32) Petitioner—M/s Patiala Industrial Investment Company Pvt. Ltd. gave highest bid of Rs. 75,00,000 for SCO No. 46-47, Sector 9-D (M.M.). The respondents accepted this bid and granted lease of the site,—vide allotment letter dated 3rd March, 1992. The petitioner took possession by paying 25% of the price and constructed building upto second floor with basement and leased it out to the Bank of Punjab.

(33) Due to non-paying of the instalments of premium and ground rent, the Assistant Estate Officer issued notices Annexures P-3 and P-4 under Rule 12 (3) and Rule 13(iii) of the 1973 Rules but instead of making payment of the amount due, the petitioner filed this petition on 24th July, 1998 and succeeded in persuading this Court to stay the recovery of the dues in their entirety. The petitioner has alleged that due to the absence of amenities which the respondents were duty bound to provide at the site, it has not been able to use its property.

(34) In the counter affidavit filed by the Assistant Estate Officer on 28th August, 1998, the following details have been given regarding the status of the site on which the building has been erected by the petitioner.

- | | |
|---|---|
| 1. SCO Site No. | 46-47, Sector 9-D, Chandigarh
(CPL-5128) |
| 2. Date of sanction of plans | 765, dated 10-4-1992. |
| 3. Stage of Building | Constructed Upto IIInd Floor
with basement. |
| 4. Date of sewerage connection. | 31-1-1995. Sewerage connection
granted for labourers for three
months has since been expired. |
| 5. Date of application for occupation certificate | Not applied |

6. Date of issue of occupation certificate	Not obtained.
7. Date of application for release of electric connection.	1-6-1993
8. Date of release of electric connection	27-1-1995
9. Name of owner	Patiala Industrial Investment Company.
10. Date of auction	5-2-1992
11. Total outstanding dues with interest upto 31-7-1998	Interest Rs. 2690787.00
12. Date of sanction of water connection.	21-4-1992
13. Details of occupiers	Basement, Ground floor, 1st floor and 2nd floor have been by the Bank of Punjab.”

(35) A perusal of the above extracted statement shows that the entire building consisting of basement, ground floor, first floor and second floor has been leased out to Bank of Punjab.

C.W.P. 8984 of 1993

(36) After having erected a multi storeyed building on site No. 33, Sector 41-D by taking possession of the same on the basis of lease granted to them by Chandigarh Administration on 31st March, 1992 on a premium of Rs. 1126000, the petitioners have invoked writ jurisdiction of the High Court for restraining the respondents from charging the instalments of the premium along with ground rent on the ground that basic amenities like approach road (metalled), street lighting and parking places have not been provided by Chandigarh Administration.

(37) The respondents have not filed written statement in this case.

(38) Petitioners—Satwant Kaur and three others gave highest bid of Rs. 4,95,000 for booth site No. 140, Sector 41-D in the auction held on 25th March, 1991. Vide letter Annexure P. 1

dated 14th May, 1991, the site was allotted to them and after constructing the building, they leased it out to the tenants. Their grievance is that due to the failure of the respondents to provide amenities, it has not been possible to use the building to its fuller extent and yet the respondents are compelling them to pay the instalments of premium, interest, annual ground rent etc. On the basis of these facts, the petitioners have prayed for issuance of a mandamus directing the respondents to provide basic amenities like approach road, street light etc. at the site.

(39) The respondents have not filed written statement in this case also.

C.W.P. 1704 of 1994

(40) Petitioner—Sukhbir Singh and others secured the lease of SCO No. 54-55, Sector 9-D by giving highest bid of Rs. 74,50,000 in the auction held by Chandigarh Administration on 23rd March, 1991 for commercial sites. Vide letter dated 21st May, 1993, 99 years lease was granted to the petitioners subject to payment of 25% premium within 30 days and the remaining amount in three equated instalments of Rs. 22,46,790 payable on 10th April, 1994, 10th April, 1995 and 10th April, 1996 along with annual ground rent of Rs. 186250. The petitioners constructed building consisting of basement, ground floor, first floor and second floor and occupied the same without obtaining occupation certificate. Due to non-payment of instalments, proceedings under Rule 12(3) and Rule 13(iii) of the 1973 Rules were initiated against them for payment of the amount of first instalment along with ground rent and interest. They were also asked to show cause why penalty be not imposed upon them for non-payment of dues. Instead of paying the amount due, they filed this petition and persuaded the Court to pass an interim order in their favour on 7th March, 1994.

(41) Although the respondents have not filed a detailed reply, in paragraph 2 of the affidavit dated 28th August, 1998 filed by the Assistant Estate Officer, Union Territory, Chandigarh, the respondents have furnished the following details of the site :

- | | |
|------------------------------|--|
| 1. Site No. & Sector | SCO No. 54-55,
Sector 9-D, Chandigarh
(CPL-5195) |
| 2. Date of sanction of plans | Order No. 9785, dated 10-6-1993. |

3. Stage of Building	Building is completed upto IInd Floor with basement.
4. Date of sewerage connection.	Order No. 5777, dated 12-10-1994
5. Date of application for occupation certificate	Not applied
6. Date of issue of occupation	Not obtained.
7. Date of application for release of electric connection.	22-4-1994
8. Date of release of electric connection	22-7-1994
9. Name of owner	Shri Sukhbir Singh and others
10. Date of auction	29-3-1993
11. Total outstanding dues with interest upto 31-7-1998	Principal Rs. 241318.00 Interest Rs. 2572023.00 Total Rs. 2831341.00
12. Date of sanction of water connection.	13-7-1993
13. Details of occupiers	Entire Building has been occupied by the landlord.”

C.W.P. No. 3322 of 1994

(42)Petitioner—Joginder Singh along with 18 other other persons gave highest bid of Rs. 75,00,000 for SCO No. 48-49, Sector 9-D, in the auction held by Chandigarh Administration. The allottees took possession of the site and constructed building in the year 1992-93. Thereafter, they leased it out to the Indian Bank and Bank of Punjab. However, they did not pay the instalments which fell due on 10th March, 1993 and 10th March, 1994. Instead, they filed this petition for directing the respondents to provide amenities like approach road, parking place, electricity, street, lights etc. and also persuaded the Court to pass an interim order against the payment of instalments.

(43) The respondents have opposed the writ petition by

stating that the petitioner is not entitled to invoke writ jurisdiction because the lessees have not paid the instalments and yet they have occupied the premises even without obtaining the occupation certificate.

(44) In paragraph 2 of the additional affidavit filed by the Assistant Estate Officer on 31st August, 1998 the following statement has been made regarding the status of the site allotted to Joginder Singh etc.

- | | |
|---|--|
| 1. SCO site no | 48-49, Sector 9-D,
Chandigarh (CPL-5129) |
| 2. Date of sanction | 14.4.1992 of plans. |
| 3. State of building | Building is constructed
upto IInd floor with
basement. |
| 4. Date of sewerage
connection | Illegal sewerage connection
done at site. |
| 5. Date of application
for occupation
certificate | Not applied. |
| 6. Date of issue of
occupation certificate | Not obtained. |
| 7. Date of application
for release of electric
connection | 9.2.1994. |
| 8. Date of release of
electric connection | 3.5.1994. |
| 9. Name of owner | Sh. Joginder Singh Kang
and others. |
| 10. Date of auction | 5.2.1992. |
| 11. Total outstanding dues
with interest upto
31.7.1998 | Interest Rs. 5683048.00 |
| 12. Date of sanction
of water connection | 18.5.1992. |

6.	Date of issue of occupation certificate.	Not obtained.
7.	Date of application for release of electric connection.	5.8.1994
8.	Date of release of electric connection.	17.12.1994
9.	Name of owner	Sh. Jasbir Singh and others.
10.	Date of auction	29.3.1993.
11.	Total outstanding dues with interest upto 31.7.1998.	Principal Rs. 1138707.00 Interest Rs. 4561091.00 Total Rs. 5699789.00
12.	Date of sanction of water connection.	17.11.1993
13.	Details of occupiers.	Basement and Ground floor have been occupied Centrly Bank Ltd. Ist Floor has been occupied by Capital Horpilac-Orthoripsy and Posy Clinic. 2nd floor occupied by Recoh India Ltd.,"

(48) To this, a counter affidavit has been filed by the petitioner showing that a sum of Rs. 75,00,000 has been paid to the respondents apart from the ground rent and there is nothing outstanding on account of premium and ground rent.

(49) During the course of hearing, we had directed the respondents to furnish the details/particulars of the sanction of building plans, dates of issuance of occupation certificates and the various amenities provided at the different sites and also indicate the period within which the remaining work will be carried out. In compliance of that direction, the counsel for the respondents has furnished these details in the form of statements duly signed by the Assistant Estate Officer, Union Territory, Chandigarh, Superintending Engineer, Electricity OP Circle and the letter

written by the Executive Engineer, Roads Division, Municipal Corporation, Chandigarh. Since these statements give a comprehensive picture of the status of various sites in the context of the plea raised by the petitioners that the amenities have not been provided at the sites allotted to them, we consider it appropriate to make them part of the judgment. The same are annexed as Annexures A, B, C, D, E, F, G, H and I.

(50) The original files of all the allotments were produced by the counsel for the respondents, perusal of which reveals that all the allottees were made aware of the general terms and conditions before they participated in the auction. These files also show that the notices were issued to most of the petitioners under Rule 12(3) and Rule 13(iii) of the 1973 Rules requiring them to pay the amount of instalments of the premium along with interest and ground rent and even after obtaining stay orders from the High Court, some of them have paid instalments of premium and ground rent.

(51) Before dealing with the respective contentions and the tenability of the prayers made by the petitioners, we consider it proper to notice the background in which the Act was enacted and also make reference to the relevant statutory provisions.

(52) Soon after the partition of the country in the year 1947, it was considered imperative to create a model capital city for the then State of East Punjab. This task was entrusted to the famous Architect Monsieur Le Carbousier. Simultaneously, legislative measures were taken for giving statutory protection to the planning of the new capital for the State which has acquired world fame as the city beautiful and with a view to regulate the sale of building sites as well as the construction of buildings, the Act was enacted. Simultaneously, supplementary legislation in the shape of the Punjab New Capital (Periphery) Control Act, 1952 was enacted. The statement of objects and reasons contained in the Bills presented to the Assembly for enactment of the Act and the periphery Act are :

Capital of Punjab (Development and Regulation) Act, 1952

“The construction of the new Capital of 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, 1952, seeks to carry out the above objects.”

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 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, 1952, seeks to carry out the above objects.”

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 are acquired so far, for the construction of the first phase of the Capital. To ensure healthy and planned developmentof 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.”

SALIENT FEATURES OF THE ACT

(53) Section 2(b), (c), (h), (i) and (k) of the Act contain the definitions of the words “amenities” “building”, “occupier”, “prescribed”, “site” and “transferee”. Section 3(1) read with Section

21, empowers the Central Government and the officers to whom the power of the Central Government is delegated to 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 may be imposed by the Government. Section 3(2) lays down that the consideration money for any transfer under Section 3(1) shall be paid to the Central Government in such instalments and at such rate of interest, as may be prescribed. Section 3(3), which begins with a non-obstante clause, declares that till the payment of entire consideration money together with interest and other amount due to the Central Government in lieu of transfer of site or building, the same shall continue to belong to the Central Government/Chandigarh Administration. Section 4 empowers the Central Government/the Chief Administrator to issue directions on the various matters specified therein and the transferee is bound to comply with such directions. Section 5(1) imposes a bar against the erections or occupation of any building in contravention of the building rules made under Section 5(2). Section 8 empowers the competent authority to recover the amount due from the transferee or occupier and also to impose penalty. Section 8-A, which was added by the Capital of Punjab (Development and Regulation) (Chandigarh Amendment) Act, 1973, (Central Act No. 17 of 1973) provides for resumption of the site or building and forfeiture of the whole or any part of the money paid by the transferee after giving reasonable opportunity of hearing to the affected person. Section 10 contains the provision for appeal and revision. Section 22 empowers the Central Government to make rules for carrying out the purposes of the Act. Sub-section (2) thereof, specifies the particular matters which may be provided for in the rules. Some of these provisions which have bearing on the subject matter of these petitions are reproduced below :

2. Definitions.—In this Act, unless the context otherwise requires.—

xx xx xx

- (b) “amenity” includes roads water-supply, street lighting, drainage, sewerage, public building horticulture, landscaping and any other public utility service provided at Chandigarh.
- (c) “building” means any construction or part of a construction which is transferred by the (Central Government) under

Section 32 and which is intended to be used for residential, commercial, industrial or other purpose, whether in actual use or not, and includes any out house, stable, cattle shed and garage and also includes any building erected on any land transferred by the (Central Government) under Section 3:

xx xx xx

- (h) "occupier" means a person (including a firm or other body of individuals, whether incorporated or not) who occupies a site or building transferred under this Act and includes his successors and assigns;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "site" means any land which is transferred by the Central Government under Section 3 :
- (k) "transferee" means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns;

xx xx xx

3. Power of Central Government in respect of transfer of land and buildings 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.

xx xx xx

22. Power to make rules. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

* (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the terms and conditions on which any land or building may be transferred by the Central Government under this Act :
- (b) the manner in which consideration money for any transfer may be paid;
- (c) the rate of interest payable, and the procedure for payment of instalments, interest, fees, rents or other dues payable under this Act;

xx xx xx

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

xx xx xx

- (g) the terms and conditions for the *breach of which any site or building may be resumed;
- (h) the conditions with regard to the buildings to be erected on sites transferred under this Act;

xx xx xx

(54) In exercise of the powers vested in it under Section 22 of the Act, the Central Government/Chandigarh Administration framed the various rules including the following:—

- (i) Punjab Capital (Development and Regulation) Building Rules, 1952,
- (ii) Chandigarh (Sale of Sites and Buildings) Rules, 1960.
- (iii) Chandigarh Lease-Hold of Sites and Buildings Rules, 1973.

(55) Rules 3, 4, 6, 8, 9, 9-A, 10, 11, 12 and 13 of the 1973 Rules which deal with various matters enumerated in Sections 3, 4, 8, 8-A and 22 of the Act are also reproduced below :

*“3. (1) Unless the context otherwise requires, the words and expressions used in these rules shall have the meaning assigned to them in the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made there under :—

(2) “Premium” means the price paid or promised for the transfer of a right to enjoy immovable property under these rules.

“Prescribed model of payment” means payment by demand draft drawn on any Scheduled Bank situated at Chandigarh in favour of the Estate Officer, Chandigarh Administration or in cash upto Rs. 500 or the amount paid in cash representing 25 per cent of the premium at the time of auction.

“Due Date” means the 10th day of the month following the month in which the amount becomes payable according to the English Calendar.

4. The Chandigarh Administration may *demise sites and buildings at Chandigarh on lease for 99 years. Such leases may be given by allotment or by auction in accordance with these rules.

xx xx xx

6. Commencement and period of lease.—The lease shall commence from the date of allotment or auction as the case may be, and shall be for a period of 99 years. After the expiry of said period of 99 years the lease may be renewed for such further period and on such terms and conditions as the Government may decide.

xx xx xx

8. Lease by allotment, Procedure for.—(1) In case of allotment of site or building the intending lessee shall make an application to the Estate Officer in form ‘A’.

- (2) No application under sub-rule (1) shall be valid unless it is accompanied by 10 per cent of the premium as *earnest money in the prescribed mode of payment.
 - (3) When 10 per cent of the premium has been so tendered the Estate Officer shall, subject to such directions as may be issued by the Chief Administrator in this behalf, allot a site of the size applied for or a building of which particulars are given in the application and shall intimate, by registered post the number, sector, approximate area, premium and the rent of the site or building allotted to the applicant.
 - (4) The applicant shall, unless he refuses to accept the allotment within 30 days of the date of the receipt of the allotment order, deposit within that period and in the prescribed mode of payment, further 15 per cent of the premium. the remaining 75 per cent of the premium shall be paid as provided in rule 12.
 - (5) If the applicant refuses to accept the allotment within said period of 30 days, he will be entitled to the refund of the amount paid by him. The refusal shall be communicated to the Estate Officer by a registered letter (acknowledgement due). The refund shall be made by means of a cheque payable at the State Bank of India at Chandigarh and the applicant shall bear the collection charges for the same.
 - (6) If the applicant fails to communicate his refusal to accept the allotment within 30 days and also fails to deposit 15 per cent of the premium under sub-rule (4) the Estate Officer may forfeit the whole or part of the earnest money.
9. Lease by auction, Procedure for. In case of auction, at least 25 per cent of the bid accepted by the Auctioning Officer shall be paid on the spot by the intending lessee in the prescribed mode of payment in accordance with Rule 12.

Provided that the Estate Officer may, in his absolute discretion, allow the successful bidder to deposit in the prescribed mode of payment not less than 10 per cent of the bid on the condition that the difference between the amount deposited and 25 per cent of the bid shall be deposited in the same manner within 30 days of auction.

9-A. Extension of period.—The Chief Administrator may for sufficient cause condone the delay or extend the period of 30 days referred to in sub-rule (4) of rule 8 or proviso to rule 9 on such terms and conditions as he thinks fit including payment of a penalty not exceeding 10 per cent of the amount in exceeding 10 per cent of the amount in default in addition to interest at the normal rate.

10. Delivery of possession.—Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with rule 8 or rule 9 as the case may be.

Provided that no ground rent payable under rule 13 and interest on the instalments of premium payable under sub-rule (2) of the Rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him. Whichever is earlier.

11. Premium.—(1) In case of allotment, the premium shall be such amount as may be determined by Chandigarh Administration.

(2) In case of auction, the premium shall be the bid accepted by the Estate Officer, as a result of bidding in open auction.

12. Payment of premium and consequences of non-payment or late payment.—(1) In addition to payment of 25 per cent premium under rule 8 or 9 as the case may be, the remaining 75 per cent premium may be paid in lump sum within 30 days from the date of allotment/auction without any interest.

(2) If payment is not made in accordance with sub-rule (1) of this rule, the balance of the 75 per cent premium shall be paid in three annual equated instalments along with interest at the rate of 10 per cent per annum (or at such higher rate of interest as may be fixed by the Chief Administrator by a notification in the official gazettee)

before the commencement of the lease. The first instalment shall become payable after one year from the date of allotment/auction).

Provided that in the case of allotment of site or building of Small Scale Industries as defined by Chandigarh Administration from time to time in the Industrial area, the balance of the 75 per cent of the premium may be paid in ten annual equated instalments or such other number of annual equated instalments as may from time to time be fixed by the Chief Administrator along with interest at the rate of 10 per cent per annum or such higher rate of interest as may be fixed by the Chief Administrator by a notification before the commencement of the lease.

- (3) In case any instalment is not paid by the lessee by the date on which it is payable, a notice may be served on the lessee calling upon him to pay the instalment within a period of 3 months together with a penalty which may extend upto 10 per cent of the amount due. If the payment is not made within the said period, the Estate Officer may cancel the lease and/or forfeit the whole or any part of the money if paid in respect thereof which, in no case, shall exceed 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the lease:

Provided that forfeiture will not be made in addition to penalty:

Provided further that no order of cancellation or forfeiture shall be made without giving the lessee a reasonable opportunity of being heard. If the order of cancellation is for non-payment of penalty, the lessee may show cause why the penalty should not have been levied.

- (3-A) In case any equated instalment or ground rent or part thereof is not paid by the lessee by the date on which it became payable he shall be liable to pay in respect of that instalment or ground rent or part thereof, as the case may

be, interest calculated at the rate of twenty four per cent per annum from the date on which the instalment or ground rent became payable till such date it is actually paid.

- (4) Each instalment shall be remitted to the Estate Officer by the prescribed mode of payment. Every such remittance shall be accompanied by a letter showing full particulars of the site or building to which the payment pertains or a statement giving reference to the number and the date of the allotment referred to in rule 8. In the absence of these particulars, the amount remitted shall be deemed to have been received only on the date when the remitter supplies correct and complete information.

13. Rent and consequences of non-payment.—In addition to the premium, whether in respect of site or building, the lessee shall pay rent as under:—

- (i) Annual rent shall be 2-1/2 per cent of the premium for the first 33 years which may be enhanced by the Chandigarh Administration to 3-3/4 per cent of the premium for the next 33 years and to 5 per cent of the premium for the remaining period of the lease.
- (ii) Rent shall be payable annually on the due date without any demand from the Estate Officer.

Provided that the Estate Officer may for good and sufficient reasons extend the time for payment of rent upto six months on the whole on further payment of 6 per cent per annum interest from the due date upto the date of actual payment.

- (iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100 per cent of the amount due which may be imposed and recovered in the manner laid down in section 8 of the Capital of Punjab (Development and Regulation) Act, 1952, as amended by Act No. 17 of 1973.

(56) The relevant extract of form 'B' prescribed for execution of deed of lease in respect of site transferred by allotment/auction is also reproduced below:—

FORM B

CHANDIGARH ADMINISTRATION

Lease for 99 years.

THIS DEED MADE THIS.....day of.....
one thousand nine hundred and..... BETWEEN
THE PRESIDENT OF INDIA (hereinafter called the Lessor) of the
one part and Shri/Shrimati..... (hereinafter called the
Lessee) of the other part.

WHEREAS, the Lessee has applied to the Lessor for the grant of a lease of the plot of a land, belonging to the Lessor, hereinafter described, and the Lessor has on the faith of the statements and representations made by the Lessee accepted such application and has agreed to demise the said plot to the Lessee in the manner hereinafter appearing.

WHEREAS, the Lessee has applied by bid at public auction to the Lessor for grant of a lease of the plot of a land, belonging to the Lessor hereinafter described and the Lessor has accepted such application and has agreed to demise the said plot to the Lessee in the manner hereinafter appearing.

AND WHEREAS THE LESSEE has paid/agreed to pay the sum of Rs..... (Rupees.....) being the premium.

NOW THIS DEED WITNESSETH THAT for the purpose of carrying into effect the said lease and in consideration of the covenants of the lessee hereunder contained and of the said sum of Rs.....(Rupees.....) paid by the lessee (A) as 25 per cent of the premium (the receipt of which the lessor hereby acknowledges) *and the undertaking of the lessee to pay the balance premium in three equated yearly instalments together with interest at the rate of..... per cent per annum from the date of issue of allotment letter/auction, the first instalment being payable on the tenth day of.....* (B)..... and of the rent hereinafter reserved and of the covenants on the part of the Lessee

hereinafter contained, the Lessor doth hereby demise upto the Lessee ALL THAT PLOT of land being the residential/commercial/ industrial plot No..... Sub Sector..... Sector.....containing by a measurement an area of..... square yards/meters of thereabouts situate at..... which plot is more particularly described in the plan filed in the office of Estate Officer, Chandigarh, signed by the Estate Officer, Chandigarh on the..... day of..... on thousand nine hundred and.....TOGETHER with all rights, easements and appurtenances whatsoever to the said plot belonging or pertaining to HOLD the premises hereby demised upto the Lessee for 99 years from the date of allotment/auction and thereafter to hold the same for such further period and on such terms and conditions as the Lessor may decide and YEILDING AND PAYING therefore yearly rent at the rate of 2-1/2 per cent of the premium for the first 33 years of this lease and at the rate of 3-3/4 per cent of the premium for the next 33 years and at 5 per cent of the premium for the remaining 33 years of the lease. The rent shall start accruing from the date of issue of allotment letter/auction, namely the..... day of..... one thousand nine hundred and..... and shall become due on the first anniversary of the date of issue of letter of allotment/auction and be payable by the 10th day of the following month.”

(57) An analysis of the provisions reproduced herein above, shows that under Section 3 of the Act read with Rule 4 of the Rules, the Central Government and as its delegate the Chandigarh Administration are vested with wide powers to sell, lease or otherwise transfer any land or building by auction, allotment or otherwise on terms and conditions wich may be laid down in the Rules and the property continues to vests in the Central Government until the entire consideration money together with interest etc. is paid by the transferee. In terms of Rule 6, the lease commences from the date of allotment or auction, as the case may be, and its tenure is 99 years which is renewable. The procedure for grant of lease by allotment and auction is laid down in Rule 8 and Rule 9 respectively. A conjoint reading of Rules 9, 10 and 11 shows that in the cases in which lease is granted by auction, the highest bid given by the prospective lessee in open auction represents the amount of premium and the deposit of 25% of which is a condition precedent for delivery of possession of the site/ building. Rule 12 gives option to the lessee to pay the remaining

75% amount of premium in lump sum within 30 days from the date of allotment/auction without any interest or to pay the same in 3 equated instalments along with interest at the rate of 10 per cent or at such higher rate of interest as may be fixed by the Chief Administrator by a notification in the official Gazettee before the commencement of the lease. If the lessee fails to pay instalment, a notice is to be given to him to make payment within 3 months together with penalty which may extend upto 10 per cent of the amount due. If the payment is not made in terms of the notice, the Estate Officer can cancel the lease and/or forfeit the whole or any part of the money already paid. rule 12(3-A) prescribes higher rate of interest which the lessee is required to pay in case any equated instalment or ground rent or part thereof is not deposited on due date. Rule 13 prescribes the payment of annual ground rent which the lessee has to pay in terms of conditions of lease. Rule 13(iii) empowers the competent authority to impose penalty upto 100 per cent in case of the non-payment of ground rent.

CONTENTIONS

(58) S/Shri M.L. Sarin, Hemant Kumar, Rajiv Atma Ram, J.S. Chahal, P.S. Patwalia, Manish Jain, Jasbir Singh, S.M.L. Arora, R.S, Bajaj, Gautam Dutt and V.P. Sharma, learned counsel representing the petitioners urged the following contentions:—

- (i) The delivery of possession envisaged by Rule 10 of the 1973 Rules can be treated as complete only after the amenities as defined in Section 2(b) of the Act have been provided and the mere handing over of physical possession of sites is not sufficient to entitle the respondents to recover the instalments of premium together with interest and ground rent and, therefore, the proceedings initiated under Rules 12 and 13 of the 1973 Rules against some of the petitioners are liable to be declared as nullity.
- (ii) The respondents are estopped from making recovery of instalments of premium etc. because they are guilty of violating the terms and conditions of the contract entered into between the administration and the petitioners, inasmuch, as the amenities like approach road, street lights, parking places, water and electricity connections, sewerage connections etc. have not been provided by the respondents at the sites depriving the petitioners of the opportunity to use and enjoy the buildings constructed

by them by spending lacs of rupees.

- (iii) The failure of the public authorities to fulfil their contractual obligation to provide amenities is sufficient to restrain them from making recovery of the premium and ground rent.
- (iv) The respondents cannot charge penal interest from the petitioners in terms of Rule 12(3) and 3(A) of the 1973 Rules because the petitioners were prevented from enjoying their properties.
- (v) S/Shri M.L. Sarin and Rajiv Atma Ram laid considerable emphasis on the lack of proper parking place and service lanes behind the buildings of the petitioners and urged that the subject failure of the administration to take steps for providing parking sites has considerably diminished the value of their buildings which were erected by spending huge amount.
- (vi) Shri Jasbir Singh Chahal lamented that the failure of the respondents to provide metalled approach road upto the site in question has caused immense financial loss to the petitioners because they have not been able to put the property to use by way of giving the same on rent to the prospective businessmen.
- (vii) Learned counsel relied on *Mahabir Auto Stores and others v. Indian Oil Corporation and others*, (1) *Satnam Singh v. Haryana Urban Development Authority, Mani Majra, U.T., Chandigarh and another*, (2) and *Bhupinder Kumar Gupta v. Haryana Urban Development Authority and another*, (3) in support of their submissions.

(59) Shri Ashok Aggarwal argued that the petitioners cannot avoid payment of the instalments of premium etc. in terms of the conditions of allotment read with general terms and conditions which were made known to them at the time of auction. He argued that the plea of lack of amenities raised by the petitioners for avoiding fulfilment of their contractual obligation to pay the dues must be treated as frivolous and vexatious because they not only

(1) 1990 (3) S.C.C. 752

(2) 1993 (1) P.L.R. 374

(3) 395-2 P.L.R. 275

constructed multi storeyed buildings after paying 1/4th of the premium but also occupied the same without obtaining the certificate in terms of Rule 18 of the 1973 Rules and leased out the various portions of their buildings for hefty rents. Shri Aggarwal submitted that it was impossible for the petitioners to construct buildings without obtaining electricity and water connections and in any case, no tenant would have agreed to take the premises on rent without the provision of electricity and water and, therefore, the very fact that almost all the premises have been let out on rent, should be sufficient to draw an inference that the petitioners have filed these petitions with the sole object of postponing the payment of premium etc. He argued that the petitioners have used the amount payable to the administration in the form of instalments of premium and ground rent, the advancing their business purposes and in this manner, public exchequer has been put to heavy losses. He argued that the petitioners, who are guilty of violating Rule 18 of 1973 Rules which require the obtaining of occupation certificate as a condition precedent for use of the building should not be shown any indulgence by the Court. Learned counsel also submitted that the stay orders passed by the Court on the payment of instalments of premium and ground rent have caused loss of crores of rupees to the public exchequer.

(60) We have thoughtfully considered the respective submissions and, in our opinion, there is no merit in the argument of S/Shri M.L. Sarin, P.S. Patwalia and other learned counsel that possession of the sites cannot be treated to have been legally transferred until all the amenities are made available by the respondents because it is based on a wholly erroneous assumption that the respondents are obliged to auction fully developed sites. Section 3 of the Act and Rule 4 of the 1973 Rules do not speak of the transfer of the fully developed land/sites only. Thus, the statute does not cast duty on the respondents to undertake development so as to provide all the amenities specified in Section 2(b) of the Act before transferring the land/sites. We also do not find anything in the rules from which it can be inferred that the administration of Union Territory is under an implied obligation to auction fully developed sites. The auction notices and the general terms and conditions, which were made known to the bidders at the time of auction did not postulate transfer of sites with all amenities. As a matter of fact, by virtue of clause 12 of the general terms and conditions of auction and clause 20 of the letter of allotment, it was made clear to the prospective lessees that the Government does

not own the responsibility for levelling the uneven sites. It is, thus, clear that the respondents did not invite bids for the sites by making representations to the public that fully developed sites will be auctioned. The petitioners have not disputed the factum of physical transfer of sites to them after the payment of 25% premium. The averments made in the writ petitions and the uncontested assertion made in the affidavits of the Assistant Estate Officer show that the petitioners have not only erected multi storeyed buildings on the sites, but most of them have also leased out the same to third parties. Therefore, it is not possible to accept the argument of the learned counsel that possession of the sites cannot be treated to have been transferred to them.

(61) The hollowness of the contention urged by the learned counsel is also established from the fact that the petitioners not only constructed multi-storeyed buildings after obtaining sanction of the building plans between 18th July, 1992 to 2nd September, 1993 but also occupied the same or rented out different portions thereof to other persons in lieu of hefty rents. A bare perusal of Annexures A and B, appeared with the judgment shows that water and electricity connections were made available to the petitioners on the basis of the applications submitted by them much before the expiry of the period specified in the letter of allotment. Perusal of the extracts of the affidavits of the Assistant Estate Officer filed on 28th August, 1998 and 30th August, 1998 shows that second, third and fourth floor of the building constructed by Surinder Singh etc. (petitioners in C.W.P. No. 15481 of 1992) is occupied by Design Office, Irrigation Department, Punjab. In the building erected by petitioners-Gurmukh Singh and others (petitioners in C.W.P. No. 1694 of 1993), Punjab National Bank, S.K. Publishing Co., Advance Video System, Business Bytes, Komicreation, Prompt Travels and Daber India Ltd. are tenants. Kartar Singh and his co-allottees (petitioners in C.W.P. No. 4721 of 1993) have leased out the premises to Modgones Marketing, Enerby dis Teh Pot Ltd., Asha Pharmaceuticals, Goldwaves Forest Ltd., Video Craft, Attantic Buildings, Corporate Couriers Ltd., Rahi Trading, T.M.T India, I.C.R.A Ltd. and H.P.M.C. In the building constructed by Jagmohan Singh Brar and others (petitioners in C.W.P. No. 5726 of 1993), M/s Chief Medical Agency, M/s Homoeopathic Medicine Clinic and M/s Saraswati Vidya Mandir are the tenants. The building constructed by M/s Talwandi Estates Pvt. ltd. (petitioner in C.W.P. No. 7020 of 1993) has been leased out to M/s A.B.C. Communication, Life Insurance Corporation of India, M/s Capital Markets Ltd., M/s

Wipro Consumers and Lighting and Instrumedix (India) Pvt. Ltd. Sant Singh Brar etc. (who have filed C.W.P. No. 8052 of 1993) have leased out the property to The Weaver (Govt. Department), Lakshmi Overseas Industries Ltd., Chandigarh Computer Centre, Asap Solution and Physics Coaching Centre. The building of M/s Patiala Industrial Investment Company, Pvt. Ltd. (petitioner in C.W.P. No. 8899 of 1993) is occupied by Bank of Punjab. Similarly, the building constructed by Joginder Singh (who has filed C.W.P. No. 3322 of 1994) and his co-allottees is in occupation of the Bank of Punjab. Jasbir Singh etc. (petitioners in C.W.P. No. 4438 of 1994) have leased out the property to Capital Horpilac-Orthoripsy and Posy Clinic and Recoh India Ltd. Neither the learned counsel for the petitioners have suggested nor such suggestion, if any made, could have been accepted that these tenants are occupying the premises and doing their business without water and electricity and without approach road, street light etc.

(62) We are also of the opinion that in view of the express provisions contained in Rule 6, the lease of the site will be deemed to have commenced from the date of auction and the petitioners were duty bound to pay the instalments of premium along with the amount of ground rent in terms of Rules 12 and 13 of the 1973 Rules and their failure to do so fully justified the initiation of proceedings under Rules 12 and 13 for recovery of the dues of instalments of premium and ground rent. The petitioners have not challenged the general terms and conditions of auction and the letter of allotment. Therefore, they are estopped from challenging the proceedings initiated by the respondents to recover the amount of premium and ground rent in accordance with clauses 1 and 4 of the general terms and conditions and clauses 4 and 5 of the letter of allotment.

(63) The argument of the learned counsel that the respondents are estopped from making recovery of the instalments of premium etc. because they have violated the terms and conditions of contract entered into with the petitioners by not providing the amenities is wholly untenable. At the cost of repetition, we deem it appropriate to observe that neither in the conditions of auction nor in the terms of allotment any indication was given to the petitioners that the respondents will be giving possession of the fully developed sites or that the availability of amenities like approach roads, street lights, parking places etc. would constitute a condition precedent for payment of instalments. Therefore, the petitioners cannot avoid their liability to pay the instalments of

premium and ground rent. That apart, after having taken part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 Rules. In our considered opinion, the petitioners cannot seek intervention of the Court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract.

(64) On the question whether the Court has the power to interfere with the matters involving the breach of the conditions of contract and whether the Court should use its power under Article 226 of the Constitution to relieve a party of its obligation to comply with the terms and conditions of contract, we may refer to some of the decisions of the Supreme Court.

(65) In *Panna Lal and others v. State of Rajasthan and others*, (4) their Lordships held that a person who enters into a contract with the State and its agencies cannot resile from the express obligation undertaken by him. In that case, the licensees had sought quashing of the conditions of contract on the ground that the same were extremely onerous and arbitrary. The High Court of Rajasthan rejected their contention. In appeal, their Lordships of the Supreme Court held:—

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

(66) While dealing with a similar issue in *Har Shankar and others v. The Deputy Excise and Taxation commissioner and others*, (5) a Constitution Bench of the Supreme Court held :

(4) 1975 (2) S.C.C. 633

(5) A.I.R. 1975 S.C. 1129

“On the preliminary objection it was fully urged by the appellants that the objection was misconceived because there was in fact, no contract between the parties and therefore, they were not attempting to enforce any contractual rights or to wriggle out of contractual obligations. *The short answer to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on those terms that licences are granted to the successful bidders in form L. 14-A of the Rules. As stated in Cheshire and Fifoot’s Law of Contract (Eighth Edn., 1972 p 24).*

“In order to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. In other words, the court examines all the circumstances to see if the one part may be assumed to have made a firm “offer” and if the other may likewise be taken to have “accepted” that offer. These supplementary ideas present a convenient method of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases.

“Analysing the situation here, concluded contract must be held to have come into existence between the parties. *The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.*”

(67) The facts mentioned in the decision reported in *Assistant Excise Commissioner and others v. Issac Peter and other*, (6) show that the licensees did not get the additional quantities applied for by them. They claimed rebate/remission on the amounts payable by them under the contracts. While rejecting their plea that the State had acted arbitrarily and unreasonably their Lordships of the Supreme Court observed :

“In short, the duty to act fairly is sought to be imported into the contract to modify and alter its terms and to create an

obligation upon the State which is not there in the contract. We must confess, we are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition, Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative. *But is can certainly not be invoked to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory contract or rather more. so.....*

We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State) for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts. It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on any one to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract."

(68) In *Delhi State Entrepreneurs Association (Regd.) and others v. Delhi State Industrial Development Corporation and others* (7) a Bench of Delhi High Court, while dealing with the issue of

(7) 1994 (3) Delhi Reported Judgement 609

price fixation of the land allotted to the petitioners held as under:—

“....No public institution can discharge its obligation to the public property if the amount due to it is not paid by the beneficiaries of welfare schemes. The petitioners have taken the advantage of the writ jurisdiction to continue in possession of the public premises of these years, disregarding their obligation under the lease deeds. *For them, equity and fairness have become one way street where these are to move only towards them and not from them.*”

(69) In Civil Writ Petition No. 9503 of 1996 *Ajit Singh and others v. Chandigarh Administration through Administrator, Union Territory and others*, decided on 29th August, 1996, A division Bench considered a case similar to the cases in hand. In that case also, the petitioners contended that they were not bound to pay the instalments because the amenities had not been provided by the respondents. While rejecting the contention of the petitioners that they were not bound to pay the dues, this Court held:—

“....There is another important reason why no indulgence should be shown to the petitioners. The allotment letter, Annexure P.1, contains a clear stipulation regarding the schedule of payment. Para 8 of the allotment letter postulates cancellation of lease on account of non-payment of instalments money. para 8-A empowers the Estate Officer to allow payment for instalments with penalty upto 100 per cent of the amount due and interest at the rate of 12 per cent for the delayed period. Duty to pay fee and taxes etc. was also of the petitioners. In addition to the conditions incorporated in the letter of allotment, the petitioners were bound to abide the provisions of the Act and the Rules. The general terms and conditions laid down by the Administration form part of the contract entered into between the petitioners and the respondents. Paras 11,12 and 21 of the general conditions also contemplate payment of 25 per cent amount as a condition precedent to the acceptance of bid; remaining 75 per cent in three equated instalments along with interest; and cancellation of the lease as well as forfeiture of the whole or part of the premium already paid. *The petitioners took possession of the property and raised construction thereon after having accepted the conditions incorporated in Annexure P.1 and*

R.1. They did so knowing fully the implications and consequences of their failure to pay the instalment money. After having accepted those conditions and taken public property on an assurance that they would faithfully comply with the conditions of payment laid down by the Administration, the petitioners are not entitled to plead that they were not bound to make payment of instalments on the ground that basic amenities were not provided by the Administration. We may add that payment of instalments was not subject to the Administration providing basic amenities to the petitioner. Rather the condition incorporated in Annexures P.1 and R.1 made it obligatory for the petitioners to pay their duties. Thus the petitioners cannot wriggle out of the contract which they had entered into with the respondents. In matters like the present one, writ jurisdiction cannot be exercised by the High Court to permit a party to commit a breach of the terms and conditions of contract of allotment."

(70) We shall now refer to the judicial precedents relied upon by the learned counsel for the petitioners.

(71) In *Mahabir Auto Stores and others v. Indian Oil Corporation and others* (supra), the Apex Court was called upon to decide the issue whether a writ of mandamus can be issued directing the Indian Oil Corporation not to discontinue the supply of lubricants to the petitioner. The facts of the case show that the appellant was engaged in the business of distribution and sale of all kinds of lubricants. It was appointed as the lube distributor of the respondent. It approached Delhi High Court with the grievance that the respondent-Corporation had arbitrarily decided to discontinue the supply of lubricants. The High Court refused to exercise writ jurisdiction under Article 226. One of the contentions urged on behalf of the appellant was that the decision of the Corporation, which was an instrumentality of the State, was unfair, arbitrary and capricious and violative of the principles of natural justice. Some of the observations made in that case are:—

"It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed

on the observations of this Court in Radha Krishana Aggarwal v. State of Bihar, (1977) SCC 457. It appears to us, at the outset, that in the facts and circumstances of the cases, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of the State organ under Article 14 can be checked.....

In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable.....

It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to

judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.”

(72) *In Satnam Singh v. Haryana Urban Development Authority* (supra), a learned single Judge of this Court dealt with a case arising out of the *Haryana Urban Development Authority Act, 1977*. The facts of that case show that an industrial plot was allotted to the petitioner in 1983. In terms of the letter of allotment, possession of the site was to be offered to the allottee on completion of development work. The possession was offered in February, 1985 but the petitioner failed to raise construction. The petitioner challenged the proceedings of resumption on the ground that water supply, sewerage facilities, storm water drainage facilities, roads and street lighting have not been completed. The learned Single Judge accepted the contention urged on behalf of the petitioner and held :—

“In the face of the above situation, there can be no manner of doubt that in the absence of electricity, it is not possible to raise modern construction especially when the site is about 3 Kms. away from the town and engulfed with darkness at night. This apart, the respondents have included the costs to be incurred on the development works in the costs of the plot which the petitioner is liable to pay in lump sum or in six instalments along with interest. As noticed earlier, the plot was allotted to the petitioner on 28th September, 1983 and the possession thereof was offered to him on 20th February, 1985. The petitioner is thus, liable to pay interest not only on the cost of the plot but also on the amount of development charges which are included in the cost of the plot. Once it is conceded that the provision for electricity is an amenity and a part of the development works, which admittedly has not been provided by the respondents for no fault of the petitioner, the respondent-authorities cannot blame the petitioner for not having completed the construction within the time allowed and start charging heavy extension fee on that account.”

(73) *In Bhupinder Kumar Gupta v. Haryana Urban Development Authority and another* (supra), another learned Single Judge held that the respondent cannot levy interest because the land in dispute had not been developed and possession was yet to

be delivered to the petitioner even though a period of 11 years had elapsed since the date of allotment.

(74) None of these decisions has any bearing on the issue raised in these cases and, therefore, the petitioners cannot derive any help from the proposition laid down in *Mahabir Auto Store's case (supra)* or the proposition laid down in *Satnam Singh's case (supra)* and *Bhupinder Kumar's case (supra)*.

(75) On the basis of above discussion, we hold that the petitioners are bound to pay the instalments of premium and ground rent together with interest and they cannot refuse to fulfil their contractual obligation to do so on the specious ground that the amenities were not provided by the administration. We also hold that the demand raised by the respondents requiring the petitioners to pay the dues of instalments, ground rent and interest are neither unreasonable nor unfair. Rather, these actions of the respondents are consistent with the terms and conditions of auction as also the conditions subject to which the sites were leased out to the petitioners.

(76) The argument of the learned counsel that the respondents should not charge penal interest under Rule 12 (3-A) of the 1973 Rules also merits rejection in view of the admitted fact that the petitioners did not pay the amount of premium and ground rent. The mere fact that the petitioners obtained stay orders from the court on the payment of instalments cannot absolve them from liability to pay interest in terms of Rule 12(3-A).

(77) We may also mention that the challenge to the constitutional validity of Rule 12(3-A) has been negated by this Court in C.W.P. No. 6990 of 1996 *Joginder Singh Sidhu v. Union Territory, Chandigarh and others* decided on 9th April, 1997. Some of the observations made in that decision, which have bearing on the plea raised by the petitioners are extracted below:—

“....A careful reading of clause (3) of the allotment letter shows that the lease granted to the petitioner and others is governed by the provisions contained in Capital of Punjab (Development and Regulation) Act, 1952 as amended upto date and the rules made thereunder. By virtue of clause (29) of the allotment letter, it was made clear that the terms and conditons of allotment were in addition to the provisions of the Act of 1952 and the rules made

thereunder which shall be binding on the lessee. *It is thus clear that the rules framed under the Act of 1952 were made part and parcel of the contract entered into between the petitioner and the administration. Having accepted those conditions, the petitioner and other allottees were bound to comply with the same.* Rule 12(2) provides for payment of interest in case of the failure of the lessee to pay the balance of the 75% premium in three annual equated instalments. Rule 12(3) empowers the competent authority to call upon the lessee to pay the instalment within a period of three months with penalty which may extend upto 10% of the amount due. Under this clause, the Estate Officer is also empowered to cancel the lease. By virtue of Rule 12(3-A) the lessee has been made liable to pay interest @ 24% per annum from the date on which the instalment or the ground rent became payable. *The object underlying Rule 12(3-A) is to compel the lessee to make payment of instalment by due date. In case of the failure of lessee to make payment he/She/they are liable to pay interest @ 24%. In view of the clear provision incorporated in Rule 12(3-A), we do not find any error in the decision of the respondents to recover interest from the petitioner in terms of that clause.* As this sub-rule stood upto 21st July 1993, the rate of interest was 15%. Thereafter, the rate of interest has been raised to 24% and thus the petitioner is liable to pay interest in order to fulfil his obligation in terms of the contract.

Although the petitioner has challenged the constitutional validity and vires of Rule 12(3) and Rule 12(3-A), the learned counsel for the petitioner has not been able to persuade us to find any fault or infirmity in these rules. In this regard it has to be remembered that in the normal circumstances no exception could be taken to the demand of the entire price of the land by the administration. As in the case of other individual, the administration could ask the allottee to pay the total price in one instalment before handing over the possession of the site allotted to him. *The provision regarding delivery of possession on payment of 25% of the premium with a condition that the remaining amount of premium shall be payable in 3 annual equated instalments is intended to relieve the allottee to the rigour*

of the requirement of the payment of the entire price. However, in order to safeguard the public money the rule making authority has legitimately incorporated the requirement of payment of interest on the instalment with a further provision to charge higher interest in case of the failure of the lessee to pay the instalment money. These provisions are, in our opinion, unexceptionable. A person who wants to take public property without paying instalment money cannot complain of any arbitrariness against the provision regarding levy of interest. In our considered view, these provisions are neither unconstitutional nor arbitrary nor do they suffer from any other legal infirmity."

(78) This decision has been followed in C.W.P. No. 15104 of 1997 *Tejbir Singh Sibia v. Union Territory, Chandigarh* decided on 22nd October, 1997 and C.W.P. No. 9031 of 1996 *Gurcharan Singh and another v. Union Territory, Chandigarh and others*, decided on 24th October, 1997. In both the cases, the Court upheld the levy of interest interms of Rule 12(3-A). In view of this legal position, we do not find any rhyme or reason to direct the respondents not to enforce Rule 12(3-A) of the 1973 Rules against the petitioners.

(79) At this stage, we may also advert to the status of the amenities made available at the sites allotted to the petitioners. perusal of Annexure 'A' shows that the building plans submitted by the petitioners were sanctioned in the years 1990, 1991, 1992 and 1993. The water and electricity connections were also released to the petitioners in the years 1990 to 1994. A bare reading of column no. 5 of Annexure 'B' shows that the applications for electricity connections were submitted by the petitioners between 21st January 1991 and 22nd July, 1997 and within few months of the compliance of the demand notice, temporary connections were released in their favour except in the cases of petitioners of C.W.P. Nos. 15481 of 1992 and 7020 of 1993. Later on, permanent connections were also released to them. The roads and parking of Sector 8-C were completed in November, 1992. The date of completion of roads and parking of Sector 9-D is some time in December, 1993. In Sector 9-D, these facilities were made available in May, 1994. In sector 34, the same were made available in the year 1986 and 1991 and in Sector 41-D the same were made

available in August, 1994. The sewerage and storm water drainage have also been made available between March, 1988 and October, 1992, as is evident from Annexure 'E'. Only service lane and tiling of payments have not been done and in respect of booth sites no. 134 and 140, Sector 41-D, the pucca road and parking have not been made available although temporary approach road has been constructed. Even a cursory look at the dates on which facilities like water, electricity, sewerage, storm water drainage, street lights, parking sites and pucca roads were made available shows that on their part, the respondents did take necessary steps to provide facilities much before the expiry of 3 years period stipulated in the letters of allotment for completion of construction of the buildings. Therefore, it is not possible to entertain the accusation levelled against the respondents that they have been lax in providing amenities at the sites and facilities to the buildings of the petitioners. It is rather surprising that some of the petitioners approached the Court within one year of the auction of sites and secured stay orders against the payment of instalments of premium and ground rent. Others followed the suit and got interim orders against the payment of dues. This must have put the respondents to a serious financial handicap in undertaking the remaining development activities. We also find it reasonable to accept the statement of Shri Aggarwal that the pucca roads constructed at the sites have been got damaged because of the on-going construction activities in the area. Therefore, we are unable to agree with the learned counsel that the petitioners were justified in not making the payment of instalments of premium and ground rent in accordance with the contract entered into between the parties.

(80) We are further of the view that highly contumacious conduct exhibited by most of the petitioners who occupied the premises and rented out the same to others without obtaining the occupation certificate in accordance with Rule 18 of the 1973 Rules lends credibility to the argument of the learned counsel for the petitioners that the writ petitions are vexatious and are an attempt by the petitioners to seek unwarranted indulgence of the Court to avoid payment of money due to the respondents. Shri Aggarwal is right on the target when he submitted that the institutions like Life Insurance Corporation, Bank of Punjab, Punjab National Bank and various business houses would have never taken the buildings on rent if basic facilities like approach road, parking sites, water,

electricity, street lighting were not available at the sites.

(81) Before concluding, we deem it appropriate to take cognizance of one submission made by Shri Chahal that due to the special situation of Sector 41, namely, the absence of metalled approach road and the carrying on of illegal business activities by the habitants of the colony of Housing Board, the allottees in C.W.P. No. 4655 of 1993 have been deprived of the opportunity to make use of the buildings constructed by them. We find some substance in his submission and deem it appropriate to observe that the petitioners may approach the competent authority for exempting it from payment of interest at high rate in terms of Rule 12(3-A) of the 1973 Rules by making appropriate application.

(82) We also wish to take cognizance of the statement made by the respondents that the amenities, which remained to be provided at the sites in question, will be made available by the end of year 1999. This should be sufficient to allay the fear of the petitioners.

(83) For the reasons mentioned above, the writ petitions are dismissed subject to the direction that in terms of the statement made before the Court, the respondents shall provide the remaining amenities like service roads, tiled pavements, tarring of parking by the end of year 1999. We also give liberty to the petitioners of C.W.P. No. 4655 of 1993 to make application to the respondents for grant of exemption from payment of higher rate of interest and hope that such application will be considered and decided expeditiously keeping in view the peculiar situation of Sector 41-D.

(84) The stay order passed by the Court stands automatically vacated. However, in order to avoid further litigation on the subject, we direct that within one month from today, the Estate Officer/ Assistant Estate Officer should furnish statement to each of the petitioners giving details of the amount due towards the instalments of premium together with interest chargeable under Rule 12(3) and 12(3-A) of the 1973 Rules and ground rent and within next 3 months, the petitioners shall pay the outstanding dues in 3 equated instalments. The respondents are also given liberty to levy penalty under Rule 13(iii) of the 1973 Rules. In case, the petitioners

fail to make the payment of the dues, the respondents shall be free to initiate proceedings under Section 8-A of the Act read with Rule 12(3) of the 1973 Rules.

R.N.R.

Before N. K. Sোধi, J.

PARAMJIT KAUR,—*Petitioner*

versus

TARLOCHAN SINGH & OTHERS,—*Respondents*

C.O.C.P. No. 829 of 1995

28th October, 1998

Contempt of Courts Act, 1971—S. 12—Breach of undertaking given by respondent No. 2 before the High Court—Defence set up that respondent No. 2 not served in the appeal and had not engaged any advocate to appear on his behalf who gave the undertaking—Sale of part of suit land admitted—Court taking word as true and dismissing the petition but on examination of original file of the appeal recalling order on discovering that respondent No. 2 was served in the appeal and had engaged counsel who had given undertaking—Contempt by advocate & party—Oral apology tendered by advocate for making false statement at the Bar accepted—Respondent No. 2 held guilty of committing contempt of Court and punished to undergo simple imprisonment for four months & to pay a fine of Rs. 2,000 alongwith costs assessed as Rs. 10,000.

Held that it is unfortunate that Shri R. L. Sharma, Advocate, made a false statement at the Bar on 26th February, 1998 and it appears that he was trying to bail out respondent No. 2 when the latter had committed contempt of this Court by wilfully committing a breach of the undertaking given by him through his counsel in Civil Misc. 185-C of 1994. The conduct of Shri Sharma cannot but be deprecated. I was inclined to issue notice of contempt to him but in view of the oral apology tendered by him in Court, I refrain from doing so.

(Para 5)

Further held, that respondent No. 2 had been served in the appeal and that he engaged Shri Sharma as his counsel who had put in appearance on his behalf and filed his memorandum of appearance. In this view of the matter he wilfully flouted the undertaking given to this Court on 1st March, 1994 when he executed the two sale deeds in