(ii) The respondent No. 3 was not legally competent to deliver the possession of the seized amount to respondent No. 1 without obtaining an order of the Court of competent jurisdiction under Section 457 of the Cr. P.C. We, therefore, order that the amount so delivered to respondent No. 1 be returned to respondent No. 3 who may obtain necessary orders from the Court of competent jurisdiction in accordance with the provisions contained in Sections 102 and 457 of the Cr. P.C.

(iii) Since the notice under Section 132A(1) of the Act dated 23rd March, 1998 has been held to be valid, the consequential notice dated 20th July, 1999 issued under Section 158 BC of the Act is also held to be valid.

Accordingly, the writ petition is disposed of in the above terms. However, in the circumstances of the case, there shall be no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & K.S. Garewal, JJ

M/S SHANTI KUNJ INVESTMENT (PVT.) LTD.—*Petitioner*

versus

U.T. ADMINISTRATION, CHANDIGARH & OTHERS—*Respondents*

C.W.P. NO. 959 OF 1999

2nd February, 2001

Constitution of India, 1950—Art. 226—Capital of Punjab (Development and Regulation) Act, 1952—S. 2—Chandigarh Lease Hold of Sites and Building Rules, 1973—Rls. 3, 12(2) and 13—Allotment of sites through auction—Allottees paying 25% of the amount of premium—Allottees defaulted in paying the instalments of premium and ground rent—Administration imposing penalty/interest on account of delay in making the payment and even cancelling the allotment—Administration failing to provide basic amenities/facilities and to remove the encroachments—Allottees unable to use and enjoy the rights in the property—Administration is under a duty to provide the amenities and to remove encroachments—Payment of premium, ground rent can be claimed only when the allottee can exercise the right to use the property—Allottees not liable to pay interest

on the instalments of the premium and ground rent till the amenities are provided—Rl. 12(2) of the 1973 Rules empowers the Chief Administrator to fix the rate of interest by notifying in the official Gazette before the commencement of the lease—Municipal Corporation levying interest @ 18% to 24% instead of 10% without issuing notification—Action of the M.C. is not in conformity with the Rules—Writs allowed with costs while directing the respondents to recover the instalments from the defaulters after providing necessary amenities and removal of encroachments.

Held, that when a person pays a fabulous price he is entitled to assume that the property is free from all encumbrances. He would be able to raise the building without any delay or obstruction from the concerned authority or anyone else. He would be provided all the civic amenities which are necessary for the proper raising of the building, occupation of the premises and enjoyment of the property. The Administration is under a duty to provide the amenities, as defined in Section 2(b) of the 1952 Act, which are essential for an effective enjoyment of the property. These have to be provided. The administration is also under an obligation to ensure that there is no obstruction in the way of the allottee to reach the site and to enjoy the property. In case, there is any obstruction, the Administration is under an obligation to remove it.

(Paras 27, 31 & 36)

Further held, that where the Administration has failed to provide the amenities and/or to remove the encroachments for more than a decade, it would be unfair to allow it to claim that the allottee is bound to pay the ground rent as also the interest on account of the delay in paying the instalment of the premium and the amount fixed as ground rent. When the Administration fails to provide conditions where the enjoyment of property is possible and the allottee is not to blame in any manner whatsoever, its right to recover the money in the form of ground rent and interest is not enforceable, otherwise, the 'contract' itself shall suffer from the criticism of being unconscionable.

(Para 42)

Further held, that the rate of interest can be fixed only by the Chief Administrator. That can be done only by a notification in the Official Gazette before the commencement of the lease. The rate of interest was initially fixed at 6%. *Vide* notification dated

29th November, 1990, it was raised to 10%. The Chief Administrator had not issued any order fixing the rate of interest at 18%. There is no notification. Thus, the action of the Municipal Corporation in levying the interest at the rate of 18% per annum is not in conformity with Rule 12 (2) of the 1973 Rules. It cannot be sustained.

(Paras 54 & 56)

Sarwan Singh, Sr. Advocate with Navpreet Singh Rapri, Advocate *for the Petitioner.*

Ashok Aggarwal, Sr. Advocate with Subhash Goyal, Advocate *for Respondent Nos. 1, 3 and 4.*

Deepali Puri, Advocate *for respondent Nos. 2 and 5.*

ORDER

Jawahar Lal Gupta, J.

(1) The petitioners in these seven cases are the allottees of different commercial sites. They allege that the Chandigarh Administration has failed to provide basic amenities/facilities for the use and occupation of the sites sold to them. They complain that the Administration has failed to administer. It is guilty of mal-administration. Yet, it is arbitrarily charging ground rent and interest. It is even resorting to the resumption of sites. On these premises, the petitioners pray for the intervention of this court so as to prevent the Administration from charging interest and ground rent. The factual position as relevant for the decision of these cases may be briefly noticed.

C.W.P. No. 9481 of 1999

(2) On 12th February, 1989, the Chandigarh Administration auctioned Godown Site No. 290, Sector 26, Chandigarh. The petitioner alongwith his two brothers gave a bid for premium of Rs. 22,10,000. It was accepted. After deposit of 25% of the *'bid'* money viz. Rs. 5,52,500, the letter of allotment was issued to the petitioner on 16th March, 1989. The site was given to the petitioner for 99 years on lease-hold basis. Under the terms of allotment, the petitioner had to pay the amount alongwith interest at the rate of 7% per annum in three equal yearly instalments of Rs. 6,31,590. These payments had to commence at the expiry of one year from the date of auction. Besides that, the allottees had also to pay annual ground rent at the rate of Rs. 55,250 for the first 33 years. A copy of the letter of allotment has been produced as Annexure P.I with the writ petition.

(3) The petitioner commenced construction. However, he found that there were high voltage electric wires passing over the site. The sewerage system had not been laid. There was no approach road to the site. There were a large number of jhuggis adjacent to the place. The dwellers were using the site as an open lavatory. On 26th September, 1989, the petitioner submitted a representation to the Estate Officer with the request that the necessary facilities be provided and that the unauthorised jhuggis be got removed. The needful was not done despite various representations and personal requests. The petitioner alleges that "from the date of allotment till today, no amenities such as roads, water supply, sewerage, drainage, land-scaping and other public utility services have been provided". He has "paid the entire premium........." Since "the amenities prescribed under the Act and necessary for the proper use of the site have not been made available at the site from the date of auction till today, no interest or ground rent can be charged............ till the amenities are made available and the site is made useable......." It is his case that the Administration "is required to provide the amenities and to develop the site before auction which the respondents failed to do. Without developing the site and providing the amenities, the respondents started charging the ground rent from the date of auction. Since....... site is not fit for use, no ground rent and interest deserve to be charged till the amenities are provided and the site is made properly useable for running the business for which it has been purchased.

(4) The petitioner alleges that his repeated requests for provision of facilities were not heeded to. However, on 1st June, 1990, the Estate Officer issued a notice under Rule 12 (3) of the Chandigarh Lease-hold of Sites and Buildings Rules, 1973 calling upon him to pay the first instalment alongwith ground rent, interest and a penalty of Rs. 46,684. A copy of this notice has been produced as Annexure P.7. The petitioner was warned that if the payment is not made, the proceedings for cancellation of lease shall be initiated. He filed an appeal against the order. The Chief Administrator,—*vide* his order dated 6th February, 1998, found that "the Assistant Estate Officer has imposed the maximum possible penalty on account of the delay in making the payment. It is felt that the maximum penalty should be resorted to only if the special circumstances of a case so warrant. No such circumstances have been brought out in the present case". Thus, the penalty was reduced to half. A copy of this order has been produced as Annexure P.8. The petitioner submits that the levy of penalty was wholly illegal. The petitioner further alleges that the

building is lying vacant and that he is suffering a great loss. He prays that the orders, copies of which have been produced as Annexures P.7 and P. 8 be quashed. He further prays that a writ in the nature of mandamus be issued directing the respondents to provide "the amenities such as water connection, sewerage connection, approach road, parking etc. at the site". He further prays that the respondents be directed not to charge the interest and ground rent till the amenities are provided.

(5) A written statement had been filed on behalf of the respondents by Mr. S.P. Arora, the Assistant Estate Officer. It has been *inter alia* averred that the building on the site has been constructed upto the second floor and is in occupation of the petitioner. The "occupation certificate was issued and the sewerage connection was granted,—*vide* memo dated 30th August, 1995". Electricity and water connections have been provided. It has, however, been acknowledged that "there is no approach road or pavement and jhuggis are existing near the site in question".

(6) The respondents allege that the first instalment of premium and ground rent amounting to Rs. 6,86,840 was payable upto 10th March, 1990. The payment was not made. On 26th March, 1990, the Assistant Estate Officer ordered that a show cause notice be issued to the allottees to explain as to why a penalty at the rate of 10% of the amount be not imposed. This show cause notice was served on Mr. Baldev Raj Bhatia on 30th March, 1990. Since nothing was heard in reply, a penalty to the extent of 10% was imposed and a notice dated 1st June, 1990 asking the petitioner to make the payment of Rs. 46,684 was issued. The payment had to be made by 31st August, 1990. In appeal, the amount of penalty was reduced to a half. The respondents allege that an amount of Rs. 8,80,745 is outstanding against the petiioner. They maintain that the petition "is wholly misconceived and without any merit............." Thus, it should be dismissed with costs.

(7) The case was posted before the Bench on 13th November, 2000. It was *inter alia* submitted on behalf of the petitioner that the written statement filed on behalf of respondent Nos. 1 to 3 was "factually incorrect". It was pointed out that even a sewerage line did not exist near the site. The question of providing sewerage connection could not have arisen. After hearing counsel for the parties, we had observed that *prima facie,* the written statement was not accurate. The respondents were directed to explain the

factual position and to show cause as to why proceedings for filling an inaccurate affidavit be not initiated.

(8) In pursuance to the order, Mr. S.P. Arora filed the affidavit dated 21st November, 2000. It may be noticed that the affidavit was not sworn to before the Oath Commissioner or any other competent authority. In this 'affidavit', it has been averred that the sewerage connection was refused due to certain building violations which were conveyed to the petitioner,—*vide* letter dated 14th January, 1991. The petitioner had again applied for the grant of sewerage connection and occupation certificate,—*vide* letter dated 28th August, 1995. An undertaking was also given for removal of violations. The grant of certificates for provision of sewerage and occupation is governed by Rules 18 and 112 of the Punjab Capital (Development and Regulation) Building Rules, 1952. The required sewerage connection and occupation certificate were granted on the recommendation of the SDO (B) and conveyed to the petitioner,—*vide* letter dated 30th August, 1995. It has been further averred that the Executive Engineer, Public Health Division No. 4 "was requested to connect the sewerage with the main Sewerage Line". The responsibility of laying the sewerage line is with the Municipal Corporation. The Estate Officer merely grants permission. The occupation certificate which certifies the completion of the building according to the sanctioned plan was issued. It is maintained that the averments made in para 3 "regarding issue of occupation certificate and grant of sewerage connection in the written statement are correct as per record and relevant rules". It has been further averred that the petitioner is occupying the building and is doing the business since 1994. This averment has been made on the basis of the information given by the Excise and Taxation Officer,—*vide* memorandum dated 18th November, 2000 according to which M/s Sumeet Trading Company, SCF No. 290, Grain Market, Sector 26, Chandigarh is registered with the department under the Punjab General Sales Act, 1948 and Central Sales Tax Act, 1956 since 14th September, 1994. The respondents maintain that they grant the permission for occupation and sewerage connection under Rules 18 and 112. The "sewerage connection of the premises with the main sewer are connected by the Engineering Department.........."

CWP 959/99

(9) On 2nd January, 1998, a Shop-cum-Office Site No. 141-142, Sector 9, Chandigarh was auctioned by the Municipal

Corporation, Chandigarh. The site was to be allotted on lease-hold basis. The petitioner—a private limited company, gave a bid of Rs. 1,78,05,000. It paid 25% of the amount. The Corporation issued the letter of allotment on 5th February, 1998. The petitioner alleges that the respondent-authorities have failed to provide road, sewerage, parking and electricity on the site. The area is not developed. There was delay in handing over of possession, sanctioning the building plans and demarcating the site. On 7th March, 1998, the Executive Engineer (Roads Division) of the Municipal Corporation asked the Assistant Commissioner to deliver possession. Though, the possession was given, the amenities were not provided. The petitioner alleges that it had started construction. However, the respondents had not laid even the pipes for supply of water near the site. It was given a temporary connection from the neighbouring residential line. No road has been laid and no sewerage pipe was available. There was no street light.

(10) According to the letter of allotment, the balance amount of bid money can either be paid in lumpsum within 30 days from the date of auction or in three annual equated instalments alongwith interest at the rate of 18% per annum. The first instalment was payable after the expiry of one year from the date of auction. In case of delay, interest is charged at the rate of 24% or at such higher rate as may be fixed by the Municipal Corporation. The petitioner alleges that the Chandigarh Administration is charging interest on instalments at the rate of 10% while the Municipal Corporation has arbitrarily chosen to levy interest at the rate of 18%. It maintains that the provision in the contract regarding payment of interest at 18% or more is violative of the rule laid down in *Central Inland Water Transport Corporation Ltd. and another* vs. *Brojo Nath Ganguly and another* (1) In any event, the petitioner claims that no interest is chargeable till the amenities are provided. It has constructed the entire building at the site after spending about Rs. 30 lacs. However, the investment can't be utilised as the Municipal Corporation has failed to provide the facilities. The petitioner maintains that till the facilities are provided, the respondents cannot charge the interest and ground rent. It prays for the issue of a writ in the nature of mandamus directing the respondents to provide the amenities such as water, sewerage connection, electricity, approach road and parking site. It further prays that

(1) AIR 1986 SC 1571

till the amenities are provided, the respondents be restrained from charging interest on the instalments as well as ground rent. It also prays that the respondents be directed to charge interest at the rate of 10% and not at the rate provided in the letter of allotment.

(11) A short written reply has been filed on behalf of respondent Nos. 1, 3 and 4 viz. the U.T. Administration, the Chief Administrator and the Estate Officer by Mr. S.P. Arora, the Assistant Estate Officer. It has been averred that,—*vide* letter dated 2nd January, 1998, the Finance Secretary had informed the Estate Officer that approval had been accorded to the transfer of the 3-bay and 2-bay sites. On 13th January, 1998, the Estate Officer had informed the Municipal Corporation about it. As for the provision of amenities, the functions had been transferred by the Administration to the Municipal Corporation,—*vide* notifications dated 28th September, 1995 and 16th May, 1996. Thus, the site was allotted to the petitioner by the Corporation and not by the Administration. The petitioner's contract is with the Corporation.

(12) On behalf of respondent Nos. 2 and 5 viz. the Municipal Corporation and the Assistant Commissioner, a separate reply has been filed. The name or designation of the person who has filed the reply has not been disclosed. It has been averred that the petitioner had paid Rs. 18 lacs at the spot. The allotment letter was issued on 5th February, 1998.after the petitioners had supplied the requisite documents. The possession was delivered on 7th March, 1998. The Superintending Engineer has,—*vide* his letter dated 10th August, 1999 intimated that "all the necessary Estate Public Health Services have already been provided for all the sites and all the sites near and adjoining the site of the petitioner are free from encumbrances in respect of sewerage, storm water drainage and water supply lines". It has, however been acknowledged that "amenities such as parking, street light etc" cannot be provided till the sub lessees who have started construction "remove building material etc. adjoining to their sites". A copy of this letter has been produced as Annexure R. 1. It has been further averred that construction of buildings on almost all the 17 sites in Sector 9 is in progress. The building material is stocked near the sites. Notices have been issued to the allottees to remove the building material so that roads, parking area already demarcated may be mettled. Some of the sub lessees have constructed huts for their labourers. It has been further averred that "the Chief Engineer Municipal Corpoation has intimated that the work in front of completed SCO

sites will be done by 31st December, 1999. Other basic amenities have already been provided.

CWP Nos. 960 & 5874 of 1999

(13) As for the payment of interest, it has been averred that the petitioner is liable to pay interest at the rate of 18% on the balance amount of the premium in accordance with the terms and conditions of auction and the letter of allotment. On these premises, the respondents claim that the writ petition should be dismissed and that the petitioners be held liable to pay the interest and ground rent.

(14) The broad position in CWP Nos. 960 and 5874 of 1999 is akin to that in CWP No. 959 of 1999. Thus, the facts need not be noticed in detail. It may only be mentioned that the site allotted to the petitioner in CWP No. 960 of 1999 is SCO No. 143-144, Sector 9, Chandigarh and in CWP No. 5874/99, the site is SCO No. 162--163, Sector 9, Chandigarh. The price, however, varies.

CWP/1339/98

(15) The dispute is regarding SCO No. 44 in Sector 42-C, Chandigarh. The petitioners allege that the building was completed in accordance with the terms of allotment contained in letter dated 28th March, 1995. Since the basic facilities like road and parking etc. had not been provided, the petitioners have not been able to let out the shop till today.

CWP/5009/1998

(16) The claim in this petition relates to site SCF No. 1026, Motor Market and Commercial Complex, Manimajra. The petitioners had purchased the site for an amount of Rs. 9,85,000 in the year 1990. They had paid 25% of the amount viz. Rs. 2,46,250 immediately after the auction. On 8th December, 1990, a letter of allotment was issued. The petitioners have completed the building but they have not been able to occupy it as pipes for sewerage have not been laid. In fact, the petitioners have produced a photograph to show that temporary arrangement for sewerage was being made in the year 2000. According to the petitioners, they have not been able to utilise the building for want of facilities. Despite that, the building has been resumed for non payment of interest etc.

CWP/10409/2000

(17) The petitioner had taken site for SCO No. 8, Sector 41-D, Chandigarh in an open auction on 7th August, 1997 for an amount of

Rs. 32,75,000. The letter of allotment was issued to the petitioner after payment of 25%. Rs. 8,18,750 were paid by the petitioner immediately after the auction. The remaining amount alongwith interest had to be paid in three annual instalments. The petitioner complains that he has constructed the building. However, he is unable to use it as there is a rehri market in the area in front of the shop. Resultantly, it is not possible to reach the shop constructed by the petitioner. Even the other facilities have not been provided. Thus, the petitioner prays that the respondents be directed to remove the unauthorised rehri market and to provide facilities like water supply, urinals, parking and street lights. He further prays that the respondents be restrained from charging instalments till the unauthorised rehri market is removed and amenities are provided.

(18) No written statement has been filed in this case.

(19) It is in the background of the above facts that the claim of the petitioners as made in these petitions has to be considered.

(20) Counsel for the parties have been heard.

(21) On behalf of the petitioners, the arguments have been addressed by Mr. Sarwan Singh, Sr. Advocate, M/s Arun Jain, Rajinder Goyal and Ram Saran Dass, Advocates. It has been contended that the Administration is duty-bound to provide all the amenities for proper use and enjoyment of the property auctioned by it. It is only when the amenities are provided that the property can be used. The action of the Administration in demanding interest and ground rent without providing the amenities is wholly arbitrary and unfair. It has been also contended that the Municipal Corporation cannot charge interest at the rate of 18% as demanded by it.

(22) On the other hand, Mr. Ashok Aggarwal, Sr. Advocate and Mr. Subhash Goyal, Advocate who appeared for the Administration and Ms. Deepali Puri, counsel for the Municipal Corporation have contended that the parties are bound by the contract. They are bound to pay the interest and ground rent in accordance with the terms of allotment. Even if, there is some delay in providing the amenities, the petitioners cannot claim any relief on that account. Consequently, the action of the Administration deserves to be upheld and the writ petitions should be dismissed.

(23) The Legislature had enacted the Capital of Punjab (Development and Regulation) Act, 1952. This Act was promulgated for "the development and regulation of the new Capital of Punjab" viz. Chandigarh. Section 2 of the act *inter alia* provides that the 'amenity' shall include "roads, water supply, street lighting, drainage, sewerage, public building, horticulture land scaping and any other public utility service provided at Chandigarh". Section 6 empowers the Chief Administrator to take action for the proper maintenance of site or building. Section 7-A was introduced by Amendment Act No. 45 of 1994 to authorise the Chief Administrator to apply to Chandigarh or any part thereof "with such adaptations and modifications....all or any of the provisions of the Punjab Municipal Corporation Act, 1976 in so far as such provision are applicable to Chandigarh". When there is a breach of the conditions of transfer in the matter of paying the consideration money or of any other condition, the Estate Officer can order the resumption of the site and forfeiture of the whole or any part of the money paid in respect thereof. The provision in this behalf is contained in Section 8-A. Section 10 provides for appeal and revision. The remaining provisions are not relevant except Section 22 which empowers the Central Government to make rules for carrying out the purposes of the Act.

(24) In exercises of the powers conferred by Section 22, the rules called 'the Punjab Capital (Development and Regulation) Building Rules, 1952 (hereinafter referred to as the 1952 rules) have been framed. So far as the allotment of land on leasehold basis is concerned, the Administrator has promulgated the Chandigarh Lease Hold of Sites and Buildings Rules, 1973. Rule 3 defines 'premium' to mean "price paid or promised for the transfer of a right to enjoy immovable property under these rules". Under rule 4, the sites can be given on lease "for 99 years". Such leases may be given by a allotment or by auction......" Rules 5 to 9 deal with the allotment etc. Rule 10 provides for the delivery of possession on payment of 25% of the premium. It has been further provided that "no ground rent payable under Rule 13 and interest on the instalments of premium payable under sub rule 2 of Rule 12 shall be paid by the leassee till the actual and physical possession of the site/building is delivered or offered to be delivered to him whichever is earlier". Rule 12 provides for the payment of premium and the consequences of non-payment or delay in payment. Reference to the provision shall be made at the appropriate stage. Alongwith the rules, various forms relating to the application for allotment, the grant of lease for 99 years in respect

of sites or buildings and the notice calling upon the lessee for the payment of an instalment have been given in forms A to D respectively.

(25) In the context of the facts, the provisions of law and the contentions raised by the counsel, the questions that arise for consideration are :—

(i) Is the Administration required to provide the basic amenities which are essential for the enjoyment of the property ?

(ii) Is the Administration under a duty to remove encroachments like jhuggis or other unauthorised occupants like rehriwalas ?

(iii) Is an allottee entitled to contend that he is not liable to pay the instalment of the premium or the ground rent or the interest thereon till the basic amenities are provided by the concerned authority and/or the encroachments are removed ?

(iv) Can the Municipal Corporation charge interest at the rate of 18% ?

(v) To what relief are the petitioners entitled in these cases ?

Reg. (i)

(26) Primarily, the functions of the State are to maintain law and order within the country. To defend the person and property of the citizen from internal and external aggression. To provide the basic amenities for health and education. However, in its anxiety to create resources and regulate every conceivable field of human activity, the State embarks upon new ventures. It subjects every activity to "a civil service regime". Thus, it assumes power to compulsorily acquire private property and then to sell it to the citizen. Normally for profit. To illustrate, lease hold rights in Godown Site No. 290 in CWP No. 9481 of 1999 were sold to the petitioner for a price of Rs. 22,10,000 in March, 1989. This was at the rate of more than Rs. 20,000 per square yard. In addition to this, the allottee had to pay rent at the rate of more than Rs. 550 per square yard annually. Still further, in May, 1998, the lease hold rights in land measuring about 368 square yards were sold at a price of Rs. 2,26,25,000 viz. Rs. 6,1480 per square yard in CWP No. 5874 of 1999. The allottee had also to pay the ground rent at the rate of Rs. 5,65,625

per year. Undeniable these rates are much above the cost at which the land had been acquired by the Administration.

(27) When a person pays such a fabulous price, he is entitled to assume that the property is free from all encumbrances. He would be able to raise the building without any delay or obstruction from the concerned authority or anyone else. He would be provided all the civic amenities which are necessary for the proper raising of the building, occupation of the premises and enjoyment of the property. This assumption would be all the more a necessary covenant in a case where the State enjoys a total monopoly.

(28) Admittedly, in Chandigarh, the sites are demarcated and sold by the Administration. No citizen can raise any building without the site having been approved and sold by the Administration. In such a situation, the Administration is bound to ensure that the site is duly accessible and all the facilities exist.

(29) As noticed above, Section 2 defines amenities to include roads, sewerage, water, lighting and drainage etc. Surely, the Legislature had not defined the amenities for purely academic reasons. The obvious purpose was to make the Administration aware of its obligation to provide the said amenities. Still further, the Legislature did not rest by merely providing a definition in Section 2. In fact, it has made a specific provision in Section 6 authorising the Chief Administrator to ensure that the amenities in any part of the city are not prejudicially affected. The specific provision was made to empower the Chief Administrator to take necessary steps to ensure that any one who created a condition affecting the amenities was given a notice and ordered to maintain the road etc. in proper shape. The provision carries an implicit obligation on the part of the Administration to ensure that the roads, water supply, street lighting, drainage, sewerage etc. are duly provided in the city. The citizen pays money so as to be able to use the property. In fact, rule 3 of the 1973 rules clearly defines 'premium' as "the price paid or promised for the transfer of a right to enjoy immovable property......" This price is well above the cost of the land and the expense which has been or is to be incurred on providing the amenities. The citizen pays a heavy price. He is entitled to get what he has paid for.

(30) The letter of allotment is issued on payment of 25% of the amount of premium. The terms regarding payment etc. are

undoubtedly laid down. However, under Rule 10, it has been specifically provided that "no ground rent..............and interest on the instalments of premium...........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". The obvious intention of the rule making authority is to ensure that the buyer gets what he is buying. He is able to enjoy the rights in the property before he becomes liable to pay the ground rent or interest. He should be able to reach, occupy and enjoy it.

(31) On a cumulative consideration of the provisions of the rules etc., it is clear that the Administration is under a duty to provide the amenities as defined in Section 2(b) of the Act. The roads, water supply, street lighting, drainage, sewerage, public building, horticulture, land scaping and other public utility service are the amenities contemplated under the Statute. These are essential for an effective enjoyment of the property. These have to be provided.

(32) Accordingly, the first question is answered in the affirmative. It is held that the Administration is under a duty to provide the amenities to the allottee of the site.

Reg (ii)

(33) Counsel for the petitioners contended that the Administration auctions sites which are not free from encroachments. In the present set of cases, one site was sold which was surrounded by jhuggis. In case of the other site, the rehriwalas had encroached upon the parking area and blocked the entry to the shop. The petitioners contend that the Administration is under a duty to ensure that the site is free from all kinds of encumbrances. Is it so ?

(34) As noticed above, 'premium' is the price that the allottee pays for the transfer of the right to enjoy the property. When the payment is made, the allottee gets a right to the enjoyment of the property. Thus, the payment can be claimed only when the allottee can exercise the "right to enjoy the property". In a case where the site is not accessible for lack of amenities or on account of obstruction caused by encroachment etc., it cannot be said that the right to enjoy the property has been transferred. For a proper enjoyment of the right, it is essential that the property is easily accessible. It is also essential that there is no encroachment thereon. It is the duty of the seller to deliver a clear and unencumbered possession of the property to the allottee.

An effective enjoyment of the property is not possible when there are encroachments. These encroachments cause obstruction in even approaching the property. Commercial sites are purchased to set up commercial establishments like shops etc. When these sites are not easily accessible, there is denial of right to enjoy the property.

(35) To illustrate, we may notice the case of the petitioner in CWP No.9481 of 1999. The Godown site was allotted in the year 1989. More than 11 years have already passed. The jhuggis continue to exist. The road has not been constructed. The allottee claims to have paid the entire premium. Despite that, he has no way to reach the property. Similarly, it is the admitted position that rehriwalas have occupied the parking area etc. around Site SCO No. 8, Sector 41-D, Chandigarh. As a result, the vehicles can't reach. The customers face obstruction. Can we still say that the right to enjoy the property has been transferred ? We think—not.

(36) In our view, the Administration is under an obligation to ensure that there is no obstruction in the way of the allottee to reach the site and to enjoy the property. In case, there is any obstruction, the Administration is under an obligation to remove it.

(37) Thus, we answer even the second question in the affirmative and hold that the Administration has to remove the encroachments like jhuggis or other unauthorised occupants including rehriwalas from and around the sites that it allots to the buyers.

Reg (iii)

(38) Counsel for the petitioners contended that the Administration cannot claim the payment of the instalment of the premium, the ground rent or the interest till the encroachments are removed and the amenities are provided. Counsel for the respondents controverted this claim. Mr. Ashok Aggarwal, learned counsel for the respondents submitted that the parties were bound by the contract. Even when the Administration was guilty of delay in providing the amenities or removing the encroachments, the allottee could not contend that it was not liable to pay. Is it so?

(39) To examine the issue, it is apt to notice by way of an illustration, the factual position in CWP No. 9481 of 1999. It is the

admitted position that the site was auctioned on 12th February, 1989. The letter of allotment was issued on 16th March, 1989. Till today, there is no road leading to the site. The jhuggis raised by unauthorised occupants of the area continue to exist. The sewerage line near the site is said to have been laid in December, 1999. However, no sewerage connection had been given to the allottee even then. Thus, the site is not accessible. The allottee cannot enjoy the property. The Administration still insists upon enforcing its right to recover the ground rent and interest on the premium as well as the ground rent despite the fact that the property cannot be used. In case of default, it imposes penalty. On failure to pay, it resumes the property.

(40) Admittedly, the respondents enjoy a monopoly in the allotment of sites. The plots or the buildings are allotted in a standardised form. The allottee has no realistic opportunity to bargain. He has to necessarily acquiesce and accept what is given to him. He is in the position of a weak party. He has "no realistic choice" as to the terms of the contract. Should the court still enforce the contract in its literality ? Or should the court intervene and ensure that the unjust terms of the contract are given a resticted meaning so that the contract is not rendered liable to be condemned as unconscionable ? We are of the view that the weaker party needs protection.

(41) The principles regarding construction of contracts were laid down by their Lordships of the Supreme Court in *Central Inland Water Transport Corporation Ltd.* vs. *Brojo Nath Ganguly and another (supra)* it was *inter alia* held that "the principle deducible from various precedents is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power". It was further obseved that this principle "will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be".

(42) This principle is fully attracted in the case of allotment of sites. The Administration insists upon the performance of duty by the allottee even when it has itself failed to carry out its own part of the obligation. In cases like the present one, where the Administration has failed to provide the amenities and/or to remove the encroachments for more than a decade, it would be unfair to allow it to claim that the allottee is bound to pay the ground rent as also the interest on account of the delay in paying the instalment of the premium and the amount fixed as ground rent. In our view, when the Administration fails to provide conditions where the enjoyment of property is possible and the allottee is not to blame in any manner whatsoever, its right to recover the money in the from of ground rent and interest is not enforceable. Otherwise, the 'contract' itself shall suffer from the criticism of being unconscionable.

(43) Even the Administration appears to realise the real ethics of the issue. *Vide* letter No. 8435/M-777/G-V dated 16th June, 1986, the Estate Officer had written to the Finance Secretary that :—

"The Co-op House Building Societies to whom plots have been allotted have represented that payment be deferred till plots are developed. The civil amenities have not been provided at site by the Engineering Department. It is, therefore, requested that the payment of instalment of premium may be deferred without interest on late payment till the land is developed. It is worth-while to mention that we do not charge ground rent and interest on instalment in cases where land is not developed and we cannot offer possession.

A copy forwarded to the Chief Engineer, Union Territory, Chandigarh. He is requested to develop plots".

(44) A copy of this letter is on record as Mark 'A'. It is clear from the contents of the letter that the Administration does not charge interest and ground rent till the 'land is developed'. Why should it treat the petitioners differently ? We find no reason to justify its action.

(45) Thus, even the third question is answered against the respondents.

Reg. (iv)

(46) Can the Municipal Corporation charge interest at the rate of 18%?

(47) The petitioners allege that the Chandigarh Administration is charging interest on the instalments at the rate of 10%. However, the Municipal Corporation insists that the allottees shall be liable to pay interest at the rate of 18%. The counsel submit that the action is arbitrary and illegal.

(48) In the reply filed on behalf of the Administration viz. respondent Nos. 1, 3 and 4, it has been *inter alia* averred that various sites were transferred to the Municipal Corporation,—*vide* letter dated 13th January, 1998. A copy of this letter has been produced as Annexure R-4/2. In this letter, it was observed that the "subsequent disposal shall, however, be governed by the Lease Hold of Sites and Buildings Rules, 1973..............." In the reply filed by the Corporation, it has been stated that it is charging interest at the rate of 18%. The petitioner having accepted the conditions of auction and the letter of allotment, he is bound to pay the interest at this rate.

(49) To examine the factual position, the facts in CWP No. 960 of 1999 may be briefly recapitulated.

(50) The site was auctioned on 2nd January, 1998 by the Corporation. The letter of allotment was issued to the petitioner on 10th March, 1998. In the letter of allotment, it was stipulated that the interest would be chargeable at the rate of 18%. In case, the payment was not made by the due date, the rate of interest was to be 24%.

(51) Mr. Sarwan Singh, counsel for the petitioners contended that the Administration is charging interest at the rate of 10% as stipulated in Rule 12(2) of the 1973 Rules. Whenever there is delay, the rate of interest is 12%. It was subsequently raised to 15%. However, the Corporation is levying interest at the rate of 18% and 24%.

(52) A perusal of the letter of allotment dated 7th August, 1997 issued by the Chandigarh Administration to the allottee in CWP No. 10409 of 2000 shows that the balance amount of the premium had to be paid together with interest at the rate of 10% per annum. It was also provided that the interest shall accrue from the date of auction. In case, the "instalment of premium and ground

rent are not paid on due date, interest at the rate of 24% shall be payable". Is this stipulation valid?

(53) To decide this issue, it deserves notice that the transfer by the Corporation is goverend by the 1973 Rules. The relevant provision is contained in Rule 12(2). It provides as under :—

> 12(2) "If payment is not made in accordance with sub-rule (1) of this rule, the balance of the 75% premium shall be paid in three annual equated instalments or more as the Chief Administrator may in exceptional circumstances of a case fix with prior approval of the Chief Commissioner alongwith interest at the rate of 6 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 Gazette before the commencement of the lease. The first instalment shall become payable after one year from the date of allotment/ auction".

(54) A perusal of the above provision shows that the balance of the 75% of the premium has to be normally paid in three annual equated instalments. The rate of interest can be fixed only by the Chief Administrator. That can be done only "by a notification in the Official Gazette before the commencement of the lease". The first instalment becomes payable after one year "from the date of allotment/auction". The rate of interest was initially fixed at 6%. *Vide* notification dated 29th November, 1990, it was raised to 10%.

(55) In the present set of cases, nothing has been placed on the record to show that the Chief Administrator had issued any notification prior to the commencement of the lease by which the rate of interest may have been revised and raised to 18%. It is well settled that if the power to do a certain thing is conferred on a particular authority, the said power can be exercised only by that authority. In the absence of a specific provision in the statute, none else can assume that power. Still more,if a particular thing is required to be done in a particular way, it has to be done in that manner and no other. The provision of Rule 12 is clear and categorical. It confers the power on the Chief Administrator and none else. The power can be exercised only by the issue of a notification. Such a notification has to be published in the Official Gazette. It must exist prior to the commencement of the lease so as to bind the lessee.

(56) What is the position in the present cases ? No notification has been issued by the Chief Administrator. Counsel were specially called and asked. Mr. Subhash Goyal and Ms. Deepali Puri, learned counsel for the respondents conceded that the Chief Administrator had not issued any order fixing the rate of interest at 18%. There is no notification. Thus, the action of the Municipal Corporation in levying the interest at the rate of 18% per annum is not in conformity with the Rule. It cannot be sustained.

Reg. (v)

(57) We may now notice the factual position regarding the cases so as to determine the issue regarding the grant of relief.

CWP No. 9481/1999

(58) The petitioner challenges the orders dated 1st June, 1990 and 6th February, 1998 by which he was held liable to pay a penalty for delay in payment of the first instalment of premium and ground rent in respect of Site No. 290 in Sector 26, Chandigarh. The Estate Officer by his order dated 1st June, 1990 had imposed a penalty of Rs. 46,684. It was reduced to half by the appellate authority,—*vide* order dated 6th February, 1998. The short question is -Was the petitioner liable to pay any penalty?

(59) The admitted position is that the basic amenities like the road and the sewerage connection have not been provided till today. The encroachments in the form of jhuggis continue to exist near the site. The petitioner is not able to use the premises erected by him. The area has not been developed. The Administration has failed to perform its functions for more than 11 years. The charge of mal-administration levelled by the counsel for the petitioner is not unfounded. In such a situation, we are not persuaded to hold that the petitioner is at fault so as to be liable to pay the penalty. In fact, it appears that the substantial amount spent by the petitioner has remained blocked.

(60) On behalf of the respondents, it was submitted that the petitioner is using the premises. M/s Sumeet Trading Company is registered with the Department under the Punjab General Sales Tax Act, 1948 and the Central Sales Tax Act, 1956 since 14th October,1994. A copy of this certificate was produced as Annexure—6 with the additional affidavit on behalf of the respondents. In the affidavit as well as in the communication, the site has been described as SCF No. 290 and not as a 'godown'.

Secondly, the certificate of registration was not produced even though it was so mentioned in the communication. Thirdly, no electricity or water bill was produced to show that there was any consumption. In any event, the fact remains that even the basic amenities like a road and the sewerage connection have not been provided so far. Even the jhuggis continue to remain on the site. How can the petitioner enjoy the property when the land around it is occupied by various persons and jhuggis continue to exist? There is no approach road. There is no sewerage connection. We can only lament the total indifference of the Administration to the requests of the petitioner. Yet, it chose to impose penalty against him.

(61) In the written statement filed on behalf of the respondents, it had been stated that the sewerage connection had been provided. This is apparently a wrong averment. It is the admitted position that the sewerage line in the main area had not been laid till December, 1999. Sewerage connection had not been provided to the petitioner till date of the hearing of the case. In this situation, we cannot compliment the respondents on their making in accurate averment in the written statement.

(62) In proceeding under Article 226 of the Constitution, the rights of the parties are determined on the basis of averments made in the affidavits. It is of utmost importance that each averment is accurate and in conformity with the record. The need for maintaining the sanctity of statements made before the court cannot be over-emphasised. The averments made on behalf of the respondents in this case leave a lot to desire. For the present, we shall say no more.

(63) We allow the writ petition and quash the orders copies of which have been produced as Annexures P.7 and P.8. The consequential relief shall follow. Furthermore, the Administration is directed to remove the encroachments and provide a road as well as the sewerage connection within three months from the date of receipt of a certified copy of this order. The petitioner shall also be entitled to his costs which are assessed at Rs. 25,000. It may be a small consolation but should provide some solace to the petitioner.

CWP No. 10409/2000

(64) In this case, the primary grievance of the petitoner is that he has not been able to use his building on account of the existing

rehri market. It has been categorically stated by the petitioner that the rehriwalas have occupied the entire parking, the pavement and open area on the front side of the site. Thus, "there is no approach whatsoever left to the site of the petitioner". The averments made in paras 7 and 8 of the petition have not even been denied. No reply to the writ petition was filed.

(65) In view of the admitted position, we have no alternative but to allow the writ petition and to direct the respondents to remove the encroachment within one month from the date of receipt of a certified copy of this order. Since the petitioner has been prevented from an effective use and enjoyment of the property on account of the inaction of the respondents, he would not be liable to pay the interest on the instalments and the ground rent till the encroachment is removed.The petitioner shall be also entitled to his costs which are assessed at Rs. 10,000.

CWP Nos. 959, 960 and 5874/99

(66) In these three cases, the grievance is two-fold. Firstly, it is claimed that the amenities having not been provided, the respondents be restrained from charging the interest and ground rent. Secondly, the dispute is regarding the rate of interest. The petitioners claim that the Corporation cannot charge interest beyond what was notified by the Chief Administrator by a notification in the Official Gazette prior to the commencement of the lease.

(67) Counsel for the respondents had referred to the decision of a Division Bench of this Court in *Sukhpal Singh Kang and others* v. *Chandigarh Administration and another* (2) to contend that the petitioners are bound to make the payment. We have examined the judgment. A perusal thereof shows that relief was declined to the petitioners who had not only constructed the buildings but had even leased them out at substantial rates of rent. However, in the case where the amenities had not been fully provided directions as contained in paragraph 27 were given. It was observed as under :—

> "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 CWP No. 4655 of 1993 have been

(2) 1999 (1) P.L.R. 54

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 higher rate in terms of Rule 12 (3-A) of the 1973 rules by making appropriate application".

(68) Thus, the respondents can derive no advantage from this decision.

(69) We have already found that the Chief Administrator had not issued any notification authorising the Corporation to charge interest at the rate of 18%. Thus, the petitioners are entitled to the grant of relief in this regard. It is held that they would be liable to pay interest only at the rate notified by the Chief Administrator in the Official Gazette before the lease was granted. Their liability shall, thus, be worked out afresh by the respondents.

(70) So far as the provision of amenities is concerned, it is the admitted position that the street lights, the parking area and the roads have not been laid down as the allottees in the neighbourhood had dumped building material. Since the obligation to have encroachments removed and to provide the amenities is that of the respondents, it is directed that the provision shall now be made within three months. Since approach roads and parking area are essential for the enjoyment of the property, it is held that the petitioners shall not be liable to pay interest on the instalments of the premium and the ground rent till the amenities are provided. The petitioners shall, however, make payment of all the dues within three months from the date the amenities are provided.

(71) The writ petitions are allowed in these terms. The petitioners shall also be entitled to their costs which are assessed at Rs. 10,000 per case.

CWP 1339/98

(72) The petitioners were allotted the site on 28th March, 1995. Various requests were made by the allottees for the provision of amenities. The petitioners had completed the construction of the building within a period of three years from the date of auction. However, the allottees were not able to let it out as there was only wild grass all around and the basic amenities had not been provided. It was in pursuance to the interim orders that cement and concrete slabs were placed on loose earth to provide a passage.

(73) In the written statement filed on behalf of the respondents on 4th July, 1998, it was stated that amenities like electricity, sewerage and water connection exist. The other amenities were in the process of being provided. However, during the course of hearing on 28th September, 2000, it was noticed that "the approach road and a parking area has not been provided so far". The respondents were given an opportunity to show as to what had been done during the period of more than 2 years. On 8th November, 2000, it was stated that a pucca pavement had been made. Photographs were produced before us which showed that only slabs made of cement and concrete etc. had been placed on loose earth. No metalled road has been made till today. Even a parking area has not been provided. We are not surprised that the substantial investment made by the petitioners has remained blocked. They have not been able to let out the shop.

(74) Thus, we allow the writ petition and direct the respondents to provide all the amenities including metalled road and parking area within three months. The respondents shall not be entitled to charge interest on account of delay in payment of instalments of premium and ground rent provided the payment of the outstanding dues is made within three months from the date the amenities are provided. The petitioner shall be entitled to costs of Rs. 10,000.

CWP 5009/98

(75) In this case, the petitioners complain that even the sewerage pipes have not been laid. Temporary pipes were being laid in the open in the year 2000. These pipes had not even been connected with the main sewer line. Despite this position, the site was resumed for non payment vide order dated 23rd September, 1996.

(76) The site was allotted on 8th December, 1990 for an amount of Rs. 9,85,000. The petitioners had paid 25% of the amount viz. Rs. 2,46,000 before the issue of the letter of allotment. The remaining amount had to be paid in three equal instalments of Rs. 2,97,065 starting from 10th April, 1991. The petitioners paid the amounts of Rs. 2,46,250 on 7th April, 1992. They paid another amount of Rs. 1,55,000 on 9th December, 1992. Rs. 2 lacs each were paid on 13th December, 1995 and on 23rd January, 1996. However, their requests for provision of basic amenities were not being heeded to. Despite that, the allotment was cancelled vide order dated 23rd September, 1996. A copy of this

order had been produced as Annexure P. 4 with the writ petition. The entire deposit which had been made till then was forfeited. The petitioners filed an appeal which was dismissed by the Commissioner,—*vide* order dated 7th January, 1998. A copy of this order has been produced as Annexure P. 5. The petitioners pray that the impugned orders be quashed.

(77) Admittedly, the petitioners had raised the construction despite the lack of facilities. An examination of the photographs produced on record shows that no sewerage connection had been provided. No roads were laid. Thus, enjoyment of the property was totally impossible. A sizeable building. Three floors had been raised by the petitioners at a substantial cost. These were resumed on account of delay in payment. Obviously, the respondents were taking an undue advantage of their own wrong. They having failed to provide the basic amenities, the order of resumption and forfeiture cannot be sustained. The impugned orders are, consequently set aside. The respondents are directed to provide the amenities in accordance with law. The needful shall be done within three months. No interest shall be chargeable from the petitioners if they make the entire outstanding amount within three months from the date of the provision of the amenities.

(78) Before parting with the cases we may notice that while the allottee is liable to pay the instalments regularly, even the authorities are under an obligation to provide amenities. When the authorities fail to perform their part of the duty, the citizen feels aggrieved. His money gets blocked. He is unable to get a return. As a result, a dispute ensues. To avoid all this, it would be appropriate for the Administration to ensure that there is no delay in the provision of amenities and removal of encroachments. Thereafter, it should effectively recover the instalments and penalise the defaulters. In the present set of cases, we are not happy with the manner in which the Administration has preformed its parts of the duty. It has failed in some of the cases to remove the encroachments and provide the amenities for unduly long periods of time. The delay has resulted in loss to the citizen as well as the Administration. Both were avoidable. We hope and trust that the Administration and the Corporation shall be careful in future.

(79) The writ petitions are, accordingly, disposed of.

R.N.R.