In the High Court of Punjab and Haryana at Chandigarh

CWP No. 4987 of 2023 (O&M)
Date of Decision: 24.4.2025

Faith Buildtech Private Limited .....Petitioner

Versus

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Prateek Rathee, Advocate,
Ms. Niharika Mittal, Advocate,
Mr. Asutosh Singh, Advocate and
Mr. Shwas Bajaj, Advocate
for the petitioner.

Ms. Svaneel Jaswal, Addl. A.G., Haryana.

Mr. Kunal Soni, Advocate for
Mr. Prateek Mahajan, Advocate
for respondent No. 4-HSVP.

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SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, the petitioner espouses for the according of the hereinafter extracted reliefs-

(i) For setting aside the notification dated 24.7.2020 (Annexure P-12), wherebys the Haryana Development and Regulation of Urban Area Rules, 1976 (for short 'the Rules of 1976), became amended by way of inserting Rule 17-B and renaming the aforesaid rules as Haryana Development and Regulation of Urban Areas (Amendment) Rules, 2020.

(ii) For amendment/modification of the policy dated 20.10.2020 (Annexure P-13) and for quashing of the order dated 27.8.2021 (Annexure P-4), framed/passed by respondent No. 4, wherebys the licence holders, have been forced to transfer 4.40 acres of land in favour of respondent No. 4 in lieu

of surrender of licence Nos. 45 and 90 of 2014.

(iii) For modification of the order dated 31.12.2021 (Annexure P-10), passed by respondent No. 3, wherebys the request of the petitioner for seeking surrender of Licence No. 45 dated 16.6.2014 has been accepted but only after the compliance of the condition of transfer of land measuring 0.6625 acres in favour of respondent No. 3 through a gift deed No. 4840 of 19.10.2021 (Annexure P-16) by the petitioner.

(iv) For modification of the order dated 28.12.2021 (Annexure P-9) passed by respondent No. 3, wherebys the application moved by the petitioner for seeking surrender of Licence No. 90 dated 13.8.2014 has been accepted but only after the compliance of the condition of transfer of land measuring 3.7375 acres in favour of respondent No. 3, through a gift deed No. 4197 of 28.9.2021 (Annexure P-15) by the petitioner.

(v) For issuance of direction upon respondent No. 3 to refund/adjust the forfeited amount of Rs. 31.760 crores along with due interest under the surrender policy of the State under impugned Rule 17-B of the notification dated 24.7.2020.

(vi) For cancellation of the gift deeds (Annexures P-15 and P-16).

(vii) For issuance of directions upon respondent No. 1 to frame rules regarding the time frame for initiation and completion of development of essential infrastructure including external developments, with regard to any area qua which

licences are issued to the developers.

Factual background

2. It is averred in the instant petition, that the petitioner is a company incorporated under the provisions of the Indian Companies Act, 1956. The State Government with a view to create town like infrastructure for the controlled area of Sohna, vide notification dated 15.11.2012, notified the Final Development Plan of Sohna 2031. Subsequently, the petitioner through its affiliate companies embarked upon the aggregation of the lands for development and submitted the applications for grant of licence for Group Housing Colony in Sectors 4, 32 and 35 in Sohna, and, accordingly, four licences respectively bearing Licence Nos. 38 of 2014, 39 of 2014, 45 of 2014 and 90 of 2014 became granted to the affiliate companies of the petitioner for the above purpose. It is further averred thereins, that the petitioner has made an investment of Rs. 618 crores approx. for the purchase of the lands, stamp duty, scrutiny fee, licence fee, conversion charges, EDC and IDC for the said licences. The petitioner under Licence No. 45 of 2014, conceptualized the development of a group housing colony on land measuring 17.806 acres in Sector-4, Sohna, and, accordingly the petitioner got sanctioned all the requisite approvals and permissions from the authorities concerned. Subsequently, the petitioner launched the said project in the year 2014. However, the respondent-State failed to lay the essential infrastructure including the 60 meters road, besides also failed to issue a notification for acquisition of lands for laying essential infrastructure.

3. It is further averred thereins, that despite elapsings of more than 10 years from the issuance of the notification (supra), yet no land for laying the essential infrastructure has been acquired, besides no work regarding

creations of the apposite essential infrastructure, became carried out by the respondent concerned, as envisaged in the Sohna Master Plan. However, the petitioner had paid Rs. 61.416 crores towards External Development Charges/Internal Development Charges for Licence No. 45 of 2014 and Licence No. 90 of 2014. The petitioner also moved several representations before the authorities concerned, thus with regard to the layings of essential infrastructure and acquisitions of lands for 60 meter wide secotral road. However, no reply was received from the respondents concerned.

4. It is also averred in the instant petition, that a case bearing No. 40 of 2017 became filed by the several licence holders/developers before the Competition Commission of India (CCI), whereins, vide order dated 1.8.2018, the recovery of EDC became stayed by the CCI. Subsequently, in compliance of the order dated 1.8.2018, respondent No. 2 passed an order dated 20.5.2019, wherebys directions became passed, that in cases, where developers have paid 10% of the EDC and submitted bank guarantees in respect of 25% of the total EDC, thereupon all cancellation of license proceedings on account of default in EDC payment under Sohna Master Plan, rather being kept in abeyance till the outcome of the above case. Subsequently, upon observing that the respondent concerned, has taken earnest steps with regard to its order dated 1.8.2018, the CCI vide order dated 13.7.2022, closed the proceedings. Against the said order, the State of Haryana preferred CWP No. 31106 of 2018. However, on 29.4.2024, the said petition became withdrawn by the State.

5. Subsequently, the petitioner in order to avoid initiation of penal action by respondent No. 3 and to reduce its liabilities, applied for surrender of licences respectively bearing Nos. 45 of 2014 and bearing No. 90 of 2014,

applications whereof became approved by the respondent concerned vide orders respectively dated 28.12.2021 and dated 31.12.2021. However, owing to the stringent conditions of the policy dated 24.7.2020 with regard to Surrender of Licence, as envisaged under Rule 17-B, and, in accordance with the order dated 27.8.2021, an amount of Rs. 31.759 crores became forfeited by respondent No. 3. Moreover, the petitioner was also forced to surrender 4.40 acres of land free of cost.

6. Furthermore, it is averred that in the meeting held on 11.1.2022, by the respondents concerned, it was decided that any developer, whose outstanding EDC/IDC exceeds Rs. 20 crore and more, therebys no further approval will be granted for their existing projects, besides no new licences shall be granted to them. Consequently, owing to the said passed order in the meeting (supra), the accordings of approvals qua other files/licences of affiliated/associated companies of the petitioner, thus also became halted by the respondent concerned. Hence, the present petition.

7. Admittedly, the present petitioner acquired a perfect right, title and interest over the subject lands, through registered deed(s) of conveyance(s) becoming executed inter se the petitioner, and, its vendor(s). Nonetheless, since at the time of assumption of right, title and interest over the subject lands, through the execution of the registered deed(s) of conveyance(s) rather the said lands were agricultural lands, and/or then fell in the agriculture zone. Resultantly, in terms of the relevant statutory provisions, as embodied in the Haryana Development and Regulation of Urban Area Act, 1975 (for short '*the Act of 1975*'), the assignings of the requisite permission(s), thus for changing the nature of activity being undertaken on the subject lands, inasmuch as, from the earlier undertaken

thereons agricultural activity to commercial/residential activity, but was a statutory necessity.

8. There is also no dispute amongst the contesting litigants, that in respect of the subject lands, which become covered by the appositely executed registered deed(s) of conveyance, the present petitioner became endowed the permission to carry out commercial activities, and/or became permitted to raise a residential colony over the subject lands.

9. Be that as it may, the learned Additional Advocate General, Haryana, on instructions imparted to her by the official concerned, submits, that Licence No. 45 of 2014 became granted to the present licencee, and, the conversion charges paid thereof, however, did not cover the additional thereto added area i.e. about 0.669 acres.

10. Initially, the disputed licences in the instant cases are Licence bearing No. 45 of 2014 and Licence No. 90 of 2014.

11. Consequently, though the learned Additional Advocate General, Haryana has argued, that the initially granted licence, and, also the conversion charges paid thereof, thus became confined to the areas envisaged in the initial licence, therebys, vis-a-vis the subsequent area added onto the apposite licence, rather the deposit of the requisite conversion charges but was absolutely necessary.

12. However, the said argument does not *prima facie* appear to be a very formidable argument, as it is unfolded by Annexure A-1/1, that in respect of an area measuring 0.669, which was added onto, the initial area in respect whereof change of land user permission was granted, thus the requisite conversion fee totaling Rs. 94,76,886/- was paid by the licencee.

13. Since during the course of arguments becoming addressed

before this Court by the learned senior counsel for the appellant, he has foregone his claim towards the forfeiture of interest, as accrued over the amount appertaining to license fee, conversion charges and infrastructure development charges. Moreover, since the learned senior counsel for the petitioner during the course of the arguments has also abandoned his claim with respect to re-demands through the impugned policy, vis-a-vis the scrutiny fees. Therefore, the res controversia, which emerges amongst the contesting litigants relates to the amenability of granting, to the present petitioner the relief qua non-forfeiture of license fee, non forfeiture of conversion charges, and, non forfeiture of infrastructure development charges.

14. Before proceeding to test the validity of the said raised re-demands, as made from the present petitioner, demands whereof become rested upon the impugned notification (Annexure P-12), wherebys, through the apposite amendment being made to the Rules of 1976, thus Rule 17-B was added thereins. The said rule becomes ad verbatim extracted hereinafter.

> *"17B Surrender of Licence —(1) Any colonizer granted licence under section 3, on payment of the outstanding renewal fee with interest upto date, if any, with the prior permission of the Director, on such terms and conditions as may be determined by him, may surrender any existing licence, either partly or fully:*
>
> *Provided that no third-party rights have been created in the colony. However, in case the same have been created, then surrender of licence shall be allowed with the consent of the allottees of the colony, which shall be deemed as extinguishing of third-party rights to the extent of said part of the colony:*
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> *Provided further that the area over which third-party rights have been created shall be in one compact block. If area over which third-party rights have been created is scattered over the*

licenced area then, the colonizer shall submit consent of the individual allottees for making it in one compact block along with a detailed scheme of the relocation within licenced area.

(2) All such surrender of licence application submitted under sub-rule (1) shall be accompanied by the following documents:-

(a) declaration pertaining to third party rights and such corresponding area;

(b) declaration pertaining to whether internal development works are undertaken at site and where undertaken whether site restored to its original state i.e. before grant of licence.

(3) The scrutiny fees, licence fees, conversion charges, infrastructure development charges, principal as well as interest till the filing for surrender of licence complete in all respects, qua the part of licenced area being surrendered, shall be forfeited.

(4) External Development Charges (principal amount and interest) being a user charge shall be refunded/adjusted, if any of the services have not been availed by the colonizer. The colonizer shall have two options for the surrendered area qua External Development Charges when he applies for surrender of license:-

(a) The colonizer may get 85% of this amount of External Development Charges refunded.

(b) Get 100% of the amount refunded without interest but only upon a new license being granted in that particular sector. In such case, the External Development Charges to be demanded in the new license shall have to be more than or equal to the External Development Charges to be refunded in the surrendered area of the license."

Provided that External Development Charges shall not be refunded/adjusted, if any of the services has been availed by the colonizer, irrespective of the proportion/extent of the services availed. Further, any such refund/adjustment of External Development Charges in partial surrender of licence shall be subject to the condition that no service has been availed for the original licenced area and further External Development Charges shall be refunded/adjusted only in proportion to the land applied for surrender of licence.

> *(5) In case of revision of layout plan on account of only part of licenced area being surrendered, all necessary formalities pertaining to change of layout plan, fees inviting of objections and suggestions as per the prevailing policy instructions for revision of layout/ building plans, as amended from time-totime, shall be followed.*
>
> *(6) If the colonizer decides to surrender part of the licenced area, the area norms of the part of colony retained under the existing licence should fulfil the applicable area norms for grant of such licence".*

Submissions of the learned senior counsel for the petitioner

15. The learned senior counsel for the petitioner has been very vehement in arguing-

(a) That the provision, as embodied in sub-rule (3) of Rule 17-B of the Rules of 1976, which relates to the forfeiture of scrutiny fee, licence fees, conversion charges, infrastructure development charges, but *ex facie* tantamounts to unreasonable re-demands being made in respect thereof.

(b) That therebys, the said re-demands also further tantamount to imposition of a penalty, rather in the genre of *in terrorem*, wherebys they fall outside the realm of any justifiably raisable claim, wherebys but tenable liquidated damages, can be said to be imposed upon the present petitioner by the respondent concerned..

(c) That if no developmental activity became undertaken on the subject lands, especially when it is irrefutably stated so, in the affidavit, which has been appended with CM No. 5993 of 2025, therebys when the impugned policy envisages the surrender of the earlier granted licences. Moreover, when there is an endowment of permissibility to the present

petitioner to, after making surrender of the earlier granted licences, thus claim the issuance of a fresh licence, dehors or despite no construction activity becoming undertaken vis-a-vis the lands envisaged in the disputed licences. Resultantly, therebys the re-demandings of the supra components, but is expropriatory, besides tantamounts to an unjust enrichment being made at the instance of the respondent concerned.

Submissions of the learned State counsel

16. On the other hand, the learned Additional Advocate General, Haryana, has made strenuous arguments before this Court, wherebys she has attempted to repel the vigour of the supra addressed arguments by the learned senior counsel for the petitioner.

(i) She submits, that since the present licencee, since the grant of the initial licence in the year 2014, did not undertake any activity over the subject lands, therebys the said omission on the part of the present petitioner, when does beget contravention or breach, vis-a-vis the initially drawn contract inter se the present licencee and the respondent concerned.

(ii) Resultantly, she further submits, that since the said contract became founded upon the claim made by the present petitioner for issuing a licence to the present licencee, and, since the said made offer by the present petitioner to the respondent concerned, thus became accepted through the claimed licence becoming issued to the present petitioner.

(iii) As such, she submits, that since therebys a contract came into existence, and, yet there being a breach of the said contract, which she submits to stem, from the fact, that no construction activity becoming commenced over the subject lands. As such, it was permissible for the respondent to re-claim the amounts against license fee, conversion charges,

and, infrastructure development charges.

17. In making the supra arguments, the learned State counsel depends upon the provisions embodied in Section 73 and Section 74 of the Indian Contract Act, 1872 (for short '*the Act of 1872*'), provisions whereof become extracted hereinafter, wherebys, the said re-demands are submitted by her to be falling in the genre of liquidated damages.

> ***"73. Compensation for loss or damage caused by breach of contract.—***
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> *When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*
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> ***74. Compensation for breach of contract where penalty stipulated for****.—When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for."*

18. The learned Additional Advocate General has also firmly argued before this Court, that, therebys the re-demand, as made by the present respondent against the present licencee, thus towards licence fee, but is a justifiably raised demand, as the provisions embodied in sub-rule (1) of Rule 17-B of the Rules of 1976, cast the same rather as a condition precedent qua the claim for the surrender of the earlier granted licence, thus being accorded approval. Therefore, when the earlier licences were surrendered, therebys the consequent theretos askings qua a fresh licence by the present licencee from the licensing authority concerned, but did also concomitantly require, that a fresh licence fee be re-demanded by the licensing authority concerned, from the present petitioner.

Inferences of this Court

19. The terms and conditions of licence bearing No. 45 of 2014 become extracted hereinafter.

> *x x x x*
> *3. The License is granted subject to the following conditions.*
> *(a) That residential Group Housing Colony will be laid out in confirmation to the approved plan and development works are executed according to the designs and specifications shown in the approved plan.*
> *(b) That conditions of the agreements already executed are duly fulfilled and the provisions of Haryana Development and Regulation of Urban Areas Act 1975 and the Rules 1976 made there under are duly complied with.*
> *(c) That portion of Sector/Master plan road which shall form part of the licensed area shall be transferred free of cost to the Government in accordance with the provisions of Section 3(3) (a) (iii) of the Haryana Development and Regulation of Urban Areas Act. 1975.*
> *(d) That licensee shall construct the 12/18/24 m wide service road forming part of the site area at his own cost and the entire area under road shall be transferred free of cost to the Government.*
> *(e) That licensee shall deposit Rs. 5,81,25,564/- on account of Infrastructural Development Charges @ Rs. 460/- per Sqm for 175% FAR of group housing component and @ Rs. 750/- per Sqm for 150% FAR of commercial component in two equal installments. First within 60 days from issuance of license and second within six*

months through Bank Draft in favour of the Director General, Town & Country Planning, Haryana payable at Chandigarh. In failure of which, an interest @ 18% per annum for delay period shall be paid.

(f) That licensee shall integrate the services with HUDA services as per approved service plans and as & when made available.

(g) That licensee shall have no objection to the regularization of the boundaries of the license through give and take with the land, that HUDA is finally able to acquire in the interest of planned development and integrated services. The decision of the competent Authority shall be binding in this regard.

(h) That licensee shall make arrangements for water supply, sewerage, drainage etc. to the satisfaction of DG, TCP till these services are made available from External Infrastructure to be laid by HUDA/HSIIDC.

(i) That development/construction cost of 24 m/18 m wide major internal roads is not included in the EDC rates and licencee shall pay the proportionate cost for acquisition of land, if any, alongwith the construction cost of the same as and when finalized and demanded by DGTCP, Haryana.

(j) That licensee shall submit NOC as required under notification dated 14.09.06 issued by MOEF, GOI before actual execution of development works at site.

(k) That licensee shall obtain clearance from competent Authority, if required under PLPA, 1900 and any other clearance required under any other law.

(l) That licensee shall pay the labour cess charges as per policy dated 4.5.2010.

(m) That licensee shall provide rain water harvesting system at site as per Central Ground Water Authority norms/Haryana Govt. notification, as applicable.

(n) That licensee shall make the provision of solar water heating system as per recommendations of HAREDA and shall make it operational, where applicable, before applying for Occupation Certificate.

(o) That licensee shall use only CFL fittings for internal as well as for campus lighting.

(p) That in compliance of Rule 27 of Rules 1976 & Section 5 of Haryana Development and Regulation of Urban Areas Act, 1975, licencee shall inform account number and full particulars of the scheduled bank wherein licencee have to deposit thirty percentum of the amount from the plot/flat holders for meeting the cost of internal development works in the colony.

(q) That licencee shall not created 3rd party right before approval of building plans.

(r) That licencee shall abide with the policy dated 14.06.2012/ instructions issued by Department from time to time related to construction/ allotment of EWS Flats.

(s) That at the time of booking of the residential/commercial spaces in the licenced colony, if the specified rates of

residential/commercial spaces do not include IDC/EDC rates and are to be charged separately as per rates fixed by the government from the plots/flats/commercial spaces owners, licencee shall also provide details of calculations per Sqm/per Sq ft to the allottee while raising such demand of EDC.

(t) The demand of EDC and Bank Guarantee thereon shall be subject to the interim and final orders of Hon'ble High Court in CWP No. 5835 of 2013.

(u) That pace of construction should be atleast in accordance with your sale agreement with the buyers of the flats/shops as and when scheme is launched.

(v) That provision of External Development Facilities may take long time by HUDA, the Applicant Company shall not claim any damages against the Department for loss occurred if any.

(w) That licensee shall specify the detail of calculations per Sqm/per sq ft, which is being demanded from the plot owners on account of IDC/EDC, if being charged separately as per rates fixed by Govt.

(x) That licensee shall pay differential license fee amounting to Rs. 73,56,400/- with in a period of 30 days of issuance of demand notice.

(y) That licensee shall get extended validity of Bank Guarantee against EDC & IDW up-to 5 years (from the date of grant of license) and submit the same within 30 days of grant of license."

20. For the reasons to be assigned hereinafter, the argument addressed before this Court by the learned senior counsel for the petitioner, are accepted, whereas the most formidable arguments raised before this Court by the learned Additional Advocate General, Haryana, thus are not justified.

21. The reasons for stating so stems from the factum, that even though sub-rule (1) of Rule 17-B of the Rules of 1976, as became inserted through an amendment theretos being made, through the impugned notification (Annexure P-12), notification whereof becomes reproduced hereinafter, rather making visible speakings, that the earlier granted licence to the present petitioner, thus was amenable to be surrendered. However, the said was subject to a condition precedent, that the licencee makes payment of the outstanding renewal fee with interest upto date, and, with a further

condition, that the said espoused permission enjoining the according(s) of approval theretos by the Director concerned. However, there is no dispute between the contesting litigants, that the surrender of the previously granted licence to the present licencee became accepted by the Director concerned.

"Haryana Government
Town and Country Planning Department
Notification

The 24th July, 2020

No. PF-115/2020/12946*:- In exercise of powers conferred by sub-section (1) read with sub-section (2) of Section 24 of the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975) and with reference to the Haryana Government, Town and Country Planning Department, notification No. PF-115/2020/7278, dated the 19th March, 2020, the Governor of Haryana hereby makes the following rules further to amend the Haryana Development and Regulation of Urban Area Rules, 1976, namely:-*

1. These rules may be called the Haryana Development and Regulation of Urban Areas (Amendment) Rules, 2020.

2. In the Haryana Development and Regulation of Urban Area Rules, 1976, after rule 17A, the following rule shall be inserted, namely:-

"17B Surrender of Licence —(1) Any colonizer granted licence under section 3, on payment of the outstanding renewal fee with interest upto date, if any, with the prior permission of the Director, on such terms and conditions as may be determined by him, may surrender any existing licence, either partly or fully:

Provided that no third-party rights have been created in the colony. However, in case the same have been created, then surrender of licence shall be allowed with the consent of the allottees of the colony, which shall be deemed as extinguishing of third-party rights to the extent of said part of the colony:

Provided further that the area over which third-party rights have been created shall be in one compact block. If area over which third-party rights have been created is scattered over the licenced area then, the colonizer shall submit consent of the individual allottees for making it in one compact block along with a detailed scheme of the relocation within licenced area.

(2) All such surrender of licence application submitted under sub-rule (1) shall be accompanied by the following documents:-

(a) declaration pertaining to third party rights and such corresponding area;

(b) declaration pertaining to whether internal development works are undertaken at site and where undertaken whether site restored to its original state i.e. before grant of licence.

(3) The scrutiny fees, licence fees, conversion charges, infrastructure development charges, principal as well as interest till the filing for surrender of licence complete in all respects, qua the part of licenced area being surrendered, shall be forfeited.

(4) External Development Charges (principal amount and interest) being a user charge shall be refunded/adjusted, if any of the services have not been availed by the colonizer. The colonizer shall have two options for the surrendered area qua External Development Charges when he applies for surrender of license:-

(a) The colonizer may get 85% of this amount of External Development Charges refunded.

(b) Get 100% of the amount refunded without interest but only upon a new license being granted in that particular sector. In such case, the External Development Charges to be demanded in the new license shall have to be more than or equal to the External Development Charges to be refunded in the surrendered area of the license."

Provided that External Development Charges shall not be refunded/adjusted, if any of the services has been availed by the colonizer, irrespective of the proportion/extent of the services availed. Further, any such refund/adjustment of External Development Charges in partial surrender of licence shall be subject to the condition that no service has been availed for the original licenced area and further External Development Charges shall be refunded/adjusted only in proportion to the land applied for surrender of licence.

(5) In case of revision of layout plan on account of only part of licenced area being surrendered, all necessary formalities pertaining to change of layout plan, fees inviting of objections and suggestions as per the prevailing policy instructions for revision of layout/ building plans, as amended from time-totime, shall be followed.

(6) If the colonizer decides to surrender part of the licenced area, the area norms of the part of colony retained under the existing licence should fulfil the applicable area norms for grant of such licence".

22. The learned State counsel, has though very formidably argued that since the initial claim made by the present licencee in the year 2012, thus for the grant of licence, in respect of the subject lands, rather resulted in the said claim/offer being accepted by the respondent concerned, through a licence being granted to the petitioner, wherebys, a concluded contract came into existence between the licencee and the licensor. Moreover, as stated supra, though the learned State counsel has argued with great vigour, before

this Court, that the disputed re-claims towards licence fee, conversion charges, and, infrastructure development charges, are justifiable, thus on the ground that no activity became undertaken over the subject lands, wherebys she has further argued, that there was a breach of the supra genre of contract, which came into existence between the licensor and the licencee.

23. However, for the reasons to be assigned hereinafter, this Court does not agree with the supra submissions, as become pointedly focused towards justifiability of the re-demands qua licence fee, conversion charges, and, infrastructure development charges.

24. The speakings, as made in the affidavit appended with application bearing CM No. 5993 of 2025, when remain uncontested at the instance of the respondent concerned. Therefore, the inferences therefores, are that-

(I) The contracts of the supra genre, which came into existence between the present licencee and, the licensor, thus cannot be argued to be intentionally or willfully breached at the instance of the present licencee.

(II) Furthermore, even if there was any breach qua the terms and conditions of the contract of the supra genre, as came into existence between the licensor and the licencee, thus a declaratory decree in the said regard was required to be passed by the Civil Court of competent jurisdiction.

(III) Moreover, the Civil Court of competent jurisdiction was alone empowered to declare the quantum of the liquidated damages to be bestowed to the errant/defaulting contracting parties.

(IV) Prima facie even in the suit of the above genre becoming

instituted before the Civil Court of competent jurisdiction, at the instance of the aggrieved contracting party, thus there was a requirement qua on the contentious pleadings of the parties, rather the relevant issues becoming struck, and, thereons also a necessity arose upon the litigant concerned, to adduce cogent evidence on the relevant issues, thus suggestive that there was prima facie a pointed intentional, and, deliberate breach on the part of the errant litigant, vis-a-vis the condition appertaining to the expeditious undertaking of construction activities over the subject lands, whereas, prima facie the said non-undertakings being delayed upto a spell of 11 years, from the date of issuance of the licence.

(V) The supra extracted provisions, borne in Section 74 of the Act of 1872, when also make thereins, contemplations with respect to the determinations of compensation for breach of contract, besides envisage, the encumbrance of penalty for the said breach being made upon the willfully breaching contracting party. Though thereins a mandate is enclosed that prima facie, there is no requirement of proof in respect of actual damage or loss being caused to any party to the contract, rather for penalty becoming imposed upon the errant litigant.

(VI) However, the imposition of penalty is declared to be adorning the attire of reasonable compensation, which however is further declared to be not exceeding the amount stated in the executed contract concerned, amount whereof, may be in the genre of penalty. Therefore, though penalties in the genre of liquidated damages, do become envisaged in the supra extracted provisions, but yet there is a requirement of the said penalty being specifically spelt in the contract executed between the parties. Needless to say that the said contractually envisaged penalty is not required

to be *in terrorem.*

(VII) Furthermore, though irrespective of no loss or actual damage being suffered by the contracting party, yet the penalty in the nature of liquidated damage, is still imposable upon the errant litigant, but emphatically the said amount is to be so declared in the contract, as in the instant case, is the initially granted licence. Now assuming that the supra provision embodied in the instant contract was required to be applied with the fullest force against the present licencee, but yet in the initially granted licence(s), there was but a requirement of the same being but candidly spoken, thus in tandem with the supra provisions, embodied in Section 74 of the Act of 1872. Since the said fact is not clearly spoken in the initially granted licence(s), therebys the inevitable corollary thereof, is that, in the impugned notification yet forfeiting the license fee, conversion charges, and, infrastructure development charges, after surrender of the licence(s), initially granted by the licensor, thus breaches the initially set-forth condition in the initially granted licence(s). Even if the initially granted licences were surrendered, but the covenants set-forth thereins rather were not required to be novated or renewed, through the passing of the impugned notification, as therebys the impugned notification becomes an impermissible unilateral novation of the initial contract.

(VIII) Since it is averred in the instant writ petition, that the respondent despite receiving the sums of moneys from the present petitioner towards external development charges, whereupons, the requisite external development activity was required to be undertaken at the instance of the concerned. Moreover, since the undertaking of external development activity over the disputed lands, required the makings of the apposite notifications at

the instance of the acquiring authority. However, when the requisitionings made by the present licencee upon the respondents, thus to ensure the making of the requisite acquisitions, thus for therebys the external development activities becoming undertaken over the disputed lands at the instance of the concerned, thus did not become heeded.

(IX) Consequently, even though the same may be a disputed question of fact, yet at this stage, the non-takings of any decision on the supra representations, does boost a conclusion, that therebys *prima facie,* there was no intentional breach at the instance of the present petitioner vis-a-vis the terms and conditions of the licence(s), as became initially accorded to it, by the respondent concerned.

25. Moreover therebys, it also appears that the respondent concerned, through not making the requisite acquisitions, therebys deterred the licencee, to earn profits from the disputed lands, wherebys the disputed lands became a financially unviable venture, wherebys the licencee was led to surrender the initial licences and was also led to seek the issuance of fresh licences.

26. As such, the ill effect of the requisite omissions on the part of the respondent concerned, cannot be encumbered upon the licencee, rather therebys the necessity of endowing the benefit of the apposite surrender, thus as arose from the financial inviability, vis-a-vis the lands covered under the initially granted licence, but was required to be accorded/mitigated, by the licensor. The said mitigation would occur through its according approval to the espousal of the present licencee, to after its making surrender of the initially granted licences, to vis-a-vis its requests, thus issue fresh licence, but without any re-demands appertaining to licence fee, conversion charges

and infrastructure development charges rather being claimed.

27. Moreover, since as stated (supra), there are plain speakings in the affidavit (supra) that till now no construction activity has been undertaken over the subject lands. Therefore, when but obviously the prospective home buyers/allottees from the present licencee also could not have any well grounded grievance. Resultantly therebys, the claims, as made in terms of sub-rule (3) of Rule 17-B of the Rules of 1976, as carried in the impugned Annexure P-12, rather towards the therebys re-demandings of licence fee, conversion charges and infrastructure development charges, and/or the same being thereins declared to be amenable to become forfeited, thus cannot be declared to be in the genre of liquidated damages. Contrarily, the said can be prima facie declared to fall in the genre of a penalty, and, that too, in the genre of the same being *in terrorem*. Conspicuously also, when no declaration, which otherwise is required to be made only by the Civil Court of competent jurisdiction, rather has been made, but covering the aspects (a) (a) whether there has been an intentional or willful breach to the terms and conditions of the apposite licence, (b) whether therebys damages/penalties can become imposed upon the errant litigant concerned.

28. Therefore, through the impugned notification, the said re-claims can be declared to be most arbitrary, and, capricious, besides are required to be declared to be made for causing unjust enrichments. In addition, through the impugned notification, even without any opportunity being granted to the aggrieved, which would become afforded only in proceedings drawn before the Civil Court of competent jurisdiction, rather has occurred an ex facie despotic expropriation of the earlier furnished charges towards licence fee, conversion charges and infrastructure development charges, as ensuing

from, re-demands in respect thereof being made by the respondent concerned, from the present petitioner.

29. The learned Additional Advocate General, has made a very vigorous submission before this Court, that once the present licencee, had asked for the surrender of the initially granted licence, and, was seeking a fresh licence being issued in its favour, therebys there was but naturally a requirement of the earlier deposited licence fee, rather being forfeited.

30. Even the said argument though is of sterling quality, but finds disagreement from this Court. The reason for stating so generates, from the factum, that the licence fee, as earlier became paid by the present licencee, to the licensor, though was with certain terms and conditions, appertaining to developmental/construction activity becoming undertaken on the subject lands. However, when no construction activity became undertaken over the subject lands, therebys when thus for the apposite financial unprofitability or financial unviability, as prima facie becomes engendered from the reasons expatiated in para 23 (supra), the licencee was led to seek the transfer or migration of the said licences to some other tracts of lands, whereover the present licencee did hold, thus a perfect right, title and interest, through the execution vis-a-vis it, thus of a registered deed of conveyance by the vendor concerned.

31. Therefore, when sub-rule 4(b) of Rule 17-B of the Rules of 1976, speaks about 100% refund being made of the External Development Charges, in case a fresh licence is sought, and, is granted, which has happened in the instant case. In sequel, if after the apposite surrender, there is a permissibility endowed upon the licencee to seek a fresh licence, which has been granted.

32. Moreover, when the granting of a fresh licence in terms of clause (b) of sub-rule (4) of Rule 17-B, is with 100% refund of the amount without interest, but the said 100% refund though covers only the External Development Charges. Consequently, if as a matter of fact, as undisputedly stated before this Court, by the learned senior counsel for the petitioner, that in terms of clause (a) of sub-rule (4) of Rule 17-B, out of the total amount, as became deposited by the present petitioner, qua the External Development Charges, vis-a-vis the licence earlier granted in respect of the disputed licence bearing No. 45 of 2014, 85% amount thereof, became adjusted towards new licence bearing No. 5 of 2024. Therefore, as but a natural corollary thereof, the respondent concerned, when concedes that there was no external development work undertaken over the subject lands.

33. In essence, the further effect thereof, especially when plain speakings occur in the supra unrebutted affidavit, that no activity is undertaken over the subject lands, is that, there is a close link or alignment inter se the lack of undertakings of construction activity over the subject lands, thus with the claims qua deposit of re-licence fee over the subject lands. The said inter relatability does, ultimately lead to a further inference, that if there is a permissibility endowed to the licencee to seek migration or transfer the initially granted licence, vis-a-vis to some other pocket. Moreover, given the area in respect whereof surrender was sought, and, was granted, and, subsequently in respect whereof, a fresh licence in terms of sub-rule (1) of Rule 17-B of the Rules of 1976, became re-accorded, to the present petitioner. As such, there was no requirement qua re-imposition of fresh licence fee upon the licencee, nor any apposite forfeitures, as ordained in sub-rule (3) of Rule 17-B of the Rules of 1976 of the earlier furnished licence fee, can be justifiable in law.

34. Since proven financial inviability for supra stated reasons, thus led the present licencee to seek surrender of the earlier granted licence(s), and, also further led it to seek the issuance of a fresh licence. Resultantly therebys, more emphatically, when the accruals of the apposite financial inviability relating to the lands covered within the initially granted licence, but became fostered by the supra omissions of the respondent concerned. In sequel, when therebys there could not be any undertakings of construction activity over the lands concerned at the instance of the licencee concerned. Resultantly, if yet this Court legitimizes the apposite re-demands, therebys this Court would be ill-condoning the evident *ex facie* omissions of the respondent concerned. The further ill consequence thereof would be that there would be an ill impining upon the fundamental rights of the present petitioner to practice the avowed, business or profession over the disputed lands, and, that too with the supra unreasonable restrictions or conditions becoming imposed upon the petitioner.

35. Furthermore, the learned Additional Advocate General, has also very strenuously argued before this Court, that since pursuant to the impugned annexure, the present petitioner after surrendering the initially issued licence, had demanded a fresh licence, which became accorded to it. Therefore, she has further argued, that therebys there is an estoppel working against the present petitioner against its challenging the validity or vires of sub-rule (3) of Rule 17-B of the Rules of 1976, rather on any of supra counts, as have been argued before this Court by the learned senior counsel for the petitioner.

36. However, even the said argument is also not acceptable to this Court. The reason for stating so becomes sparked from the factum, that in

case, there are impermissible re-demands, rather tantamounting to unjust enrichment(s), as has happened in the instant case, therebys any argument raised today before this Court, that since pursuant to the impugned annexure, there was a re-claim for a fresh licence, wherebys the present petitioner is estopped to raise any argument before this Court relating to the vires of sub-rule (3) of Rule 17-B of the Rules of 1976, but is an argument which also does not find any acceptance by this Court. Tritely when there is no estoppel against the counsel making a well laid onslaught to the constitutionality or the vires of the relevant provisions (supra).

37. In summa, the impugned annexures are quashed, and, set aside to the extent that therebys unjust enrichments are ill endowed to the licensor, besides therebys unjust expropriations qua the sums of moneys earlier deposited are made against the licencee. Additionally also, when therebys the respondent concerned, has arrogated onto itself the jurisdiction of a Civil Court of competent jurisdiction, which otherwise alone has the powers to determine the liquidated damages or damages of some other genre. Additionally also, the impugned notification when has unilaterally made the said re-claims, therebys the said impugned notification in the instant factual scenario, is partly set aside to the extent that paragraph 3 thereof, becomes declared to be ultra vires the fundamental rights of practice, business and profession, but subject to the further condition that the interest accrued on the principals of the amounts of license fee, conversion charges, and, infrastructure development charges, but are amenable to be surrendered or forfeited to the licencing authority concerned.

38. In aftermath, with the afore observations, the instant petition stands disposed of.

39. This Court appreciates the assistance provided to this Court by Mr. Puneet Bali, Senior Advocate and by Ms. Svaneel Jaswal, Additional Advocate General, Haryana.

40. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 24, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No