REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ INHERENT JURISDICTION

MISCELLANEOUS APPLICATION NO. 50 of 2019

IN

CIVIL APPEAL NO. 8788 OF 2015

RAMESHWAR AND ORS. ...APPELLANT(S)

VERSUS

STATE OF HARYANA & ORS. ...RESPONDENT(S)

WITH

Diary No(s). 26552/2019, MA 2150/2020 in C.A. No. 8788/2015, MA 2149/2020 in C.A. No. 8788/2015, CONMT. PET.(C) No. 2226/2018 in C.A. No. 8788/2015, MA 1175/2019 in C.A. No. 8788/2015, Diary No(s). 24553/2019, Diary No(s). 45026/2019, SLP(C) No. 5490/2021, Diary No(s). 7888/2020, CONMT. PET. (C) No. 513/2020 in C.A. No. 8788/2015, MA 1521/2020 in C.A. No. 8788/2015, MA 2067/2020 in C.A. No. 8788/2015, MA 2228/2020 in C.A. No. 8788/2015, SLP(C) No. 2147/2021, Diary No(s). 5699/2021, Diary No(s). 7775/2021, Diary No(s). 9505/2021, Diary No(s). 6705/2022, Diary No(s). 9002/2022, M.A. No. 864/2019, Diary No. 45009/2019.

AND

CONMT. PET. (C) No. 716/2021 in MA 50/2019 in C.A. No. 8788/2015

J U D G M E N T

S. RAVINDRA BHAT, J.

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Background

1. The present judgment will dispose of various applications filed by the Haryana State Industrial and Infrastructure Development Corporation (hereinafter, "HSIIDC") and others, by way of clarifications sought on the judgment delivered by this Court in *Rameshwar v. State of Haryana*[1] (hereinafter, "main judgment").

2. The main judgment of this Court had, after duly considering the sequence of facts and developments which occurred after publication of the notification under Section 4 of the (now repealed) Land Acquisition Act, 1894 (hereinafter, "Acquisition Act") on 27.08.2004, read with the final decision of the State of Haryana (hereinafter, "State") dated 29.01.2010 to not proceed with the said acquisition, declared as *mala fide* and inoperative the decision dated 29.01.2010. The Court's reasoning was that the State, in principle, had decided to withdraw from the acquisition after the notification under Section 4, which was followed by the declaration under Section 6 and the receipt of objections from the concerned lands owners etc., even when the matter was posted for publication of the award on 26.08.2007. In the interim period, land owners, alarmed by the prospect of losing their holdings, were induced to sell or otherwise transfer their lands to colonizers / developers at significantly lower rates of compensation.

[1] *Rameshwar & Ors. v. State of Haryana & Ors.*, (2018) 6 SCC 215.

Most of such colonizers / developers had entered into collaboration agreements after the notification under Section 4, sought (and were granted) licenses by the Department of Town and Country Planning of the State of Haryana (hereinafter, "DTCP"). This Court found that upon an overall consideration of the materials (which included relevant official notings in government files, ministerial decisions and notifications), the state machinery was used to further private ends. The Court held that such a decision to withdraw from acquisition was a fraud on power under the Acquisition Act. Therefore, the judgment invalidated all transfers effected from the date of publication of the notification under Section 4, to the date of publication of the State's decision to revoke the acquisition i.e., from 27.08.2004 to 29.01.2010 (hereinafter, "suspect period").

3. Apart from invalidating the State's final decision, the judgment also contained consequential directions on various aspects. Before moving further, it would be useful to extract these directions:

> *"42. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:*
>
> *42.1. The decisions dated 24-8-2007 and 29-1-2010 referred to hereinabove are set aside as being brought about by mala fide exercise of power. In our considered view, those decisions were clear case of fraud on power and as such are annulled.*
>
> *42.2. The decision dated 24-8-2007 was taken when the matters were already posted for pronouncement of the award on 26-8-2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24-8-2007 has been held by us to be an exercise of fraud on power, it is directed that an award is deemed to have been passed on 26-8-2007 in respect of lands:*

(i) which were covered by declaration under Section 6 in the present case, and

(ii) which were transferred by the landholders during the period 27-8-2004 till 29-1-2010.

The lands which were not transferred by the landholders during the period from 27-8-2004 till 29-1-2010 are not governed by these directions.

42.3. Subject to the directions issued hereafter, the lands covered under aforementioned Direction 42.2 shall vest in HUDA/HSIIDC, as may be directed by the State of Haryana, free from all encumbrances. HUDA/HSIIDC may forthwith take possession thereof. Consequently, all licences granted in respect of lands covered by the deemed award dated 26-8-2007 will stand transferred to HUDA/HSIIDC.

42.4. Since the dropping of acquisition on 24-8-2007 and subsequent decision dated 29-1-2010 have been set aside, the period between 24-8-2007 and up to the date of this judgment shall not be counted for the purposes of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

42.5. All transactions entered into during the period from 24-8-2007 till 29-1-2010, pursuant to which the original landholders transferred their holdings in favour of builders/private entities or third parties shall be subject to and the interest of the respective parties shall be governed by the directions issued hereafter.

42.6. Consistent with the directions issued in para 33 of Uddar Gagan [Uddar Gagan Properties Ltd. v. Sant Singh, (2016) 11 SCC 378: (2016) 4 SCC (Civ) 198], *the builders/private entities will not be entitled to recover the consideration paid by them to the landholders. The sale consideration paid by the builders/private entities to the landholders shall be treated towards compensation under the award and the landholders will not be required to refund any amount to such builders/private entities. The landholders will be at liberty to prefer Reference under Section 18 of the Act within a period of three months from today. For the purposes of maintaining such reference the reasoning that weighed while passing awards dated 9-3-2006 and 24-2-2007 shall be the basis. If the Reference Court were to enhance the compensation, the amounts received by the landholders by way of consideration from the builders/private entities shall be appropriated towards such sum awarded by the Reference Court. If the landholders are still entitled to something more than what they had received from the builders/private entities, the differential sum shall be made over to them by the State of Haryana towards acquisition of their interest in the lands in question. If, however, what the landholders had received*

towards consideration from the builders/private entities is found to be in excess of what is awarded by the Reference Court, the remainder shall not be recovered from them.

42.7. *Consistent with the directions issued by this Court in paras 33.6 and 33.7 in Uddar Gagan* [Uddar Gagan Properties Ltd. v. Sant Singh, (2016) 11 SCC 378 : (2016) 4 SCC (Civ) 198] *, the builders/private entities will be entitled to refund/reimbursement of any payment made to the landholders or the amounts that had been spent on development of the land, such payments shall be made by HUDA or HSIIDC on being satisfied about the extent of actual expenditure not exceeding HUDA or HSIIDC norms on the subject, as the case may be. Refund will however be in respect of amount at which the landholders sold the land and not of subsequent sales. As regards subsequent transactions, the subsequent purchasers will have remedies against their respective vendors. Claims of builders/private entities entitled to refund will be taken up after settling claims of third parties from whom the builders/private entities had collected monies. No interest will be payable on such amounts.*

42.8. *The third parties from whom money had been collected by the builder/private entities will either be entitled to refund of the amount from and out of and to the extent of the amount payable to the builder/private entities in terms of above direction, available with the State, on their claims being verified or will be allotted the plots or apartments at the agreed price or prevalent price, whichever is higher. Every such claim shall be verified by HUDA or HSIIDC. In cases where constructions have been erected and the entire project is complete or is nearing completion, upon acceptance of the claim, the plots or apartments shall be made over to the respective claimants on the same terms and conditions. Except for such verified and accepted claims, the remaining area or apartments will be completely at the disposal of HUDA or HSIIDC, as the case may be, which shall be free and competent to dispose of the same in accordance with the prevalent policy and procedure. In order to facilitate such exercise all third parties who had purchased or had been allotted the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today.*

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

investigation in the transactions including unearthing unnatural gains received by "middlemen" shall be undertaken by CBI."

4. The present applications have been preferred by HSIIDC and several colonizers / developers, transferees, license holders as well as associations of allottees of flats or commercial plots, consumers, etc. The primary question which this Court has been called upon to answer is as to the nature of the term 'transfer', adverted to in para 42 of the main judgment.

5. The colonizers / developers and license holders on the one hand submitted that so long as the lands were not 'transferred' by their owners (who continued to hold title), mere grant of developmental rights or other associated rights by instruments such as builder development agreements, collaboration agreements, and other contracts would not amount to 'transfer' within the meaning of the main judgment. The stand of HSIIDC and the State (based upon the opinion of the learned Advocate General of Haryana) on the other hand was that entering into such development agreements or contracts was in fact a 'transfer' as it impeded the enjoyment of title by the owners. It was further submitted that such agreements led to issuance of licenses, which were the basis for ultimately deciding not to acquire such lands.

6. To appreciate the rival contentions, it would be necessary to set out the facts in regard to the relevant transactions.

I. Applications filed by (a) M/s. Paradise Systems Pvt. Ltd.; (b) M/s. Karma Lakelands Pvt. Ltd. and (c) Frontier Home Developers Pvt. Ltd.

a. M/s. Paradise Systems Pvt. Ltd. and Green Heights Projects Pvt. Ltd.

7. Paradise Systems Pvt. Ltd., (hereinafter, "Paradise") purchased 2.681 acres of land in village Lakhnaula on 06 - 07.04.2004, by registered sale deeds.[2] On 09.09.2007, Paradise entered into a collaboration agreement with M/s. Sunshine Telecom Services Pvt. Ltd. (hereinafter, "Sunshine"). The consideration for that agreement was ₹ 75 lakhs -received by Paradise. In addition, Paradise was entitled to 35% share in the built-up commercial office space with proportionate land rights and common area rights of the developed property. Paradise granted the 'absolute developmental right' of land for construction of commercial office space. The agreement also recorded that the period for completion of the project was to be sixty months.

8. Based on this collaboration agreement, an application was made for grant of license to the DTCP, and License No. 59 of 2009 was granted on 26.10.2009. Paradise alleged that Sunshine did not adhere to the terms of the collaboration agreement. Paradise claims to have refunded all amounts received by it and annulled that transaction by deed dated 30.03.2013. Paradise thereafter entered into another collaboration agreement with M/s. Green Heights Projects Pvt. Ltd.

[2] Referred to in the collaboration agreement between Paradise and Green Heights Projects Pvt. Ltd. dated 30.03.2013. The collaboration agreement was executed on behalf of Paradise by its then director, Mr. Lalit Modi and on behalf of Green Heights Projects Pvt. Ltd. by its director, Mr. Virendra Kumar Bhatia.

(hereinafter, "Green Heights") for development of the same lands on 30.03.2013. This collaboration agreement referred to License No. 59 of 2009, which was valid up to 25.10.2013. Paradise parted with all rights of development to Green Heights.[3] In terms of this collaboration agreement, Paradise received ₹ 28.40 crores as consideration. The collaboration agreement also recorded the liability of Paradise to the tune of ₹ 4.25 crores to the DTCP.

9. Both Paradise and Green Heights contend that no 'transfer' took place in the suspect period. It was argued on their behalf by learned Senior Advocates Mr. P.S. Patwalia and Ms. Kiran Suri that parties were (and continued to be) the owners of the lands in question, which were purchased prior to the notification under Section 4 dated 27.08.2004. In these circumstances, Paradise was legitimately entitled to enter into collaboration agreements, first with Sunshine Telecom, and later with Green Heights. Paradise received valuable consideration in its agreement with Green Heights. It was argued that Green Heights had invested ₹ 144.91 crores in the project and constructed a total of 371 units. Counsels further submitted that a sum of ₹ 139.78 crores had been received from allottees who booked the properties. The amounts received and the particulars of the allottees who had paid for respective allotted units have been revealed to the Court by Green Heights[4]. It was therefore urged that firstly, the transaction which Paradise entered into initially with Sunshine and subsequently with Green

[3] Detailed facts, with documents are set out in I.A. 112515/2020 in M.A. 2150 of 2020.
[4] I.A. No. 118401 of 2020 in M.A. No. 2150 of 2020.

Heights, did not fall within the mischief of the proscribed transactions that were covered by the main judgment. Secondly, the project was completed and the allottees had paid almost the entire consideration which was utilized in the construction of the building. The counsels submitted that the Court should clarify that there was no 'transfer' in respect of the land covered by License No. 59 of 2009.

10. HSIIDC and the State urged that though there was no 'transfer' or conveyance of the title in the strict sense, what was apparent was that in terms of the collaboration agreements, though the original landowner held nominal title, effective control of the lands was parted to the colonizer / developer. In the case of Sunshine, the consideration was ₹ 75 lakhs, which was in excess by more than twice the value of compensation offered under the Acquisition Act in adjacent lands. In the case of Green Heights, Paradise received ₹ 28.40 crores. It was submitted that under the collaboration agreement, the colonizer / developer was entitled to develop the lands, build upon it, and allot the residential or commercial unit, as the case was, to those who entered into agreements and paid valuable monies. Crucial rights such as possession, the right to construct as per one's choice, and the right to sell, all devolved on the colonizer / developer, who would be entitled to a share of the proceeds. Therefore, it was urged that the real purpose behind the transactions ought to be viewed holistically, and not only one facet of it, i.e., retention of the title by the landowners. HSIIDC and the State therefore,

contended that these lands clearly fell within the description of 'transfers' and should be included in the award deemed to have been passed on 26.08.2007 by the main judgment (hereinafter, "deemed award").

b. <u>Karma Lakelands Pvt. Ltd. and Unitech Ltd.</u>

11. Karma Lakelands Pvt. Ltd. (hereinafter, "Karma") had purchased lands in villages Manesar, Naurangpur and Lakhnaula, between 1996 and 2004. In respect of the total 207.11 acres it had acquired, Karma was granted a conversion of land use (hereinafter, "CLU") certificate by the State on 13.03.1996.

12. The notification issued under Section 4 had included these 207.11 acres, as well as another lot of 25.95 acres in villages Naurangpur and Lakhnaula, owned by companies whose dominant shareholder (to the extent of 90%) was also the majority shareholder in Karma. When the declaration under Section 6 was published on 25.08.2005, Karma's lands, which were the subject of the CLU (207.11 acres), were dropped from acquisition. This was apparently in tune with the existing policy of not acquiring lands whose use had been converted. There is no controversy about those lands at present.

13. In these proceedings, it is the smaller parcel of 25.95 acres of land, which is the subject matter of consideration. Unlike the lands for which CLU had been obtained, these 25.95 acres were included in the acquisition proceedings, in the declaration under Section 6. In respect of these lands, Karma had entered into a

collaboration agreement on 16.02.2004, and a supplementary agreement on 24.12.2006, after the publication of the declaration under Section 6 i.e., after 25.08.2005. The collaboration agreement envisaged development of these lands by M/s Unitech Ltd. (hereinafter, "Unitech"). According to the arrangement, a large number of golf villas were to be built and given out on long-lease basis. During the proceedings before this Court, Unitech stated that it had paid ₹ 15 crores to Karma as consideration for the same.

14. By the time the supplementary agreement was executed on 24.12.2006, the Delhi High Court approved a scheme of amalgamation of the land-owing companies, merging them with Karma. Karma then applied to the DTCP for a license to develop a group housing colony on 15.01.2007. Consequently, License No. 206 of 2008 was issued on 16.12.2008. Thereafter, when the award scheduled for 26.08.2007 was not pronounced, and the decision of the State to not acquire lands was taken on 29.01.2010, these 25.95 acres belonging to Karma were excluded from acquisition.

15. Mr. Brijender Chahar, learned Senior Advocate for Karma, argued that the State's attempt to include Karma's land in the deemed award was untenable. He also urged that the landowning companies which eventually merged with Karma had as a matter of fact purchased these lands as early as the mid-1990s. Karma's *bona fides* was evident from the fact that the largest portion of its acquired land, i.e., 207.11 acres, was left out of the acquisition on a proper application of the

existing policy, which the State consciously followed. By this policy, lands which had CLU certificates were excluded. Therefore, the 207.11 acres earmarked for the development of the golf course which was a subject matter of the CLU obtained in 1996 was excluded; consequently, it did not find place in the declaration under Section 6. It was submitted that even though the non-CLU lands, i.e., 25.95 acres, did not fulfill the terms of the policy, nevertheless, the justification for not letting the State proceed with their acquisition was that neither Karma nor its predecessors had attempted to influence the acquisition. Karma submitted that while these lands were included in the notification under Section 6, they stood on the same footing as the lands owned by other *bona fide* land owners, because they were not the subject matter of any speculation. The lands had been purchased at least ten years or so prior to the notification issued under Section 4. In the circumstances, Karma was justified in seeking a license after waiting for a reasonable period of time, even within the suspect period. Mr. Chahar also pointed out that no malice or ulterior motive could be attributed to Karma because its collaboration with Unitech was entered into on 16.02.2004, which was prior to the notification under Section 4.

16. Learned Senior Advocate further submitted that Karma's applications, i.e., M.A. No. 1046/2019, and connected applications, were for directions for release of a total area of 9.7 acres. It was submitted that these were seven distinct units of land which Karma was forced to purchase because they fall in pockets within

the larger area of 207.11 acres, left out of the acquisition when the declaration under Section 6 was issued. It was submitted that being a contiguous land, it interfered with the integrity of the golf course. Their inclusion in acquisition would ultimately disturb the peaceful enjoyment of land, which Karma was legitimately entitled to. He also relied upon a policy of the State dated 14.06.2012 (issued under a letter[5]) which contained a comprehensive policy in respect of leftover pockets of land. It was submitted that this Court should grant liberty to the State to release the lands which were the matter of acquisition in view of this policy. However, at the end of the hearings, Mr. Chahar sought and was granted liberty to withdraw the application (M.A. No. 1046 of 2019). The application was therefore dismissed as withdrawn on 19.04.2022.

17. Learned counsel for HSIIDC Mr. Sanjay Kumar Visen argued that even though Karma or its affiliates had purchased the lands earlier, only 207.11 acres was covered by a previously issued CLU. Its exclusion from acquisition was justifiable due to extant policy. However, with respect to 25.95 acres, it was included in the declaration under Section 6, and there was no justification for its non-inclusion in the deemed award. It was urged that Karma's intensions were clear because even after the declaration under Section 6 was issued, and much before the scheduled date for the award, on an assumption that it still owned the land and could develop it, an application was made on 15.01.2007 for license. It

[5] No.PF-31/7/10/2012-2 TCP dated 14.06.2012.

was also submitted that Karma's submissions that the collaboration agreement with Unitech was arrived at earlier, were of no avail given that the supplementary agreement was also executed by the parties after the declaration under Section 6. Clearly, these events were meant to create an impediment in the acquisition and ultimately led to the decision by which the proposed award was never announced in respect of these lands and finally, the State decided to drop the acquisition in respect of 25.95 acres on 29.01.2010.

18. It was also urged by the State and HSIIDC that unlike in other cases, there had been no development on the land. Further, interests like those of third party allottees was not involved. In these circumstances, the lands which were deliberately excluded from acquisition, after they formed part of the final declaration, by non-publication of the award, clearly fell within the mischief of what could be termed as 'transfer' in the main judgment.

c. ***Frontier Home Developers Pvt. Ltd., Balbir Singh, Ram Pyari, M/s Earl Infotech Pvt. Ltd., and Godrej Properties Ltd.***

19. Frontier Home Developers Pvt. Ltd. (hereinafter, "Frontier") had originally purchased 8.568 acres of land at village Naurangpur on 16.08.2004 under its erstwhile name Conway Developers Pvt. Ltd. (hereinafter, "Lot 1"). The consideration paid was ₹ 5.62 crores. Another parcel, i.e., 5.175 acres of land was jointly owned by one Balbir Singh and Ram Pyari (hereinafter, "Lot 2"). Both lots were included in the notification under Section 4, as well as the declaration

under Section 6. During this period, Balbir Singh and Ram Pyari entered into a collaboration agreement with M/s Earl Infotech Pvt. Ltd. (hereinafter, "Earl") on 24.08.2006 for its development. Soon thereafter, Earl entered into a development collaboration agreement with Frontier in respect of Lot 2 on 11.12.2006. Frontier agreed to jointly develop both lots. This agreement was followed up with a supplementary agreement between Balbir Singh, Ram Pyari, and Earl under which further amounts were given to the owners as consideration.

20. On 11.12.2006, Frontier applied to the DTCP for a license enclosing the collaboration agreement and related documents. Along with this, a sum of ₹1.17 crores was also paid for the license. On 07.05.2008, License No. 88 of 2008 was issued in the name of Frontier, Balbir Singh, Ram Pyari and Earl in respect of the entire composite area of 13.743 acres (Lot 1 + Lot 2). After the final decision of the State to drop the acquisition on 29.01.2010, on 24.06.2010, the four licensees transferred their rights to develop all 13.743 acres to Godrej Properties Ltd. (hereinafter, "Godrej").

21. In this agreement, Balbir Singh and Ram Pyari were to receive 55,328.60 sq. ft. of built-up area. The agreement (by clause 2.11) showed exact areas - including built up areas - which were to come up; what was allocable for amenities, common facilities, etc. The consideration was that Frontier was to have a 30% right in the gross share of revenue, and Godrej the remaining 70%. Godrej paid Frontier an interest-free deposit equal to ₹ 16 crores of which ₹ 5.5 crores

was non-refundable; in addition, Frontier's expenses till then were reimbursed. The prior commitments of Frontier, including allotment of land to owners (55,328.60 sq. ft.) and additional 1,00,000 sq. ft. for 50 residential flats in favor of the Jammu & Kashmir All India Service Officers Society was also agreed to.

22. The materials on record show that a group housing colony styled as "Godrej Frontier" was developed. The occupation certificate was granted by the DTCP on 16.10.2014 for residential, EWS and commercial units, and on 19.06.2017 for community building. The group housing colony comprised of 567 units in total – 475 residential, 84 EWS and 8 commercial. Godrej disclosed in its affidavit that it sold 357 residential units, 8 commercial shops and 83 EWS units from its share and a negligible number of units remained unsold, i.e., 4 residential units; 1 EWS unit and a nursery school. Of the group housing units developed by Godrej Frontier, 199 units were registered in favour of third-party buyers.

23. It was argued, on behalf of Godrej, by learned Senior Advocates Mr. Pinaki Misra and Mr. Randeep Singh Rai that the original landowners in question were not aggrieved. They were neither parties before any forum, nor did they allege any fraud, influence nor were they distressed. Landowners in the present case transacted voluntarily with the colonizers / developers. There was no allegation of fraud or illegality against Godrej. It was emphasized that the original landowners retained their respective titles in the project land. It was urged that

this Court's main judgment only applied to cases involving forceful and fraudulent sale of lands at throwaway prices after the issuance of notification under Section 4 and declaration under Section 6. The basis of the main judgment was against the illegal monetary gains by the builders on purchasing land at throwaway prices from farmers by threatening them with effects of the acquisition. In the present case, the ownership of the land was intact and no illegal monetary gain was made. Moreover, no middle men were involved. Therefore, the present land was not covered by the purview of directions given in the main judgment.

24. Counsels highlighted the following portions of the main judgment:

> *"**42.2.** The decision dated 24-8-2007 was taken when the matters were already posted for pronouncement of the award on 26-8-2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24-8-2007 has been held by us to be an exercise of fraud on power, it is directed that an award is deemed to have been passed on 26-8-2007 in respect of lands:*
> *(i) which were covered by declaration under Section 6 in the present case, and*
> *(ii) which were transferred by the landholders during the period 27-8-2004 till 29-1-2010.*
> *The lands which were not transferred by the landholders during the period from 27-8-2004 till 29-1-2010 are not governed by these directions".*

25. In the present case, Balbir Singh and Ram Pyari owned Lot 2 much before the notification under Section 4, and these landowners continued to hold title of the land as on the date of filing their affidavits before this Court. The only difference was that the flats developed on the land had been sold to *bona fide* consumers and conveyance deeds had been executed in their favour by the

landowners and the colonizers / developers. Out of the entire flats developed on the said land, some had been allocated to respective stakeholders including the landowners. The original landowner in the case of Lot 1 was always Frontier, which had also purchased the lands before the notification under Section 4. In these circumstances, the project should not be covered by the deemed award as stipulated in the main judgment.

26. It was urged that entering into collaboration agreements, applying for licenses and issuing licenses could not be construed as 'transfers', or a burden on the title. It was submitted that these were legitimate activities that landowners with valid title could perform. It was also urged that Godrej in fact took over development five months after the lands were released from the cloud of acquisition (the collaboration agreement was dated 24.06.2010, whereas the decision of the State to drop the acquisition proceedings was taken on 29.01.2010). Godrej therefore could not be accused of any wrongdoing, because it entered into agreement with *bona fide* land owners after any kind of impediment on collaboration had ceased. Furthermore, it developed the property by beginning construction only in 2011, after obtaining all permissions.

27. It was lastly urged that in case the interpretation of the main judgment were so as to include the present lands within the ambit of the deemed award, then the purpose of carving out an exception in para 42.2 would be defeated. Moreover, the main judgment was meant to protect the interests of farmers, and in this case,

any alternate interpretation would end up harming their interests. Likewise, the genuine interests of *bona fide* third-party consumers would be jeopardized.

d. Analysis and conclusion of I (a) (b) and (c):

28. To discern the content and nature of the transactions whereby landowners conferred rights upon colonizers / developers, it would be necessary to notice some relevant conditions in the collaboration agreements placed on record by the parties:

Collaboration Agreement between Balbir Singh and Earl Infotech (dated 24.08.2006)

"7. That the Owners shall execute General Power of Attorney (GPA) and Special Power of Attorney and/or any other document or papers in favour of the Developer or it's nominee to enable the Developer to apply for all regulatory approvals, licenses, sanctions and no objections for development of the said land and to raise constructions thereon as agreed hereto. However, in the event, any other/further document in respect of said land the Owners have to sign the same to enable to Developer to obtain the necessary license/permission and complete the development of the colony on the said. Land. The Owners shall sign the same without raising any objection in any manner whatsoever and within the stipulated period.

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9. That the Owners further undertakes that he/she/they shall not deal with the said land in any manner whatsoever and shall henceforth keep the said land free from any change, lien, litigation, claim etc. And shall not create any obstruction or impediment in the development of the said land of the 'Development'.

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12. That Owners will hand over the actual physical possession of the said land to the developer for purpose of developing for the purpose of the residential/commercial Group Housing/industrial/Special Economic Zone complex agreed to be developed at the time of signing of this agreement and to enable the developer to discharge its part of obligations.

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18. That the developer shall commence and complete the development of the said residential/Commercial/Group Housing/Industrial Complex by providing the entire finance, equipment, inputs material infrastructure and expertise necessary to develop the Special Economic Zone/ residential/Commercial/ Industrial Complex in accordance with the sanctioned plans and any modifications thereof as may become necessary or agreed to during the progress of the work. That the Developer is fully empowered and entitled to assign this agreement in favour of any Third Party at its absolute discretion without any recourse to the Owners and the Owners shall have no objection for such assignment.

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21. The Owners shall not interfere with or obstruct in any manner with the execution and completion of the work of development the said residential/ commercial/Group Housing /Industrial complex and/or booking and sale of developer's share of development, built or unbuilt areas of the project. However, if any defect is pointed out in the development while the work is in the progress by the Owners, the same will be removed and rectified by the developer.

22. It is agreed between the parties that the possession of the said land once delivered/handed over to the developer for the purpose of the aforementioned project shall not be disturbed nor any interference caused by the Owners till the project is complete. 1t is clarified that the ownership in the said land shall continue to vest exclusively in the Owners and developer shall not be entitled to claim any right, title or interest in the said portion of the said land or any part thereof before successful completion of the project complex as provided herein after which the Ownership in the property shall be of both the parties as per their respective shares.

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24. That the Qwners shall be entitled to retain or let out or sell the area their respective share to any party either in whole or in parts, but subject to Para No. 16 hereinabove. If in case the Owners are desirous of sale of their residential plots areas forming part of their allocation, they shall first offer the same for purchase to the Developer. It is however, made clear that the Developer shall be afforded a period of two weeks from the date of receipt of written intimation from the owners along with offer in writing, to communicate its decision pertaining to

purchase of the allocation of the owner, in case Developers is in a position to match the highest offer available with the Owners for sale of their property referred to above, it shall be entitled to pay the sale consideration amount within a period of 90 days from the date of receipt of intimation from the owners and to purchase the property being alienated by the Owners. In case Developers fails to respond within the period of two weeks referred to above calculated from the date of receipt of written intimation by the Developers from the Owners, the Owners shall be at liberty to sell their area to third party. The developer shall be entitled to enter into any agreement to sell/lease/rent or to dispose of its share in any manner to receive the payments and to execute the necessary documents in favor of such purchaser. The Owners shall also join hands in executing the documents in favour of such purchaser and shall also do all other acts, deeds and things which may be required to be done in order to confer legal and perfect title in favour of such purchaser and all receipt shall be issued for an on behalf of the owners and developer conclusively thereby binding both the parties for the transaction."

(emphasis supplied)

Collaboration Agreement between Balbir Singh, Ram Pyari, Earl and Godrej (dated 24.06.2010)

"2.9 The Power of Attorney shall be irrevocable (except in accordance with the terms of this agreement) and the Developer shall be entitled to appoint one or more substitutes under the said Power of Attorney for the exercise of any or all of the powers and authorities thereunder in favour of its Affiliates."
*****

4.2 Marketing

It is agreed between the parties hereto that the Developer shall have the exclusive marketing rights of the Project. It shall also be the obligation of the Developer to sell and market the area reserved for Frontier commitments.

*****

6.7 Developer shall have exclusive possession of the said property and shall allow reasonable access to Frontier as may be required. Developer also agrees to provide for inspection of all Project related information on a quarterly basis to Frontier.

*****

6.8 The original title documents pertaining to Land B are in the possession of Land B Owners. Earl and Frontier shall procure from Land B Owners to deposit the same with the Developer prior to the formation of a society of prospective purchaser of flats in the Project, in

> *conformity with the Applicable law."* (emphasis supplied)

………………………………………………………

In light of the above extracts of the documents, it would now be necessary to examine the true nature of the collaboration agreements whereby the owner (title holder) parted with possession to the colonizer / developer for payment of valuable consideration and allocation of a certain number of constructed units or percentage of built-up area.

29. The common refrain of the colonizers / developers was that while the collaboration agreements were entered into during the suspect period, the title to the lands had never passed onto them. Further, (in some cases) licenses were obtained only *after* the time for announcing the award had expired.

30. The question then revolves around the true nature of these development rights, and whether the directions issued in the main judgment were applicable to their 'transfer'. In these cases, undoubtedly transfer of such rights was done *after* the lands were notified under Section 4 (except in the case of Karma where apart from the original development agreement dated 16.02.2004, a supplementary agreement was entered later into on 24.12.2006). Additionally, soon after the collaboration agreements were executed, licenses were applied for and issued (License Nos. 88 of 2008, 59 of 2009 and 206 of 2008) *after* the declaration under

Section 6 but before the State's final decision to not acquire the lands on 29.01.2010.

31. The following are the features common to all the collaboration agreements:

i. Possession was handed over to the colonizer / developer;

ii. Full rights of development – the nature, the kind of colony or group housing units to be constructed as well as their numbers were at the absolute discretion of the colonizer / developer;

iii. Substantial amounts were paid to the land owner (and in the case of Frontier, in addition to the original landowners, the intervening developer as well, such as Earl);

iv. Wherever intervening rights existed (such as those of Frontier which had already committed to allot a certain number of developed or constructed units to third parties) the ultimate developer (such as Godrej) took over such liability;

v. The landowners, and wherever applicable, the intervening developer, were in addition, entitled to a share in the proceeds and to a certain number of units of constructed or developed lands defined specifically in the agreement;

vi. Power of attorney documents were executed in favour of the colonizer / developer, to facilitate the latter's intent to develop the lands;

vii. The consideration paid to landowners in all these cases far exceeded the market value of the lands, prevailing at the time of the notification under Section 4;

viii. The landowner – and wherever applicable, the intervening colonizer / developer – executed registered power of attorneys to the final developer, and in all cases agreed to execute registered sale deeds to the allottees of the colonizer / developer as and when called upon to do so; and

ix. In some cases, on the strength of these collaboration agreements, licenses were applied for by the landowner or by the intervening developer.

32. The nature of collaboration agreements has been discussed by this Court in *Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr*.[6] In this case, the parties had entered into a collaboration agreement for the construction of a residential building. The usual conditions, such as handing over possession, non-interference in the project, handing over title documents to enable sale of constructed units to third parties, etc. were agreed to. Holding that the Consumer Protection Act, 1986 was applicable to the collaboration agreement, and that the parties could not be viewed as constituting a 'joint venture' given the power inequality between them, this Court held as follows:

[6] *Faqir Chand Gulati vs Uppal Agencies Pvt. Ltd. & Anr*., (2008) 10 SCC 345.

"27. What then is the nature of the agreement between the appellant and the first respondent? The appellant is the owner of the land. He wants a new house, but is not able to construct a new house for himself either on account of paucity of funds or lack of expertise or resources. He, therefore, enters into an agreement with the builder. He asks the builder to construct a house and give it to him. He says that as he does not have the money to pay for the construction and will, therefore, permit the builder to construct and own additional floor(s) as consideration. He also agrees to transfer an undivided share in the land corresponding to the additional floor(s) which falls to the share of the builder. As a result, instead of being the full owner of the land with an old building, he becomes a co-owner of the land with a one-third share in the land and absolute owner of the ground floor of the newly constructed building and agrees that the builder will become the owner of the upper floors with corresponding two-third share in the land. As the cost of the undivided two-third share in the land which the landowner agrees to transfer to the builder, is more than the cost of construction of the ground floor by the builder for the landowner, it is also mutually agreed that the builder will pay the landowner an additional cash consideration of Rs 8 lakhs.

28. The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a "collaboration agreement" or a "joint venture agreement", is not, however, a "joint venture". There is a contract for construction of an apartment or house for the appellant, in accordance with the specifications and in terms of the contract. There is a consideration for such construction, flowing from the landowner to the builder (in the form of sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is also payment of cash consideration by the builder. But the important aspect is the availment of services of the builder by the landowner for a house construction (construction of the owner's share of the building) for a consideration. To that extent, the landowner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the landowner will be a consumer dispute. We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration. The deciding factor is not the number of apartments deliverable to the landowner, but whether the agreement is in the nature of a joint venture or whether the agreement is basically for construction of certain area for the landowner."

(emphasis supplied)

33. The above judgment, while clarifying the purpose of collaboration agreements, falls short of delving into the legal effects of the transfer of such development rights. Parting with rights which are fundamental to ownership, for valuable consideration (in cash or by handing over constructed units), leaving only the nominal 'title' with the landowner, is a common feature of such collaboration agreements. Given the evolution in complexity of real estate contracts, and the absence of the definition of collaboration agreements in legislation, their interpretation by various High Courts assumes significance. In a question pertaining to the applicability of the Specific Relief Act, 1963 to such contracts, a Full Bench of the Calcutta High Court in *Ashok Kumar Jaiswal v. Ashim Kumar Kar*[7] while addressing the nature of development agreements, also answered the question in affirmative:

> "45. *This leads to the unavoidable discussion as to what may be regarded as a Development Agreement as referred to in the questions framed for the reference and the Judgments of this Court cited by the parties. Without intending the discussion to be an exhaustive treatise on Development Agreements of all hues, it may be recognized there can be several Agreements, which can be loosely described as Development Agreements in the sense that such expression has been used in the judgments cited in course of the present proceedings. An owner without any funds or the independent resources to construct a new building on such owner's land may engage another for such purpose with the consideration for the construction being paid by allocation of a part of the constructed area. There could be several variants of the same basic structure of a Development Agreement with the Agreement either providing for the owner being entitled to a sum of money in addition to a specified share in the constructed area or with a Developer being required to rid the land of its encumbrances, whether monetary or otherwise, prior to the construction being taken up. There may be other similar Agreements under which the Developer is required to*

[7] *Ashok Kumar Jaiswal v. Ashim Kumar Kar*, AIR 2014 Cal 92.

temporarily relocate an existing tenant or occupant and ultimately provide the tenant or occupant a part of the constructed area. In the context in which certain Agreements pertaining to the construction of new buildings contemplate the construction to be undertaken or orchestrated by a person other than the owner of the land, whether upon the demolition of the existing structure or otherwise, with such person other than the owner having a share in the constructed area, such Agreements have now come to be regarded as Development Agreements. Whether or not such Agreements are in the nature of collaboration or joint venture, they are loosely referred to as Development Agreements in several Judgments. Such Agreements are not merely for the construction of any building or for the mere execution of any other work on the land. The Developer is not merely a Contractor engaged to undertake the construction; the Developer is, under the Agreement with the owner, promised a part of the constructed premises as owner thereof together with the proportionate area of the land. In the context in which certain Agreements are referred to as Development Agreements and the non-owner party to such an Agreement is regarded as the Developer qua the nature of the work envisaged under the Agreement, the Developer always has a share in the building or the area proposed to be constructed – which implies a proportionate share of the piece of earth – and such Agreement envisages the Developer to have a share of, and interest in, the final product which is the outcome of the Agreement.

46. In such sense, a Development Agreement which envisages the party thereto other than the owner being responsible for ensuring the construction of a building on the subject land and having a share therein, there is an inescapable contract to transfer immovable property. In form, a Development Agreement which envisages the Developer to have a share in the building proposed to be constructed in terms of the Agreement, the Agreement may appear to be somewhat not resembling an Agreement for transfer of an immovable property; and, indeed, it is not an Agreement simpliciter for sale of an immovable property. In law, however, a Development Agreement of the kind described herein entails the transfer of immovable property in the sense that the Developer or an assignee of the Developer, at the instance of the Developer, would be entitled not only to a part of the constructed area but the proportionate share of the land on which the construction is made."

(emphasis supplied)

34. Thus, collaboration agreements which enable the colonizer / developer to retain a significant portion of the constructed area as consideration, are not in the

nature of pure construction contracts. An analysis of these agreements depicts the transfer of crucial rights and interests in the property, which otherwise are enjoyed only by the landowner, falling short only in respect of the 'title'.

35. In *Sushil Kumar Agarwal v Meenakshi Sadhu & Ors.*,[8] this Court stressed on the necessity to analyze the terms of the collaboration agreement in order to determine if any 'charge' or 'interest' had been created in the land. If so, such agreements could attract the application of the Specific Relief Act, 1963:

> *"17. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:*
>
> *17.1. An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;*
>
> *17.2. An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;*
>
> *17.3. <u>An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association</u>;*
>
> *17.4. A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may*

[8] *Sushil Kumar Agarwal v Meenakshi Sadhu & Ors.*, (2019) 2 SCC 241.

take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and

17.5. An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.

18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

19. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B. Gangadhar v. B.G. Rajalingam [B. Gangadhar v. B.G. Rajalingam, (1995) 5 SCC 238, para 6] .) Ownership denotes the relationship between a person and an object forming the subject-matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v. Haradeb Banerjee [Swadesh Ranjan Sinha v. Haradeb Banerjee, (1991) 4 SCC 572] .) An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third-party rights in the property or the construction to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this nature, where an interest is created

> *in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed. For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third-party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it."*
>
> (emphasis supplied)

36. The recognition of transfer of valuable rights by collaboration agreements was also commented upon in *Unitech Ltd. v. Union of India*,[9] wherein this Court was concerned with whether a collaboration agreement constituted 'transfer' of property under Chapter XX-C of the Income Tax Act, 1961. Vidarbha Engineering Industries entered into a collaboration agreement with Unitech on 17.03.1994 for development and construction of a commercial project at Dahipura and Untkhana in Nagpur. Unitech was to retain 78% of the total constructed area, transferring the rest 22% to Vidarbha. It is imperative to note that Vidarbha itself had leased said land from Nagpur Improvement Trust for a period of thirty years, and could not transfer title to any third party such as Unitech. The Court interpreted Section 269-UA of the Income Tax Act, 1961

[9] *Unitech Ltd. v. Union of India*, (2016) 2 SCC 569.

which included transfer of any 'right' or enabling enjoyment of immovable property, as follows:

> *"6. It is clear from the agreement that the transfer of rights of Vidarbha Engineering in its land does not amount to any sale, exchange or lease of such land, since, only possessory rights have been granted to Unitech to construct the building on the land. Nor is there any clause in the agreement expressly transferring 22% of the building to Vidarbha after it is constructed by Unitech. Clause 4.6 only mentions that as a consideration for Unitech agreeing to develop the property it shall retain 78% and the share of Vidarbha Engineering will be 22%. In fact Parliament has defined "transfer", deliberately wide enough to include within its scope such agreements or arrangements which have the effect of transferring all the important rights in land for future considerations such as part acquisition of shares in buildings to be constructed, vide sub-clause (ii) of clause (f) of sub-section (2) of Section 269-UA. There is no doubt that the collaboration agreement can be construed as an agreement and in any case an arrangement which has the effect of transferring and in any case enabling the enjoyment, of such property. Undoubtedly, the collaboration agreement enables Unitech to enjoy the property of Vidarbha Engineering for the purpose of construction. There is also no doubt that an agreement is an arrangement. It must, therefore, be held that the collaboration agreement effectuates a transfer of the subject land from Vidarbha Engineering to Unitech within the meaning of the term in Section 269-UA of the Act. It appears to be the intention of parliament to cover all such transactions by which valuable rights in property are in fact transferred by one party to another for consideration, under the word "transfer", for fulfilling the purpose of pre-emptive purchase i.e. prevention of tax evasion. A judgment of the Patna High Court in Ashis Mukerji v. Union of India [Ashis Mukerji v. Union of India, (1996) 222 ITR 168 (Pat)] cited before us takes the view that a development agreement is covered by the definition of "transfer" in Section 269-UA. We note the same with approval."*
>
> (emphasis supplied)

Thus, for the purposes of the Income Tax Act, the collaboration agreement was considered as a 'transfer', even though no title vested with Vidarbha in order to pass the same to Unitech.

37. The features set out earlier in this judgment demonstrate that the landowner in all the cases were aware that the notification was issued under Section 4 on

27.08.2004. No doubt, such landowners did not acquire the land after such notification. However, during the subsistence of the notification, which constituted the manifest intention of the State to acquire the lands, the third parties' rights were consciously created for substantial consideration. In the case of Paradise, the initial sum paid was ₹ 75 lakhs, and in the subsequent agreement with Green Heights, the sum paid was ₹ 28 crores for parting with development rights relating to 2.681 acres. Similarly, in the case of Balbir Singh and Ram Pyari, the initial agreement with Frontier entitled the landowners to 1000 sq. yds out of each developed acre plus ₹ 52 lakhs, and in the subsequent agreement with Godrej, the landowners were entitled to 55,328.60 sq. ft. of built up units, and Frontier was entitled to 30% share of the receipts in the project. In the case of Karma, the developer Unitech paid ₹ 15 crores and was entitled to a share of receipts of developed units sold.

38. The main judgment of this Court has carefully considered and gone into great lengths to examine the file notings which led to the final decision of the State not to acquire such lands. In the case of Frontier, the records clearly demonstrate that a noting was approved by the State Government at the highest level that All India Service Officers of the Jammu & Kashmir cadre had requested for lands for their residential housing society. This request was the main basis for the decision not to acquire Frontier's lands which was the subject matter of License No. 88 of 2008. After said decision, Frontier parted with all its rights to

Godrej, as did the owners of other parcels of land, i.e., Balbir Singh and Ram Pyari. These facts clearly demonstrate how the entire state machinery was subverted. The collaboration agreement with Godrej shows that 50 residential units were committed to the Jammu & Kashmir cadre of All India Service Officers (just above 10% of the total number of flats ultimately constructed). Likewise, in the case of Paradise, Frontier and Karma too, entering into collaboration agreements and the seeking grant of licenses formed the basis for the State's final decision not to go ahead with the acquisition even though a declaration under Section 6 had been published.

39. It is clear that the collaboration agreements formed the first element of a two-step process whereby the colonizers / developers (who might have been also land owners) having acquired lands, prior to the preliminary notification, went ahead and entered into commitments by executing collaboration agreements after the notification under Section 4, and even declaration under Section 6, with full knowledge. The consideration for parting with developmental rights was far higher than the market value of the lands which they would have been entitled to. These acts ultimately culminated with the decision not to acquire the lands. The second step – and the important one persuading the State not to acquire the lands[10]- was the application for, and the grant of, development licenses.

[10] In the case of Frontier Developers (earlier known as Conway), the request for de-notification was made, by a letter dated 17.08.2007, to the state of Haryana - a fact noted in the status report filed by the Enforcement Directorate (hereinafter, "ED") before the Court.

Uniformly, in all these cases, the applications were made prior to the scheduled date of publication of the award (26.08.2007). This is a significant and tell-tale factor because there was no way the applicants would have ordinarily known that an award would not be pronounced on the concerned date. In fact, the application clearly indicates foreknowledge that their lands would not be ultimately acquired. This is what may be characterized as the proverbial 'smoking gun' which establishes the complicity of these individuals and entities.

40. Land ownership typically carries with it a bundle of rights. A landowner has the right to possess, sell, lease, develop, sub-let, occupy, etc. On an overall analysis of the common features of all the collaboration agreements as carried out in an earlier part of the judgment, it is evident that except for the empty husk of a title, the land owner parted with predominant and substantial rights over the property, including possession. In almost all the cases, these rights were parted for consideration which was far above the notified acquisition rates. This observation applies in the case of the two companies – Frontier and Karma, who continued to be the land owners of the land. Such 'emptying out' of all important attributes that constitute rights and interest over the property cannot but be viewed as a 'transfer'. To hold otherwise would mean that after receiving substantial amounts – equal to many times over the existing market rates (that could ordinarily have been claimed by the landowner in respect of their holding in acquisition proceedings) – and entitling the developer to create third-party rights

in respect of not a few but hundreds of people, nevertheless, the landowner could still hold out and claim their right to not part with the title. Such a conclusion would defy reason and commonsense and cannot be countenanced. In the circumstances, it is held that the collaboration agreements in all these cases which ultimately culminated in the grant of licenses would fall within the mischief of the term 'transfer' as envisioned in the main judgment, as it foreclosed the enjoyment and possession by the landowner, who willingly parted with such rights, for valuable consideration and acquiesced to irreversible changes on it.

41. The above observations are dispositive of the issue. However, this Court cannot be oblivious to the existing state of affairs. The collaboration agreement entered into between Paradise and Green Heights and Frontier and Balbir Singh and Ram Pyari with Godrej have led to construction of units. This Court has been shown materials which establish that in the case of Green Heights, the number of constructed units is 438 (of which 371 have been sold) and in the case of Godrej, the constructed units is 567. It is also on record that Green Heights has received ₹ 70.92 crores as against sale value of agreements. Likewise, there is no denial of the fact that Godrej has also received substantial amounts in the range of ₹ 300 crores towards its residential units sold. In these circumstances, the Court would have to strike a proper balance and protect the interests of such third-party consumers to ensure that they do not suffer on account of the past sins of the colonizers / developers or land owners, as the case may be.

42. The main judgment recorded that in another transaction, one of the colonizers / developers had paid ₹ 4.5 crores per acre at the relevant time (in 2009). During the hearing, learned counsel for the State mentioned that the current value of these contiguous land is to the tune of ₹ 5.3 crores. Keeping these facts in mind, this Court is of the opinion that to balance the equities and in the overall interest of the home buyers, for 2.681 acres which is the subject matter of the collaboration agreement between Paradise and Green Heights, and for 13.743 acres, which is the subject matter of collaboration agreement between Frontier, Earl, Balbir Singh, Ram Pyari and Godrej, the following sums should be paid to HSIIDC:

i. A sum of ₹ 5 crores per acre payable in respect of 2.681 acres. Therefore, final amount payable would be 2.681 acres x ₹ 5 crores= ₹ 13,40,50,000-/ (rupees thirteen crores, forty lakhs, and fifty thousand only). This amount will be paid by Green Heights which will be entitled to recover from Paradise such proportionate sums it may be entitled to claim having regard to the terms of their agreement.

ii. A sum of ₹ 5 crores per acre payable in respect of 13.743 acres. Therefore, final amount payable would be 13.743 x ₹ 5 crores = ₹ 67, 36, 30,000/- (rupees sixty-seven crores, thirty-six lakhs and thirty thousand only). This amount will be paid by Godrej, which

shall be entitled to claim such proportionate sums as it may be entitled to in terms of its agreement with Frontier, Earl, Balbir Singh and Ram Pyari in accordance with law.

These amounts shall be deposited with HSIIDC within six months, from the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from the date of default. The lands covered by these projects shall, subject to such payments be excluded from the deemed award.

43. As far as Karma's lands are concerned, the materials on record disclose that no development has taken place, and there is no allotment in respect of their lands. Karma had in fact entered into a collaboration agreement with M/s Unitech Ltd., and based on that, it applied for license on 15.01.2007. The license was ultimately granted before the date of the decision of the State not to acquire its land. In these circumstances, this Court holds that the collaboration agreement – especially the supplementary agreement which was entered into after even the declaration under Section 6 was published – the application for license and the grant of license constituted an irreversible clog in the ownership of the lands. Karma received substantial amounts to the tune of ₹ 15 crores, and in terms of the agreement placed on record, was entitled to far more substantial amounts had the development in fact been completed. In these circumstances, it is held that the collaboration agreement and the grant of license amounted to 'transfer' within the meaning of the expression in para 42.6 of the main judgment. Such land will

therefore, form part of the deemed award. The State shall take appropriate steps and issue the supplementary award in respect of these lands within six months from the date of this judgment.

44. It is also clarified that Karma would be entitled to compensation in accordance with the Acquisition Act as on the date of the notification under Section 4. The compensation in such case shall be determined within the same time-frame as indicated in the award. Karma shall be entitled to statutory benefits such as interest, solatium etc. on such determined compensation. In the event Karma is aggrieved, it is open to it to seek such recourse or redress in law as is available.

45. I.A No. 112515/2020; I.A. No. 117025/2020; I.A. No. 118401/2020; and I.A. No.116268/2020 of M.A. No. 2150/2020 are disposed of in terms of the above findings and directions. I.A. No. 82000/2020 is dismissed as withdrawn as prayed for in I.A. No. 112682/2020 of M.A. 1175/2019.

II. M/s. R.P. Estates Pvt. Ltd and M/s. Subros Ltd.

46. M/s. R.P. Estates Pvt. Ltd. (hereinafter, "R.P. Estates") owned 2.9875 acres of land, and M/s. Subros Ltd. (hereinafter, "Subros") owned 10.881 acres. The lands of both these concerns were included in the notification under Section 4 as well as the declaration under Section 6. The State decided to release these lands, as indicated by its letter to Subros dated 22.08.2007. This stand was reiterated

by the State in these proceedings, where it was submitted that as there were no sale transactions with respect to these lands, it was decided not to include them in the deemed award. It was also stated that no developmental rights were parted by them.

47. Learned counsel appearing for both the entities reiterated the State's submissions, that the lands were vested in these two concerns and continued to be so vested. In the circumstances, R.P. Estates and Subros had to be treated as *bona fide* land owners, since they did not enter into any transactions during the suspect period.

48. In three applications (i.e., I.A. Nos. 111557 of 2020, 111562 of 2020 and 111563 of 2020) in M.A. No. 2067 of 2020, R.P. Estates further submitted that it applied for license from the DTCP much after the date of the deemed award and was granted License No. 82 of 2009 on 08.12.2009. It also disclosed that developmental rights were thereafter transferred to another enterprise called M/s. Elan Ltd. in 2013-14. The application and pleadings show that the project was completed on 14.01.2020 and the application for grant of occupation certificate was thereafter made, with 305 units allotted to third parties out of a total of 362.

49. Subros had initially challenged the acquisition by filing a writ petition before the Punjab & Haryana High Court.[11] However, after it received a letter from the DTCP, communicating recommendation for withdrawal from

[11] *M/s Subros Ltd. v State of Haryana,* W.P. (C) No. 2787/2006 (dismissed on 20.09.2007).

acquisition, Subros withdrew its petition. Thereafter, it applied for license, and was granted the same on 13.06.2008. Subros did not enter into any collaboration agreement or sell its rights during the suspect period - it sold the lands to one Akme Projects Ltd. much later on 23.01.2012.

50. Having regard to the overall circumstances, this Court is of the opinion that the lands owned by both R.P. Estates and Subros should be excluded from the deemed award. The judgment of the Court dated 12.03.2018 is therefore clarified to the above extent. I.A. No. 111557/ 2020; I.A. No. 111562/2020; and I.A. No. 111563/ 2020 of M.A. No. 2067/2020; I.A. No. 116120/2021; I.A. No. 116128/2021 and I.A. No. 123690/2021 of M.A. No. 50/2019 are disposed off accordingly.

III. Express Greens / DLF Home Developer Ltd.

51. Express Greens was a project of DLF Home Developers Ltd. (hereinafter, "DLF"). The main judgment of this Court had dealt with the manner in which the land for this project was acquired from the original landowners in the village Manesar by a group of companies and entities owned or wholly controlled by ABW Infrastructure Ltd. (hereinafter, "ABW"). These lands, in aggregate, measured 33.536 acres. ABW and its group of companies obtained License No. 283 and 284 for their development. These lands were part of the 235 acres which ABW had purchased during the subsistence of the acquisition proceedings.

Eventually, before the final decision to drop the acquisition was taken by the State on 29.01.2010, the lands and licenses were transferred to DLF for a consideration of ₹150.95 crores.

52. Several home buyers filed applications (I.A. No. 110995/ 2019; I.A. No. 91793/ 2020 and I.A. No. 113206/ 2020 (in M.A. (D) No. 26552/ 2019), I.A. No. 36484-85/2020; I.A. No. 36487/2020 and I.A. No. 89570/2020 in M.A. (D) No. 7888 of 2020; I.A. No. 49986-87/2021 in M.A. (D) No. 9505/2021 and I.A. No. 49990/2021 and I.A. No. 31079-81/2022 in M.A. (D) No. 6705/ 2020). The submission on behalf of these applicants, who sought impleadment and directions, was that in terms of this Courts' main judgment, they were entitled to clear title over the residential units of flats constructed and allotted by DLF. It was submitted that a substantial number of flats had been handed for occupation to the allottees. However, with respect to many such allottees, sale deeds had not been executed and registered. Furthermore, it was submitted that several flats had not been completed though their allottees were entitled to the units. In addition, during arguments it was submitted that certain common amenities such as lifts had not been installed, and community centres, club houses, etc. had not been completed or were not in usable condition.

53. It was urged on behalf of Express Green Home Owners Association by Mr. A. N. Nadkarni, learned Senior Advocate, that in cases where the flats were handed over to the home buyers, not only would they be entitled to clear title,

which necessitated clear directions from this Court, but also that it would be in the overall interest of the home buyers that the maintenance of common areas as well as the completion of unbuilt units should be made over to DLF.

54. This was seconded by Mr. Gopal Shankarnarayanan, learned Senior Advocate appearing for some home buyers, who urged that such buyers invested their hard-earned savings and in some cases even obtained bank advances, on the strength of the reputation and name of DLF. If the entire project were to be made over to HSIIDC, the value of the residential units under their occupation and ownership would considerably reduce. Therefore, it was urged that DLF be directed to complete the project, and maintain the colony, according to the high standards it was known to keep.

55. In its reply (MA (D) 2665/ 2019), and during hearings, DLF represented by learned Senior Advocate Mr. Pinaki Misra submitted that the company was willing to undertake the balance finishing work such as repair and renovation of common areas, strengthening of compound walls, construction of club house etc. and bear all associated expenses. However, this was on the condition that DLF be handed over with the entire project including the entitlement to the balance sale consideration based upon the existing executed agreements with allottees in respect of units allotted to them. DLF also urged in para 18 of its reply[12] that it should be allowed to utilize FAR of approximately three lakh sq. ft. in the manner

[12] M.A. (D.) No. 26552 of 2021 dated 24.08.2020.

it chose. In lieu of this, it was contended that DLF would give up its claim towards ₹ 372.83 crores in accordance with the main judgment of this Court. In these circumstances, it was urged that this Court should exclude the area of 33.536 acres, i.e., the subject matter of License No. 283 and 284, from the deemed award to enable further development.

56. The State and HSIIDC resisted these contentions. It was pointed out that a detailed analysis was made in the main judgment which disclosed the trail of suspect transactions. ABW had acquired more than 235 acres after the notification under Section 4 was issued, by threats to the land owners. Not only was land purchased, even licenses were applied for and obtained – these in fact formed the backbone for the demand to the state of withdrawal from acquisition. It was during the pendency of these proceedings that DLF chose to transact and purchase the lands that it ultimately did as well as acquire all rights under the two licenses for development of 33.536 acres which ultimately led to the Express Greens project.

57. It was highlighted that DLF paid over ₹ 150 crores to acquire these rights. The clear intention of this Court in this regard is to be found in para 42.8 of the main judgment where it clarified that third party purchasers/allottees would be entitled to the units allotted to them and would thereafter enjoy perfect title, and in respect of all unallotted lands, residential or constructed units, rights, title and interest would devolve absolutely upon HSIIDC. It was submitted that the sale

deeds executed by DLF would be validated by HSIIDC and wherever sale deeds had not been executed, they would be so executed by HSIIDC after due verification in a time-bound manner. It was submitted that likewise with respect to any unfinished work, the rights, title and interests in the colony would be that of HSIIDC and not of DLF.

58. It is evident on a reading of various parts of the main judgments that ABW was in the eye of the storm. This Court's main judgment is explicit about the fact that DLF chose to dip its hands in murky waters by acquiring rights to the 33.536 acres as well all rights under the licenses for ₹ 150 crores from ABW.[13] In these circumstances, there can be no question of seriously deliberating upon the application for release of these 33.536 acres of land from the deemed award. There is absolutely no merit in the submissions on behalf of DLF that the title to lands continued with the original owners. The entire exercise of ABW was to acquire these lands and then transfer them to those capable of developing the lands, such as DLF. Those contentions are accordingly rejected. However, the rejection of DLF's claim does not in any way impinge on the rights, title and interest of the allottees, who were handed over possession of their flats, upon payment of full consideration, or those allottees entitled to it, after payment of the balance sums. The HSIIDC shall complete the process of validating their title,

[13] The status report of ED reveals that on 13.04.2008, a request for transfer of license in favour of DLF was made to the DTCP. DLF also continued to engage in correspondence in this regard (on 26.09.2008, 14.01.2010, 29.09.2010, etc.)

including the title to the undivided and proportionate land share, within six months from the date of this judgment.

59. So far as the complaints of the home buyers are concerned, this Court had directed for the latest status report to be placed before it, which was furnished by way of an additional affidavit dated 28.04.2020, by DLF. This affidavit enclosed the details of the project. A total of 1348 units were constructed, of which 1223 were sold, and 510 sale deeds were registered. Possession was granted to 882 allottees. It is evident therefore that 441 allottees are yet to be handed over possession; furthermore 713 sale deeds are yet to be executed and registered. The HSIIDC is therefore directed to ensure that the balance allottees are notified about the execution of sale deed and the process of execution and registration of sale deed is completed in their case within six months from the date of this judgment. HSIIDC shall ensure that a designated nodal officer is deployed to scrutinize the relevant documents and facilitate the execution of such sale deeds.

60. The affidavit also discloses that a total of 116 townhouses/independent floors were constructed. 77 townhouses/independent floors were sold and the structure of 25 of them was complete. The affidavit further stated that 39 houses/independent floors are unsold and construction of 11 townhouses are complete. Thus, all rights, title and interest in respect of unsold 39 townhouses in the independent floors vest with the HSIIDC, which shall deal with them in

accordance with its policies and applicable laws. Likewise, in case of unsold apartments, all rights, title and interest shall vest with HSIIDC.

61. According to the affidavit, 96 apartments on the 15th tower have been completed but no occupation certificate has yet been issued. In case the application is pending, the DTCP shall ensure due inspection and decision on the occupation certificate. If any deficiency has to be rectified the same shall be completed by the HSIIDC.

62. As far as the complaint with respect to lifts etc. is concerned, the affidavit discloses that all lifts have been installed; the certificates by the concerned State authorities have been placed on the record. With respect to club houses in sector M-1, the club house has not been constructed – only basement structure is complete and for sector M-1(A) the club houses have not yet been issued completion certificate. With respect to the boundary wall the additional affidavit states that 218 meters in tower M-1 and 434 meters in tower M-1(A) has been damaged. The HSIIDC is directed to take up work immediately and complete the same with eighteen months from the date of this judgment, as it is in the interest of safety and security of the residents.

63. Having regard to the above discussion, it is held that the request of the Express Green Home Owners Association and DLF to exclude the project from deemed award is not tenable. It is accordingly rejected. It is further declared that all unconstructed and unallotted portions as well as construction rights (such as

FAR) in respect of unconstructed, unallotted plots etc., including two school sites, shall vest absolutely with HSIIDC. HSIIDC shall be entitled to develop these areas in accordance with its policies within the frame work of the applicable Master Plan development laws. DLF is therefore, entitled to collect amounts, if any, in terms of the main judgment of this Court. It shall hand over all records relating to the allottees, and technical data, pertaining to the entire project to HSIIDC within one month from the date of this judgment.

64. I.A. No. 110995/2019; I.A. No. 91793/2020 and I.A. No. 113206/ 2020 in M.A. (D) No. 26552/ 2019; I.A. No. 36484-85/ 2020; I.A. No. 36487 and I.A. No. 89570/ 2020 in M.A. (D) No. 7888/ 2020; I.A. No. 49986-87 of 2021; I.A. No. 49990/2021 in M.A. (D) No. 9505/ 2021; I.A. No. 31079-81/2022 in M.A. (D) No. 6705/ 2020 are disposed off in the above terms.

IV. M/s Kalinga Realtors Pvt. Ltd.

65. An application (MA No. 50/2019) was filed by Kalinga Realtors Pvt. Ltd. the first applicant, a wholly-owned subsidiary of the second applicant, Anant Raj Ltd. Both applicants are cumulatively referred to as "Kalinga". The claim in this application is for a direction for proper calculation of amounts payable by HSIIDC to Kalinga, in terms of the main judgment. It is a matter of record, that Kalinga sought NOC from DTCP to purchase the land in October 2009. The same was granted in January, 2010 and sale deed executed shortly thereafter on

23.04.2010. ABW and its group of companies had acquired License No. 67 of 2009 dated 19.11.2009, which was transferred to Kalinga pursuant to the sale deed on 12.07.2010. Thus, Kalinga's attempt to purchase the land and rights granted by the license clearly fell within the mischief of the main judgment of this Court.

66. Kalinga submits that it furnished all details and particulars, in support of its claim that it had incurred expenses to the tune of ₹ 308 crores[14], for the construction of the housing project called "Madelia". It is submitted that Kalinga expended the amounts and deployed resources for the development of the area and construction of 13 towers, of which 10 are complete and in respect of which claims have been received for 257 allottees.

67. Learned Senior Advocate, Mr. Sanjiv Sen, urged that this Court had sought information from HSIIDC, which filed replies and further affidavits. Despite these, a clear picture has not been given. Instead of verifying all the invoices and materials, apparently HSIIDC has conducted a piece meal inquiry. It was pointed out that HSIIDC had admitted that according to its valuation and verification, the cost payable was ₹ 11.68 crores; even that has not crystallized into a concrete assurance to pay.

68. Learned counsel pointed to an auction notice, issued by HSIIDC, in respect of Kalinga's project, inviting prospective bidders to submit offers for completion.

[14] Detailed at pg. 40 of M.A. No. 50 of 2019.

It was urged that the reserve price, including price for the land (12.45 acres) and the constructed towers (which were described in detail in the auction notice) were grossly undervalued by HSIIDC, which has offered a pittance of ₹ 11.68 crores. It was submitted on behalf of Kalinga that HSIIDC should be compelled to revise the valuation, within a time bound manner, and this Court should appoint an arbitrator.

69. Counsel for the State and HSIIDC urged that Kalinga cannot claim a grievance, because it was a direct beneficiary of the transactions during the suspect period. It chose to enter into the field, by entering into transactions with ABW, intending fully to make substantial profits, on account of the depressed cost of land. However, this Court's main judgment resulted in its land being included in the deemed award - it can be at best entitled to those amounts which it actually expended. It was submitted that HSIIDC was prepared to verify all the bills and invoices, provided they were genuine and arrive at the amounts payable. Counsel also submitted that in the event of a dispute, HSIIDC was prepared to submit the dispute to arbitration.

70. From the above discussion, it is evident that Kalinga's grievance is regarding the amounts it claims it is entitled to. The gap between its claim (₹308 crore) and what HSIIDC offered at one time (₹ 11.68 crores) is too excessive. The materials placed on record show that HSIIDC in fact, did put up the entire

land, with the construction for auction[15] on an 'as is where is' basis. The date of e-auction was 21.09.2021, with a reserve price of ₹ 309 crores. The advertisement also states that 12 towers were constructed with finishing remaining; other works (EWS, community centre, etc.) were yet to be constructed. The advertisement further states that the successful bidder was to step into Kalinga's shoes and complete the project.

71. It is apparent to this Court from the materials on record that the initial valuation of ₹ 11.68 crores made by HSIIDC is inaccurate, particularly in view of the reserve price indicated by it in the auction notice. However, in view of the final order proposed, no final opinion or finding is recorded.

72. It is directed that HSIIDC shall complete verification of all the relevant documents furnished by Kalinga. Any additional documents or invoices, or relevant materials which Kalinga may wish to rely upon, shall be furnished to HSIIDC within two weeks. Thereafter, HSIIDC shall conduct verification, and based upon that exercise, and relevant inquiries (for which it may seek such assistance of Kalinga as is necessary) indicate the final valuation within six months from the date of this judgment. The amount in furtherance of that valuation shall be released, within three months of completion of verification. In case Kalinga disputes the figure, it is open to it to *firstly* accept the amount offered, on a without prejudice basis, and *secondly,* indicate its unwillingness to

[15] In its portal HTTPS://HSIIDC.BIDX.IN.

accept that offer towards final settlement. In such event, Kalinga and HSIIDC shall jointly submit the dispute to arbitration, to a mutually agreed person. In the event no agreement is possible, the arbitration shall be referred to the Delhi International Arbitration Centre (hereinafter, "DIAC"). The Chairman of the DIAC shall then nominate an arbitrator, who shall enter upon reference. It would be advisable, in such event, that the arbitrator also seeks the assistance of a technical person, versed in verification of construction related documents, as an expert. The fee for the arbitration shall be borne equally by the parties; the proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996.

73. Some flat owners, who had booked units in the project have applied for appropriate directions to HSIIDC, to refund the amounts deposited by them. HSIIDC shall complete the verification of documents, in relation to all those who claim refund as allottees of Kalinga, within six months. Such allottees or flat owners, (who have not obtained possession) shall be disbursed the amounts they are entitled to within six months thereafter.

74. In the event of any dispute, with respect to the entitlement or amounts payable, it is open to the concerned allottee or flat buyer to take recourse to appropriate proceedings in law, i.e., by filing civil suit, or complaints under the Consumer Protection Act, 1986. It is clarified that no proceeding, application or contempt petition in this regard, will be entertained by this court.

75. I.A. No. 46028/2020; IA No. 59743/2020; I.A. No. 118798/2020; IA No. 103292/2020 and I.A. No. 137407/2019 in M.A. No. 50/2019; I.A. No. 30807/2020; I.A. No. 3403/2020; I.A. No. 3406/2020; and I.A. No. 191983/2019 in M.A. (D) No. 45009/2019; I.A. No. 192027/2019 in M.A. (D) No. 45026/2019; Contempt Petition No. 716/2021 and Contempt Petition (D) No. 21733/2021 are disposed off in terms of the above directions.

V. ABW Infrastructure Ltd.

76. ABW was earlier known as M/s. Aditya Buildwell Pvt. Ltd. ABW and its associated companies had purchased maximum land measuring over 235 acres. 'ABW Aditya Niketen' was floated by ABW in M-I, M-I(A) and M-I(C) adjoining HSIIDC Residential Sector-1, Manesar, Gurgaon, Haryana. That project was the subject matter of the proceedings throughout culminating in the main judgment of this Court.

77. From 2009 onwards, 1993 allottees booked their flats, built floors, plots shops, commercial space as the case was, with ABW. In ABW Aditya Niketan and City Centre, a residential plotted colony, on 104.912 acres of land with 236 plots, 1488 of floors/flats and 269 shops and commercial places, was to be developed and constructed, pursuant to License No. 66 of 2009 dated 09.11.2009 issued by DTCP.

78. The ABW Manesar Allottee Welfare Society, 118-C, Sector 30, Gurgaon, Haryana (hereinafter, "Society") was registered on 21.09.2012. The Society has filed on behalf of its member allottees, several applications, seeking directions. It has filed charts, and proof of payment, by way of copy of receipts issued by ABW, to substantiate its claim of genuine allottees being its members. The Society has sought impleadment before the High Court, in the original proceedings, out of which the main judgment culminated, in this Court. The society was also impleaded during proceedings in this Court.

79. The Society claims that in adherence to the directions contained in para 42.8 of this Court's main judgement, the allottees preferred their claims and submitted all required information to HSIIDC primarily indicating description of the plot/unit, exact measurement of the area, purchase price and the total payment made to ABW including (a) basic sale price, (b) External and Internal Development Charges, (c) service tax, etc. Along with the claim form, the necessary documents were also enclosed, namely, provisional allotment letter, payment receipts, ID proof and address proof. An attested affidavit duly supporting the contents of the claim was also submitted.

80. The Society claims that as there was no indication of compliance with the direction contained in para 42.8 of the main judgment, on 07.01.2019 it filed an application under the Right to Information Act, 2007. The HSIIDC responded by its reply dated 24.01.2019 stating that claims of 220 plot buyers, 1270 flat/floor

buyers and 157 commercial shop buyers had already been received by it. The Society claims it has regularly and continuously impressed upon HSIIDC as to the delay in adherence and compliance of the judgement, but with no effect. The Society's grievance is that despite diligence by its members, HSIIDC failed to verify their claims within a period of two months and after deep slumber of nine months, it moved an application (M.A. No.50 of 2019) for three months extension of time and this Court's order dated 18.01.2019 granted extension up to 22.04.2019.

81. It was submitted that even in the extended period the necessary compliance was not made and once again I.A. No.68542 of 2019 (in M.A. 864 of 2019) was moved by HSIIDC for yet another extension. It was therefore submitted that although a comprehensive direction was passed by this Court specifically in favour of the innocent allottees, HSIIDC's inaction has resulted in nothing even after a lapse of 15 months. The Society had moved a contempt proceeding, Contempt Petition No.2226 of 2018 against HSIIDC as well. The Society is therefore seeking urgent directions, to HSIIDC for completion of its responsibilities.

82. It was further urged that given that HSIIDC has demonstrably failed in complying with the terms of this judgment, it would be in the interest of all allottees that the land is handed over on an 'as is where is basis' to the respective buyers of plots, flats or commercial units and a direction issued consequently to

HSIIDC to execute conveyance deeds. It is submitted that the Society and the buyers themselves will undertake the work of completing the project having regard to the fact that necessary approvals were granted in terms of License No.66 of 2009; the zoning plans have been approved and furthermore clearance was granted by the concerned Forest and Environment Departments. In addition, to facilitate development, previous deposits of EDC of ₹ 29.99 crores and IDC of ₹ 14.08 crores was paid long back by the developer, i.e., ABW. No doubt, the project land stands transferred to HSIIDC. Further, it was submitted that this circumstance is not an impediment to permit the allottees joined together through the Society and to complete the project.

83. On behalf of the State and HSIIDC, it was urged that the process of verification has been delayed. It was further urged that of the total licensed land measuring 104.682 acres, an extent of 2.306 acres were acquired for Haryana Shehri Vikas Pradhikaran through an award dated 27.12.2016. Furthermore, a sum of ₹ 8.31 crores was paid over to the erstwhile owner ABW. It was further submitted that the records indicate total compensation paid to ABW for the land which vested in the State under the deemed award was ₹ 12.51 crores, of which ₹ 3.32 crores has been paid by the LAC, with ₹ 9.91 crores still pending.

84. It was further argued that there has been no development on the land; that no structure or construction or development was undertaken by ABW as on date. A total of 1995 units were contemplated under the scheme - included 453 plots

and 221 commercial units. Furthermore, it was submitted -during the hearings before this Court- that a total of 270 claims for refund had been made. In view of the fact that it was submitted on affidavit by HSIIDC dated 12.04.2022 that it had decided to settle 270 claims on *pro rata* basis for ₹ 20.486 crores. Other claims on the lands of ABW measuring 104.282 acres, including buyers' claims working out to ₹ 128.38 crores and third-party claims working out to ₹ 172.15 crores. M/s. Alchemist claimed ₹ 33.99 crores as an investor, for the credit facility provided to ABW and its associates, which was rejected. Likewise, the claim of ₹ 1.28 crores to the land given to ABW and its group companies too was rejected. After the hearings were concluded, the HSIIDC filed an affidavit indicating that the figures indicated have now undergone a change, because more refund claims were received, driving upwards the total amounts needed to be refunded.

85. After obtaining instructions, learned counsel appearing for HSIIDC submitted that since there has been no development or construction, the question of granting any compensation in respect of ABW's allottees would not arise. Therefore, the HSIIDC would refund all unverified claims on *pro rata* basis to the allottees and those who had applied under the scheme together with 6% interest per annum from the date of this Court's judgment.

86. As found in the main judgment as well as the previous part of this judgment, ABW was one of the prime movers behind the entire subversion and abuse of the state machinery for acquisition of farmer's lands. ABW obtained

licenses for 104.682 acres and floated schemes for plots with two-three storied structures and residential as well as commercial units. Despite the fact that licenses were granted way back, even as on the date of the judgment of this Court (and even now), no development has taken place. All that was asserted on behalf of the Society was that IDC and EDC amounts were paid. HSIIDC's stand is that these charges are in fact in arrears. Having regard to the totality of circumstances, this court is of the opinion that the claim by the Society that the lands be made over to it or the residents on an 'as is where is' basis for development by them is untenable.

87. The main judgment expressly stated that it is only in cases where construction is completed or nearing completion that the interests of third party allottees were protected. However, such is not the situation in the case of 104.682 acres of land that belonged to ABW. There is no denial that such lands have now been vested in HSIIDC as a consequence of the main judgment of this Court and are to be included as part of the deemed award. It is apparent that the when the Court delivered the main judgment, it was unaware of the true nature of acts in relation to each project, especially in relation to ABW, i.e., that no development had taken place and that allottees had merely paid certain instalments to the colonizer / developer. Furthermore, the materials on record disclose that a large number of claims have been made for refund. Having regard to these facts and being aware of the practical reality that were HSIIDC mandated to now proceed

with the project, it would not be reasonable to expect completion of such project in the foreseeable future, at least for the next 5-7 years, it would be in the fitness of things that HSIIDC refunds the amounts payable to the allottees of the entire project, i.e., allottees of residential units/plots and commercial or shop space. HSIIDC shall take up this process as expeditiously as possible and facilitate the verification and payment of these amounts at the earliest, so that the process is completed within the next twelve months from the date of this judgment. In case, the HSIIDC is unable to refund the amounts, by that date, the sums shall carry interest at 6% p.a.

88. I.A. No. 102358/2019; I.A. No. 189667/2019; I.A. No. 83251/2020; I.A. No. 62216/2020 in M.A. (D) No. 24553/2019; I.A. No. 42263/2022 and I.A. No. 49262/2022 in M.A. (D) No. 9002/2022; I.A. No. 76605/2020 and I.A. No. 76602/2020 in M.A. No. 1521/2020; I.A. No. 75955/2020 in Contempt Petition No. 513/2020; Contempt Petition No. 2226/2018; and Contempt Petition No. 716/2021 are disposed off in terms of the above directions.

VI. Speed Town Planners Pvt. Ltd.

89. Eleven applications were preferred in relation to lands that were *inter alia*, subject of license No. 175 of 2008 dated 30.09.2008 pertaining to 2.443 acres of land in village Naurangpur acquired by Girnar Infrastructure Pvt. Ltd. (hereafter "Girnar") and License No. 76 in favour of one Navin Rao to the extent of 11.519 acres). Girnar was a wholly owned subsidiary of Unitech, and Navin Rao too was

an affiliate of Unitech. Applications were preferred by Unitech, and one Speed Town Planners Pvt. Ltd. (hereafter "Speed Town") which claimed to be entitled to rights to 19.56 acres.

90. In 2008, Girnar obtained license No. 175 of 2008 dated 30.09.2008 for developing a commercial colony on 2.443 acres out of the 19.56 acres of land. The license was granted by DTCP. Out of the 2.443 acres, an area of 1.5125 acres was notified under Section 4 of Acquisition Act, on 07.08.2013 and under Section 6 on 31.07.2013. Finally, 1.5125 acres of land was acquired under Award No. 13 dated 29.07.2016, for development and utilization of sectors roads (Sector 75 to 80) at Gurugram. Unitech urges that the acquisition of 1.5125 acres rendered the balance area of 0.93 acres to be commercially non-viable for any construction/development thereon as it was not be possible to consume the entire permissible FAR of 2.443 acres on the residual parcel of land. It is contended that an agreement to sell was executed on 14.03.2016 between Girnar as vendor and Speed Town as vendee for the sale of a portion of land admeasuring 9.69 acres, out of balance 17.116 (19.56 - 2.443 = 17.116 acres) at the rate of ₹ 4.40 crores per acre, for a total sale consideration of ₹ 42.636 crores. Of that consideration, a sum of ₹ 33.21 crores was received by Girnar from Speed Town for sale of 9.69 acres from 13.01.2016 to 18.06.2016 while an amount of ₹ 9.426 crores (₹ 42.636 - ₹ 33.21 = ₹ 9.426) is outstanding in the books of accounts.

91. In terms of the agreement, Speed Town was obliged to clear the balance outstanding amount of ₹ 9.426 crores upon submission of the sale deed for registration.

92. Applications are preferred by Unitech and Speed Town. Speed Town claims to have entered into collaboration agreement with Girnar, on 12.02.2016. Subsequently, the agreement to sell was entered into by the parties, and the sum of ₹33.21 crores was paid to Girnar. Speed Town seeks directions that the lands in respect of which it entered into collaboration agreement (9.69 acres) ought to be released from the deemed award directions of this Court in its main judgment. In the alternative, it claims for a direction that Girnar should refund amounts paid by it.

93. During the hearing, Mr. Joydeep Gupta, learned Senior Advocate contended that Speed Town was a *bona fide* purchaser which had first entered into collaboration agreement with Girnar, and later entered into agreement to sell. It was urged that Girnar's holding company Unitech was under a cloud and its management has been replaced by virtue of orders of this Court.

94. It was urged that on the basis of the main judgement, the physical possession of Girnar's entire land parcels, measuring 19.56 acres, (comprising of 2.443 acres of licensed and 17.117 acres of unlicensed land), was taken over by HSIIDC in furtherance of District Revenue Officer-cum-Land Acquisition

Collector's letter No. 382/LAC dated 06.07.2018 and correspondingly reflected in the revenue records.

95. Apparently, Speed Town sent a notice dated 24.04.2018 to Girnar to refund the amount of ₹ 33.21 crores for the land along with interest at the rate of 18% per annum from the date of payment till the date of actual refund. Speed Town invoked the arbitration clause, and submitted the dispute for arbitration. This culminated in an award in its favour.

96. It is argued that the site inspection carried out by Unitech's land division on 15.03.2021 noted that barring the licensed land of 2.443 acres and 2.08 acres (out of the total unlicensed land parcel of 17.117 acres), the residual land was under unauthorized cultivation since November 2020.

97. The applicants seek directions for exclusion of the lands from the deemed award, urging that they were not purchased from any farmers but rather from one Angelique International Ltd. (hereinafter, "Angelique"), a public limited company, through a registered sale deed executed on 23.08.2007. The main judgment was based on the premise that the land sellers were the farmers whose only source of income was agriculture. The entire tenor of the main judgement was therefore farmer-centric. In the case of Girnar, the position is entirely different since the land was purchased from a public limited company which was incorporated on 03.01.1996. It was submitted that the original owner, Angelique was a project engineering and construction company and the other assumptions

based on which this Court delivered the main judgment, were inapplicable to it. Furthermore, the land parcels purchased by Angelique were mutated in the name of Girnar on 06.06.2006 and 23.08.2007 and, therefore, their ownership is prior to the dates of mutation. Hence, the seller company was not in the business of buying and selling land only for minting quick money by duping innocent farmers.

98. It was argued that Girnar acquired ownership of 19.56 acres from Angelique by registered sale deed dated 23.08.2007 whereas the cut-off date fixed by this Court was 24.08.2007 till 29.01.2010, meaning thereby that all land transactions of sale and purchase during the pendency of acquisition proceedings from 24.08.2007 till 29.01.2010 were cancelled by the main judgment.

99. On behalf of the HSIIDC and the State, it was urged that neither Unitech, nor Speed Town, were entitled to any relief. It was highlighted that the acquisition of the land from Angelique, during the suspect period, was expressly noticed by this court. The sale deed, in the present case, was executed just before the scheduled pronouncement of the award. Furthermore, during the pendency of proceedings, Girnar transferred its development rights to Speed Town, which chose to acquire it, and did so at its own peril. Speed Town later entered into agreement to sell. However, at the root of all these transactions, was the transfer of ownership during the suspect period, i.e., after issuance of the notification

under Section 4. Counsel drew the notice of this Court to paras 34.2 and 35 of the main judgment which clarified the issue beyond any doubt.

100. This Court's main judgment, has noted in more than one place, from paras 26.1 to 26.9, and traced the sequence of events which led to the notification of 912 acres for acquisition, the resultant panic and scramble on the part of landowners to get rid of their holdings, the purchase of these lands, and in many places, their entering into agreements of sale or development agreements, by builders, which made no mention of the impending acquisition, leading to a demand to drop acquisition, which was ultimately done at two points of time, i.e. 24.08.2007 and 29.01.2010. The transactions relating to lands owned by Girnar, and Unitech's associates, squarely fall within the suspect period. In these given circumstances, Unitech's plea, or that of Speed Town, that the collaboration agreement with the latter- and the agreement to sell, - were executed *after* the suspect period, are untenable. The taint that attaches with the initial transaction (i.e., Girnar acquiring the lands during the acquisition process) attaches equally, to Speed Town's transaction, because the entire premise, which persuaded the vendor to sell the lands, was that the acquisition proceedings would go through, divesting their title. However, the vendee and its holding company appeared to have full knowledge of the nature of future events, in which they probably had a hand. Thus, the request for exclusion of these lands, from the deemed award, is untenable and is accordingly rejected. Speed Town shall be entitled to the

compensation to be decided, in respect of the land, on the same basis as in the case of all others entitled to it.

101. I.A. No. 128802-03/2020; I.A. No. 128807/2020 and I.A. No. 53868/2022 in M.A. No. 2228/2020; I.A. No. 31185/2021; I.A. No. 31180/2021; I.A. No. 31182/2021; I.A. Nos. 128798-99/2021; and I.A. No. 128801/2021 in MA (D) No. 5699/2021 are disposed off in the above terms.

VII. Innovative Infradevelopers Pvt. Ltd.

a. Legend Height Owners Welfare Association

102. 3.35 acres of agricultural land in Naurangpur was purchased by two individuals, i.e., Shri Ashok Kumar Lakhotia and Shri Subhash Chand Goyal by sale deeds dated 26.02.2004 and 08.03.2004. It was claimed that these two also obtained possession. The lands became the subject matter of acquisition in the notification under Section 4. The original owners sought for release of land and thereafter objected under Section 5A of the Acquisition Act. Some lands were released from acquisition, however, the major portion was included in the declaration under Section 6. Request for release of these lands for acquisition was made. This was followed up by an order dated 31.07.2007 releasing the land from acquisition. M/s. Innovative Infradevelopers Pvt. Ltd. (hereinafter, "Innovative") thereafter entered the scene on 15.10.2007. Subsequently, they

sought for and were granted license to develop the lands on 20.06.2008 (License No. 128 of 2008). Apparently, meanwhile on 19.12.2007, Innovative purchased the two parcels of lands. Innovative claims that pursuant to the license granted by DTCP, it developed the land and constructed commercial tower.

103. After the main judgment was delivered, the state while ensuring the publication of the deemed award also included the lands which were the subject matter of License No. 128 of 2008. Aggrieved, Innovative approached the Punjab and Haryana High Court in writ proceedings.[16] The writ petition however was rejected by the High Court by an order which has been impugned in the present case by special leave.[17]

104. The construction put up by Innovative is a commercial building known as "Legend Heights". Several individuals and entities claimed to have purchased spaces within it. They have approached this Court by filing an application - i.e., the Legend Height Owners Welfare Association (hereinafter, "Legend Heights Association"). It claims to represent 35 individuals who allegedly paid substantial amount ranging between ₹ 13 lakhs and ₹ 65 lakhs. The details of the application filed by Legend Heights Association list the amounts paid to Innovative and also describes the units allotted in the building to the individuals.

[16] *M/s Innovative Infradevelopers Pvt. Ltd. v State of Haryana,* W.P. (C) No. 18336 of 2020 (dismissed on 03.11.2020).
[17] *M/s Innovative Infradevelopers Pvt. Ltd. v State of Haryana*, SLP (C) No. 2147 of 2021.

b. Paramveer Distributors Pvt. Ltd.

105. Another set of applications has been preferred by Paramveer Distributors Pvt. Ltd., (hereinafter, "Paramveer") a non-banking financial institution. It alleges having entered into an agreement with Innovative on 08.06.2017, whereby an area measuring 96,216.03 sq. ft. was agreed to be purchased by it for a total consideration of ₹ 16 crores. The areas sold was for a hotel block. The relevant condition stipulated that out of ₹ 16 crores payable by the buyer, ₹ 8.05 crores, by way of outstanding dues of one Ms. Saraswati Devi was agreed to be adjusted. Another sum of ₹ 4.24 crores by way of outstanding dues of Paramveer, was agreed to be adjusted. The balance amount was to be paid in the ratio of 55:45 respectively.

106. Paramveer therefore contends that it is entitled to the built-up space in respect of the hotel block constructed by Innovative.

c. Analysis of VII (a) and (b)

107. HSIIDC in its response to the special leave petition and the applications (by Legend Heights Association and Paramveer) submits that no construction has been undertaken with respect to the hotel block. It is argued that this Court should not take cognizance of submissions on behalf of Paramveer since no credible material has been placed on record to establish the genuineness of the transactions claimed by it. As far as the commercial complex of Legend Heights is concerned,

HSIIDC points out that since the land transactions for sale of lands, as well as the license in respect of these lands, was issued during the suspect period, it has to be included in the deemed award.

108. From the factual narrative it is evident that the original owners of lands themselves purchased the lands in early February 2004. This Court cannot *per se* attribute the foreknowledge about the acquisition. However, their subsequent conduct in seeking for denotification which led to the ultimate withdrawal from acquisition of those lands (even though they were included in the notification under Section 6) is an established fact. Innovative concededly entered into transactions for purchase of lands in 2007 and applied and obtained the requisite license in 2008.

109. At the same time, this Court is cognizant of the fact that a number of allottees appear to have invested substantial amounts (in respect of the commercial building of Legend Heights, and not the hotel building of Paramveer). Although HSIIDC is silent as to whether the occupation certificates have been granted, there is some material on record (by way of averments in the special leave petition as well as in the application by the Legend Heights Association) that several sale deeds/conveyance were executed and registered.

110. The larger interest of justice would lie in ensuring that such of the allottees who are either granted occupation, and /or in whose favour conveyance has been executed, should be handed over the commercial units that they had originally

booked. As far as others are concerned, HSIIDC should first verify the claims of all persons/entities who claim to have paid substantial amounts and have not been allotted their spaces, and shall, depending on the stage and nature of construction and the extent of amount paid (it is more than 75 per cent of the total consideration) hand over possession of the units, after due completion.

111. In case any allottee seeks refund, HSIIDC should ensure that the amounts are duly verified and repaid within six months of the date of this judgment. In the case of default, HSIIDC shall pay 6% per annum as interest. In respect of all unallotted units and areas which can be constructed upon, title shall vest exclusively with HSIIDC.

112. So far as Paramveer is concerned, this Court is of the opinion that the agreement entered into with Innovative records that certain amounts (over ₹ 12 crores) were due and payable to the allottees, which was subsequently adjusted in the builder buyer agreement for the hotel. The details of those transactions have nowhere been verified or placed on record. In addition, Innovative has stated that construction of the hotel block has not taken place. In the circumstances, all rights, title and interest in those portions of Innovatives' properties shall vest in HSIIDC and be part of the deemed award.

113. Needless to add, Innovative shall be entitled to amounts like in the case of all other developers/owners in accordance with the main judgment. HSIIDC shall verify its claims. In the event of any dispute in this regard, Innovative is at liberty

to press its claim in substantiative legal proceedings and not their miscellaneous applications before this court. I.A. No. 41690/2021 in M.A. (D) No. 7775 of 2021; I.A. No. 84064-67/2020; I.A. No. 91091/2020; I.A. No. 84067 of 2020 in M.A. No. 50/2019 and SLP No. 2147 of 2021 are disposed off in the above terms.

VIII. **Dharamvir & Ors.**

114. 105 individuals approached the Punjab & Haryana High Court, through a common writ petition, claiming directions that they were residents of village Manesar.[18] The claim put forth by them was that they were *bona fide* and innocent purchasers who had acquired the lands which were included in the notification under Section 4. They acquired rights in respect of lands – presently under their occupation during the suspect period, i.e., between 27.08.2004 and 29.01.2010. It is alleged that assuming the transactions to be free from any cloud on the title, these petitioners had even proceeded to construct upon lands. The claim made to the Punjab & Haryana High Court was that their lands should be excluded from the deemed award. The High Court declined the claim, reasoning that the purchases were made by them during the suspect period and this court's judgment provided relief only to the original land owners who had not transferred, alienated or in any manner sold or parted with rights in respect of the land. Since these petitioners admittedly claimed to have purchased the land when they were facing

[18] *Dharamvir v State of Haryana*, SLP (C) No. 5490 of 2021.

acquisition, no relief could be granted to them. It was argued on behalf of these petitioners by Mr. Rathi that all the petitioners invested their hard-earned money and had built houses in which they have been living all this while. It was urged that many of those dwellers are ex-army personnel.

115. During the course of hearing, HSIIDC submitted that the land occupied by such individuals are to the extent of 27 acres. HSIIDC expressed practical difficulties in verifying the transactions claimed to be *bona fide*. It was pointed out that these petitioners proceeded to complete the alleged transactions even though the lands were facing imminent acquisition. This court has granted relief only to those land owners who were coerced into selling lands to developers. Such developers used the acquisition proceedings to make profit and ultimately ensure that the acquisitions were dropped. These individuals, however, ran the risk of acquisition being completed.

116. The entire tenor and reasoning of the main judgment is that proceedings under the Land Acquisition Act were used as device, whereby through a web of holding or shell companies, developers ultimately entered into transactions and paid valuable amounts towards developmental rights – during pendency of acquisition proceedings. Those rights in turn were exploited to persuade the state machinery to withdraw from the acquisition. The prices of land had risen astronomically by then. Taking all these facts into consideration, as well as the fact that developers had proceeded to develop properties and construct buildings

in which units were sold or allotted, this Court allowed only one kind of exception, i.e., that *bona fide* purchasers of such units, flats or shops etc. to be vested with title. In respect of all unallotted, unconstructed land as well as buildings and land forming part of each of such project, title was to vest in HSIIDC.

117. Wherever development agreements were entered into and licenses issued, and no activity took place in the form of construction or development, land was to vest in HSIIDC. If the above thread of reasoning were to be considered, it is apparent that third-party *bona fide* purchasers who secured allotment by paying valuable considerations which is verifiable as a matter of fact (by independent material) was protected. In the case of all other transactions, however, such protection was not extended for the simple reason that there is no manner for verifying whether in fact a *bona fide* transaction of the kind alleged took place. For these reasons, this Court is of the opinion that there is no infirmity with the judgment and order of the Punjab and Haryana High Court.

118. As a result of the above, the right and title in respect of lands under occupation of these petitioners is vested with HSIIDC. It is up to the HSIIDC to frame such scheme as is permissible in accordance with its parent enactment and a non-discriminatory manner by a scheme, in regard to such land (i.e. the 27 acres to which the petitioners and others like them may claim relief) as it may deem appropriate. In case the HSIIDC chooses to do so, it shall be bound by all

provisions of the Master Plan and Zoning and such other rules and regulations as are applicable, in the area and shall strictly enforce them.

IX. <u>Other issues</u>

119. During the hearing, it was submitted that out of the 688 acres finally notified under Section 6, 420 acres were finally included as part of the deemed award. Learned counsel urged that HSIIDC has sought to grant benefit to developers who made colossal profits and have sought to wriggle out from the impact of the judgment to various stratagem, including by filing applications for extension/clarification etc. During the course of hearing, all these applications, the submissions of all parties and that of HSIIDC (which has also preferred this application for directions and clarifications) were considered. Out of the 912 acres originally notified under Section 4 of the deemed consideration of objections under Section 5A, 688 acres were apparently notified under Section 6. The entire acquisition was abandoned on 29.01.2010. This Court, in its main judgment has, in many places - held, in the that the state's decision to not to go ahead with the acquisition was *mala fide* and amounting to a fraud under the Acquisition Act. The HSIIDC through its applications sought clarifications about whether the term 'transfer', includes only conveyance or formal transfer of lands or would it include parting with valuable developmental rights. In an earlier portion of this judgment, this aspect has been elaborately dealt with, and

concluded that the expression ‘transfer’ has to be interpreted widely and not in a narrow or technical manner. Thus, in all cases where collaboration agreements were entered into or developmental rights were parted for valuable consideration or where licenses were applied for during the suspect period whether in favor of the original land owner who might have entered into collaboration agreement and received monies, the transactions would fall within the mischief of transfer. Having regard to these conclusions, the applicants’ apprehensions are unfounded.

120. As far as other steps with respect to acquisition are concerned, during the course of hearing, the Court was told that in respect of 365 acres of land, 185 references have been received. The State shall ensure that these are answered as expeditiously as possible the concerned reference courts are hereby directed to conclude all the proceedings in 185 references and pronounce the award in accordance with law within a period of one year from the date of this judgment. All rights and contentions of the parties are kept open. I.A. No. 118408/2020; I.A. No. 118410/2020 and I.A. No. 126826/2020 in M.A. No. 2149/2020 are disposed off in the above terms. The applications on behalf of the State and HSIIDC (I.A. 2254/2019 and I.A. 100745/2020 in M.A. No. 50/2019; and I.A. 93822/2019 in M.A. No. 1175/2019) are also accordingly disposed off.

Conclusions and Directions:

121. In the light of the above discussion, this Court's findings are summarized as follows:

a. The expression 'transfer' used in the main judgment, especially in light of para 42.6, is not confined to sale, lease or other encumbrance. It includes development and/or collaboration agreements, as well as licenses issued (for development) during the suspect period, whether or not in favour of the developer.

b. As a corollary to the above, the lands covered by licenses issued to Paradise (ultimately transferred to Green Heights); Karma (for which collaboration was entered into with Unitech); Ram Pyari, Balbir Singh, Earl and Frontier (ultimately used by Godrej); Express Greens (DLF); Kalinga and Innovative amount to transfer.

c. With respect to Green Heights, a sum of ₹ 5 crores per acre is payable by Green Heights to HSIIDC. Therefore, the final amount payable is 2.681 acres x ₹ 5 crores = ₹ 13,40,50,000 /- (rupees thirteen crores, forty lakhs, and fifty thousand only) within six months from the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from the date of default. Green Heights is entitled to recover from Paradise such proportionate sums it may be entitled to claim having regard to the terms of their agreement.

d. With respect to Godrej, a sum of ₹ 5 crores per acre is payable by Godrej to HSIIDC. Therefore, final amount payable is 13.743 acres x ₹ 5 crores = ₹ 67,36,30,000 /- (rupees sixty-seven crores, thirty-six lakhs and thirty thousand only) within six months from the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from the date of default. Godrej is entitled to claim such proportionate sums as it may be entitled to in terms of its agreement with Frontier, Earl, Balbir Singh and Ram Pyari in accordance with law.

e. Upon full compliance with directions above, the lands covered by Green Heights and Godrej's projects shall be excluded from the deemed award.

f. With respect to Karma, the 25.95 acres of land subject of License No. 206 of 2008 forms part of the deemed award. The State shall take appropriate steps and issue the supplementary award in respect of these lands within six months from the date of this judgment. Karma is entitled to compensation in accordance with the Acquisition Act as on the date of the notification under Section 4, and is entitled to statutory benefits such as interest, solatium etc. on such determined compensation.

g. Lands measuring 2.9875 acres and 10.881 acres respectively belonging to R.P. Estates and Subros, are excluded from the deemed award.

h. With respect to Express Greens (DLF), contentions to exclude the project from the deemed award are rejected. It is directed that:

(i) HSIIDC shall complete the process of validating the title of allottees, including the title to the undivided and proportionate land share, within six months from the date of this judgment;

(ii) HSIIDC shall notify the balance allottees about the execution of sale deed - the process of execution and registration of sale deed to be completed within six months from the date of this judgment. HSIIDC shall ensure that a designated nodal officer is deployed to scrutinize the relevant documents and facilitate the execution of such sale deeds; and

(iii) All rights, title and interest in respect of the unsold 39 townhouses in the independent floors vests with the HSIIDC, which shall deal with them in accordance with its policies and applicable laws. Likewise, in case of unsold apartments, all rights, title and interest shall vest with HSIIDC.

(iv) With respect to 96 apartments on the 15th tower which have been completed but no occupation certificate has yet been issued, the DTCP shall ensure due inspection and decision on the pending occupation certificates. HSIIDC to complete any deficiency that has to be rectified.

(v) With respect to club houses and boundary wall in sector M-1 and M-1(A), the HSIIDC is directed to take up work immediately and

complete the same with eighteen months from the date of this judgment.

(vi) All unconstructed and unallotted portions as well as construction rights (such as FAR) in respect of unconstructed, unallotted plots etc., including two school sites, shall vest absolutely with HSIIDC. HSIIDC is entitled to develop these areas in accordance with its policies within the frame work of the applicable Master Plan development laws. DLF is entitled to collect amounts, if any, in terms of the main judgment of this Court. It shall hand over all records relating to the allottees, and technical data, pertaining to the entire project to HSIIDC within one month from the date of this judgment.

i. With respect to Kalinga, it is directed that

(i) HSIIDC shall complete verification of all the relevant documents furnished by Kalinga. Any additional documents or invoices, or relevant materials which Kalinga may wish to rely upon, shall be furnished to HSIIDC within two weeks. Thereafter, HSIIDC shall conduct verification, and based upon that exercise, and relevant inquiries (for which it may seek such assistance of Kalinga as is necessary) indicate the final valuation within six months from the date of this judgment. The amount in furtherance of that valuation shall be released, within three months of completion of verification.

(ii) HSIIDC shall complete the verification of documents, in relation to all those who claim refund as allottees of Kalinga, within six months. Such allottees or flat owners, (who have not obtained possession) shall be disbursed the amounts they are entitled to within six months thereafter.

(iii) In the event of any dispute, with respect to the entitlement or amounts payable, it is open to the concerned allottee or flat buyer to take recourse to appropriate proceedings in law, i.e., by filing civil suit, or complaints under the Consumer Protection Act, 1986. It is clarified that no proceeding, application or contempt petition in this regard, will be entertained by this Court.

j. With respect to ABW, it is directed that HSIIDC to refund the amounts payable to the allottees of the entire project, i.e., allottees of residential units/plots and commercial or shop space, within the next twelve months from the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from date of default. The lands of ABW shall form part of the deemed award.

k. With respect to Speed Town, the contentions to exclude the land from the deemed award are rejected. It is held that Speed Town shall be entitled to the compensation to be decided, in respect of the land, on the same basis as in the case of all others entitled to it.

l. With respect Paramveer, the contentions to exclude the hotel block from the deemed award are rejected. All rights, title and interest in those portions of

Innovative's properties shall vest in HSIIDC and be part of the deemed award. Innovative shall be entitled to amounts like in the case of all other developers/owners in accordance with the main judgment. HSIIDC shall verify its claims. In the event of any dispute in this regard, Innovative is at liberty to press its claim in substantiative legal proceedings and not their miscellaneous applications before this Court

m. With respect to Legend Heights, HSIIDC is directed to:

(i) Hand over commercial units to allottees who were either granted occupation, and /or in whose favour conveyance was executed. As far as others are concerned, HSIIDC to first verify the claims of all persons/entities who claim to have paid substantial amounts and have not been allotted their spaces, and shall, depending on the stage and nature of construction and the extent of amount paid (it is more than 75 per cent of the total consideration) hand over possession of the units, after due completion.

(ii) Duly verify and pay refunds sought by any allottee within six months of the date of this judgment, failing which interest at the rate of 6% per annum shall be levied from date of default.

(iii) In respect of all unallotted units and areas which can be constructed upon, title shall vest exclusively with HSIIDC.

n. With respect to Dharamveer and other petitioners, as well as similarly placed individuals the rights and title in respect of lands under their occupation is

vested with HSIIDC. It is up to the HSIIDC to frame such scheme as is permissible in accordance with its parent enactment and a non-discriminatory manner by a scheme, in regard to such land (i.e., the 27 acres to which the petitioners and others like them may claim relief) as it may deem appropriate. In case the HSIIDC chooses to do so, it shall be bound by all provisions of the Master Plan and Zoning and such other rules and regulations as are applicable, in the area and shall strictly enforce them.

o. The State is directed to ensure that all references pertaining to the acquisition are answered as expeditiously as possible. The concerned reference courts are hereby directed to conclude all the proceedings in 185 references received for 365 acres of land and pronounce the award in accordance with law within a period of one year from the date of this judgment.

p. It is clarified that wherever the allottees have not paid the full amounts (payable in terms of the agreements) HSIIDC shall be entitled to the same rights in law as in the case of the original builder/developer, which include, but are not limited to, insisting full payment before handing over possession to the allottees.

122. I.A. No. 112515/2020; I.A. No. 117025/2020; I.A. No. 118401/2020; I.A. No.116268/2020; I.A. No. 111557/ 2020, I.A. No. 111562/2020; I.A. No. 111563/2020; I.A. No. 116120/2021; I.A. No. 116128/2021, I.A. No.

123690/2021; I.A. No. 110995/ 2019, I.A. No. 91793/ 2020; I.A. No. 113206/ 2020; I.A. No. 36484-85/2020; I.A. No. 36487; I.A. No. 89570/ 2020; I.A. No. 31079-81/2022; I.A. No. 102358/2019; I.A. No. 189667/2019; I.A. No. 62216/2020; I.A. No. 42263/2022; I.A. No. 49262 of 2022; I.A. No. 75955/2020; I.A. No. 83251/2020; I.A. No. 76605/2020; I.A. No. 76602/2020; I.A. No. 31185/2021; I.A. No. 31180/2021; I.A. No. 31182/2021; I.A. No. 128802-03/2020; I.A. No. 128807/2020; I.A. No. 128798-99/2021; I.A. No. 53868/2022; I.A. No. 128801/2021; I.A. No. 91091/2020; I.A. No. 41690/2021; I.A. No. 84064-65 of 2020; I.A. No. 84066 of 2020; I.A. No. 84067/2020; I.A. No. 118408/2020; I.A. No. 118410/2020; I.A. No. 126826/2020; I.A. 2254/2019; I.A. 93822/2019; I.A. 100745/2020; I.A. No. 46028/2020, I.A. No. 30807/2020; I.A. No. 191983/2019; I.A. No. 192027/2019; I.A. No. 137407/2019; I.A. No. 3403/2020; I.A. No. 3406/2020; I.A. No. 59743/2020; I.A. No. 118798/2020; I.A. No. 103292/2020; I.A. No.68542 of 2019; I.A. No. 49986-87 of 2021; I.A. No. 49990/2021 in MA No. 50/2019; M.A. No. 864/2019; MA (D) 24553/2019; MA (D) 45009/2019; M.A. (D) No. 45026/2019; M.A. No. 1175/2019; M.A. (D) No. 26552/ 2019; M.A. (D) No. 7888/2020; M.A. No. 1521/2020; M.A. No. 2067 of 2020; M.A. 2150 of 2020; M.A. No. 2149/2020; M.A. No. 2228/2020; M.A. (D) No. 5699/2021; M.A. (D) No. 7775 of 2021; M.A. (D) No. 9505/2021; M.A. (D) No. 6705/2020; M.A. (D) No. 9002/2022 and Contempt Petition No. 2226/2018, Contempt Petition No. 513/2020, Contempt Petition No. 716/2021, SLP (C) No.

2147/2021 and SLP (C) No. 5490/2021 are thus disposed off in the aforementioned terms.

…….....J.
[UDAY UMESH LALIT]

……..…….....J.
[S. RAVINDRA BHAT]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi,
July 21, 2022.