IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1089 OF 2008
[Arising out of SLP (Civil) No. 14074 of 2006]

M.D., H.S.I.D.C. and Ors. …Appellants

Versus

M/s. Hari Om Enterprises and Anr. …Respondents

WITH

CIVIL APPEAL NOs. 4090,4130,4091,4092,4093,4094,4095,4097,4098 OF 2008
[Arising out of SLP (Civil) Nos. 16541, 16708, 16711, 19833, 19916, 19949, 20235, 17426, 18011 OF 2006]

CIVIL APPEAL NOs. 4099,4101,4100,4102 OF 2008
[Arising out of SLP (Civil) Nos. 2331, 2343, 2702 and 2891 OF 2007]

J U D G M E N T

S.B. SINHA, J :

Leave granted.

Validity of orders of recession of allotment of industrial plots and resumption thereof by the appellants herein is in question in this batch of appeals.

With a view to appreciate the questions involved herein, the factual matrix of the matter, however, would be noticed from Civil Appeal arising out of SLP (C) No. 14074 of 2006.

Appellant - Corporation is a public sector undertaking. Its principal function is allotment of industrial plots belonging to the State of Haryana. It was set up as a catalyst for promoting economic growth and accelerating the pace of industrialization. It not only provides financial assistance to the industrial concerns by way of term loans; it also develops infrastructure for setting up of industrial units. The Corporation also invests money in developing the industrial estates at strategic locations. In exercise of its functions, it also allots industrial plots to entrepreneurs for setting up their industries on "no profit no loss" basis. The entrepreneurs, according to the Corporation, must be the deserving ones. For the said purpose, it keeps in mind the principle that allotment of land should not be made to speculators who invest in property for getting high returns on escalation of price.

Respondent No. 1 is a partnership firm. It was previously known as M/s. Dysa International (Firm). It applied for allotment of 1000 sq. m. size plot in IMT, Manesar. The Allotment Committee of the Corporation

having found the respondent to be eligible for allotment, allotted plot No. 177 in Sector 6, IMT, Manesar measuring 1012.50 sq. m. wherefor a letter of allotment was issued on 10.01.2001.

We may notice the relevant clauses thereof.

Note appended to Clause 3 of the said letter of allotment states that in the event of failure to comply with the terms and conditions by the Regular Letter of Appointment (RLA) holder, the allotment of an Industrial plot/ shed, within the stipulated period, the RLA shall automatically lapse and 10% application money deposited towards the cost of the plot/shed shall be refunded without any interest. However, if the allottee makes a request for the surrender of the plot/shed after complying with the terms and conditions, then the Principal amount will be refunded without any interest after making a deduction of 10% of the cost of the plot/shed.

Clause 4 provides for other Terms and Conditions governing schedule of payment of the balance 75% of the price of plot/shed.

Clause 6 provides for the consequences of non-payment of the balance amount or non-fulfillment of the terms and conditions of the Letter of Allotment/Agreement. In such an event, the RLA shall stand withdrawn with the resumption of the plot/shed and refund of the deposit without any interest with 10% deduction.

Clause 8 provides for the Schedule of Construction and "Going into Production". It mandates the allottee to commence construction of building as per the approved building plans within a period of one year from the date of the offer of possession. The allottee will be required to start commercial production within a period of three years from the date of offer of possession. Extension for commencement of construction can be granted for 6 months maximum if circumstances were beyond the control of the allottee. Similarly, extension of one year can be granted for commencement of commercial production for reasons beyond its control and only if 10% of the permissible area has been constructed and effective steps taken for completion of project subject to payment of the extension fee.

An allottee will be deemed to have completed the project if he constructs minimum 25% of the permissible covered area and starts commercial production within the period specified therein.

Clause 14 provides for consequences of non-adherence to the schedule of payment and schedule of implementation. In such an event and on an unsatisfactory reply to the show cause notice, the HSIDC is empowered to the plot/shed and the principal amount is to be refunded without payment of interest and after deduction of the 10% of the plot/shed.

Clause 26 provides for the resumption of plots by HSIDC in the event of non-compliance of the terms and conditions after giving show-cause notice therefor. The principal amount will be refunded without payment of interest and after deduction of the 10% of the plot/shed without interest. The allottee will be free to remove the structure/debris within a period of 2 months of resumption order at his own cost. The allottee will not be entitled to any payment/compensation for building constructed by it on the resumed plot.

Clause 27 provides that no restoration of resumed plots shall be allowed.

The agreement also provides for an appeal against the order of the competent authority of the Corporation before the Commissioner, Industries, Government of Haryana.

An offer of physical possession was made to the firm by the Corporation by a letter dated 20.12.2001 wherein the schedule of payment in five instalments beginning from 1.07.2002 to 1.07.2004 was specified.

It was furthermore stipulated:

> "…You are, therefore, requested to deposit the installments along with interest @ 18% per annum from the date of offer of possession on the due dates otherwise you would be liable to pay penalty equivalent to 10% of the amount due and if you fail to pay the penalty within the prescribed period which would be specified by the Estate Manager, the plot would be liable for resumption after affording you opportunity of personal hearing before MD/HSIDC."

It, however, appears that handing over of actual possession took some time and possession was handed over only on 8.12.2003. At the

time of handing over of possession, the area of the land, measurement thereof as also the boundaries were delineated.

Indisputably, Respondent No. 1 herein filed an application for construction of the building on 19.12.2003. Indisputably, again the permission for construction of the buildings was to be granted only by the Corporation. The Corporation itself granted permission only on 20.03.2004 whereafter the construction started. It was completed in May, 2005.

The Corporation, however, by a letter dated 13.07.2004 asked the firm as to what steps had been taken by it for constructions of the plot in question with documentary proof as also need to apply for extension on the premise that offer of possession was issued on 1.01.2002 and the construction activity, thus, was required to be started within one year therefrom and production of the Unit should have been started from the date of offer of possession.

Respondent No. 1 intimated about the change of the constitution of its firm. It by a letter dated 30.11.2004 categorically stated:

> "We could not start the construction on the above mentioned plot, due to some financial constraints. We are pleased to inform you that

> we have been able to arrange sufficient funds for the construction and have already started the construction of your factory at the above mentioned plot. The factory will be operational within three months. Since we have the building plans approved by your department and have obtained temporary connections for water and electricity, the construction is going on in full swing.
>
> Regarding the balance amount, enclosed please find Demand Draft No. 000433 for Rs. 908461/- drawn on HDFC Bank. This clears our account as mentioned in your letter. Copy of the approval of the building plan is attached herewith for your reference."

Despite the same, as no action was taken, a legal notice was issued by the Respondent No. 1 through its lawyer dated 1.03.2005 inter alia drawing its attention to :

(i) Actual physical possession had been handed over on 9.12.2003 and the building plans were approved by the Corporation on or about 20.03.2004.

(ii) Steps for construction had been intimated to the Corporation together with a letter for extension of time.

(iii) Pursuant to the show cause notice dated 2.11.2004, a sum of Rs. 9,08,461/- had been remitted.

(iv) 25% of the construction had been completed and despite the same the land was said to have been resumed without issuing any show cause notice although the respondent had already deposited the said sum.

The Corporation was asked to withdraw the said notice of resumption.

By an order dated 3.03.2005, however, the plot was said to have been resumed inter alia on the premise that Respondent no. 1 had violated Clause 4 of the said Agreement. A demand draft of Rs. 9,08,461/- was not accepted and a cheque for a sum of Rs. 6,83,349/- towards the refundable amount as also the demand draft for the said sum of Rs. 9,08,461/- were returned.

Admittedly, an appeal preferred thereagainst has been dismissed.

Respondent No. 1 aggrieved by and dissatisfied therewith filed a writ petition before the Punjab and Haryana High Court. A Division Bench of the High Court by reason of the impugned judgment while setting aside the order of resumption as also the order of the appellate authority dated 27.05.2005, directed:

> "…The plot in question stands restored back to the petitioner. The amount refunded by the Corporation to the petitioner shall be repaid to the Corporation within a period of two weeks from the date a certified copy of this order is received.
>
> The respondent – Corporation would be at liberty to inform the petitioner through a written communication, if there are still any outstanding dues against the petitioner – firm. On receipt of the aforesaid communication, the petitioner – firm shall be required to clear all the aforesaid outstanding dues also, within a further period of two weeks thereof. It is made clear that if the payments as notice above are not made by the petitioner – firm, the present petition shall be deemed to have been dismissed."

Mr. A. Saran, the learned Additional Solicitor General appearing on behalf of the appellants, would submit:

(i) Respondent No. 1 admittedly having violated the terms and conditions of contract, the High Court acted illegally and without jurisdiction in issuing the impugned directions.

(ii) The High Court could not have entertained a writ petition in a matter arising out of a contract qua contract. It in any event it could not have condoned the delay in making payments.

(iii) The High Court could not have re-written the contract.

(iv) Respondents were not only aware of the terms of contract, they acted thereupon and as such they are estopped and precluded from contending that the date of actual handing over of physical possession would be the relevant date.

(v) In any event, as before the High Court the appellants in their counter-affidavit categorically denied and disputed the assertions made in that behalf by the respondents herein, such disputed question of fact could not have been gone into by the High Court in exercise of its writ jurisdiction.

(vi) Taking any view of the matter, the High Court should have considered as to who was to be blamed; the allottees or the Corporation and only upon arriving at a finding of fact that the respondents were not handed over actual physical possession despite all attempts made by them to obtain the same, the date of handing over of actual possession could have been held to be a relevant one.

Mr. Puneet Bali, learned counsel appearing on behalf of the respondent no. 1, on the other hand, would submit:

(i) Appellant in its list of dates has suppressed the fact that actual physical possession had been handed over only on 8.12.2003 and despite the fact that within a period of seven days, the 'Firm' applied for sanction of the building plan, the same had been issued only on 20.03.2004, thus, the building having been completed within a period of 14 months and commercial production having been started, the terms of the contract had not been violated.

(ii) In any event of the matter, the show cause in respect of resumption of land could be issued only upon demand of penalty and not prior thereto.

(iii) The action for resumption of land and/ or forfeiture being draconian in nature could have been taken recourse to by the Corporation only as a last resort.

Allotment of industrial plot keeping in view the object and purport for which the Corporation had been constituted and incorporated must be held to be a governmental function. In a case of this nature where the aim and object of the Corporation as also the State is to encourage industrialization while adjusting equity, the purpose for which the Scheme was made would be a relevant factor. Only because allotment of

land has been effected through a letter, the same by itself does not make such allotment and/ or the provisions contained therein to be matters within 'private law domain' as contra-distinguished from 'public law domain'. The State exercises deep and pervasive control over the activities of the Corporation.

The parties themselves agreed that despite the fact that the Corporation is a juristic person, an appeal against its decision shall lie to the Financial Commission of the State. Indisputably, the function of the appellant is a sovereign function. It, in any event is a State, within the meaning of Article 12 of the Constitution of India. Its action, therefore, must be fair and reasonable so as to subserve the requirements of Article 14 of the Constitution.

In the aforementioned backdrop, the issue involved in the matter must be determined.

The letter of allotment dated 10.01.2001 indisputably sets out the terms and conditions thereof. But, the same is not exhaustive. The terms and conditions were supplemented by the Corporation itself in its letter dated 20.12.2001 when offer of handing over physical possession was

made, by reason whereof not only a period of two years was provided for deposit of instalement along with interest at the rate of 18% per annum but also a provision had been made that in the event of failure to adhere to the schedule enumerated therein, penalty equivalent to 10% of the amount due would be levied. It was furthermore laid down that in the event of failure of the 'firm' to pay the amount penalty within the prescribed period, the plot would be liable for resumption. The terms and conditions of letter of allotment would clearly show that resumption of the plot is not automatic.

The question as to whether the allottee had failed to comply with the terms and conditions was required to be determined. The terms of the contract would have to be construed having regard to the respective rights and obligations of the parties to perform their part of contract. It provides for issuance of a show cause notice. It provides for refund of the principal amount, of course, without any interest.

Resumption of plot, it is trite, would not be automatic.

Clause 26 provides for an enabling clause. The decision of the Corporation is not final. An appeal lay thereagainst.

The jurisdiction of a 'State' to resort to the drastic power of resumption and forfeiture ordinarily should be undertaken as a last resort. Keeping in view the fact that the Corporation was obligated to comply with the principles of natural justice and, particularly, in view of the fact that was required to determine the capacity as also bona fide of an entrepreneur to start an industrial undertaking on the plots, the Corporation was required to assign some reasons as to why the plot in question had to be resumed. While doing so, it evidently was required to take into consideration its own conduct. A party cannot take advantage of its own wrong. While a State takes penal action against the allottee, its bona fide would be one of the relevant factors before an order of resumption and forfeiture of the amount deposited is passed.

The particulars contemplated in the letter of allotment as also the letter of offer of possession and the procedures laid down therefor were required to be scrupulously complied with. The letter of allotment as also the letter of offer of possession must be read conjointly. The very fact that not only the amount specified therein was required to be paid in instalments but also with interest at the rate of 18% per annum, was required to be borne in mind. Thus, in a case where the allottee had complied with the terms of allotment in the matter of payment of instalments, the same would be a relevant factor for exercising the

enabling clause of resumption by a 'State'. Not only that, a further opportunity was required to be given to the allottee even if there was some default on its part inasmuch as the appellant itself provides for levy of penalty. The power of resumption, thus, must be resorted to only in a case where despite grant of the opportunities contemplated in terms of the letter of intent were violated.

Despite issuance of letter of offer of physical possession dated 20.12.2001, the fact that actual possession had not been handed over for a period of two years is not in dispute. The Corporation did not say that actual possession was not taken by the respondent despite offer having been made in that behalf. It, in its anxiety to set a time limit for ensuring that the commercial production starts at an early date, was expected at least to send a reminder. It failed and/ or neglected to do so. For the purpose of approval of the building plan, the time taken by it also would have been a relevant factor for passing an order of resumption.

We although do not intend to lay down a law that all the aforementioned period should be excluded from computation for the purpose of grant of notice of resumption, but there cannot be any doubt

whatsoever that while judging the conduct of the parties, the appellant was obligated to judge its own conduct in the matter.

A law far less a contract does not warrant compliance of the contractual or statutory obligations where it is otherwise impossible to do. An entrepreneur may start raising constructions over a plot only when the physical possession thereof is handed over and/ or plan for construction of the building is approved. A State cannot ignore the aforementioned relevant factors.

It may be true that ordinarily in a matter of enforcement of a contract qua contract, a writ court shall not exercise its jurisdiction under Article 226 of the Constitution of India. But, it is also trite that where the action of a State is violative of Article 14 of the Constitution of India as being wholly unfair and unreasonable, the writ court would not hesitate to grant relief in favour of a person, where both law and equity demands that such relief should be granted.

Appellant being a "State" within the meaning of Article 12 of the Constitution of India, it without a justification cannot make any discrimination when the parties are similarly situated. [See Mahabir

Auto Stores and Others Vs. Indian Oil Corporation and Others [(1990) 3 SCC 752, para 12]

Moreover, the act on the part of the respondent must be a reasonable one. [See Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavalli and Others [(2007) 6 SCC 81, para 16]

This Court in ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others [(2004) 3 SCC 553] laid down the law in the following terms:

> "*28*. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks*) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which

> the Court thinks it necessary to exercise the said jurisdiction."

[See also Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd. (2005) 8 SCC 242 and Noble Resources Ltd. v. State of Orissa and Another (2006) 10 SCC 236]

In Kumari Shrilekha Vidyarthi and Others v. State of U.P. and Others [(1991) 1 SCC 212], this Court opined that even in contractual matters the State cannot act arbitrarily, stating:

> "31…This decision clearly shows that no doubt was entertained about the applicability of Article 14 of the Constitution to an action of the State or its instrumentality, even where the action was taken under the terms of a contract of tenancy which alone applied by virtue of the exemption granted under the Rent Act excluding the applicability of the provisions thereof."

Referring to M/s Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293], this Court held:

> "24. The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character. The legislative assumption or expectation as noted in the observations of Chagla, C.J. in Rampratap

> Jaidayal case cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. In this connection, reference may be made on the observations of this Court in Som Prakash Rekhi v. Union of India reiterated in M.C. Mehta v. Union of India wherein at p. 148 this Court observed: (SCC p. 480, para 55)
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> "It is dangerous to exonerate corporations from the need to have constitutional conscience ; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien, amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio."
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> 25. Therefore, Mr Chinai was right in contending that every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution, in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest."

When time granted is flexible, the constructions of the term may not lead to a conclusion that it is imperative in character. In M/s. Jagdish Chand Radhey Shyam v. The State of Punjab and Others [(1973) 3 SCC 428], this Court while interpreting Sections 8 and 9 of the Capital of Punjab (Development and Regulation) Act, 1952 in the context of Article 14 and 19(1) (f) of the Constitution of India, held as under:

"13. Section 9 speaks of resumption of the site or building by the Estate Officer and forfeiture of the whole or part of the money paid on account of consideration in the case of non-payment of consideration money or instalment or breach of any condition of transfer or breach of any rule.

14. Under the ordinary law of the land it is open to the Government to enforce the charge and to recover the due on consideration money, instalments or any other due from the transferee. It is also open to the Government under Section 8 of the Act to proceed against the transferee to realise the amount due on consideration money or on instalment or any other due as an arrear of land revenue. Section 8 provides penalty for default in payment of money and the recovery of the same as an arrear of land revenue. These remedies are deterrent and drastic.

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

16. Section 9 confers power to resume the site. There is a charge on the land for the unpaid consideration money. This charge can be enforced by instituting a suit in a court of law.

> The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand when the Government proceeds under Section 9 of the Act, to resume the land or building the Government proceeds under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. There is no guidance in the Act, as to when the Government will resort to either of the remedies."

Although the provisions of the aforementioned Act are not applicable in the instant case, Jagdish Chand (supra) is being referred for showing that when two remedies to enforce a contract are available, the power should be exercised in reasonable manner. So construed, a harsher remedy may not ordinarily be resorted to.

The learned Additional Solicitor General places strong reliance upon a decision of this Court in Indu Kakkar v. Haryana State Industrial Development Corporation Ltd. and Another [(1999) 2 SCC 37]. Therein the lady had assigned her interest. One of the questions which arose for consideration was as to whether such transfer was valid having regard to the locus standi of the appellant therein. What was emphasized was that as a rule the party cannot transfer its liabilities under the contract without consent of the other party. It was in the aforementioned context, this

Court considered the question of locus standi of the appellant therein holding:

> "19. In fact, the question is not whether there is any legal bar for the allottee to make assignment of the plot. The real question is whether the assignee has a legal right to claim performance of any part from the allottor. The answer of the said question depends upon the terms of allotment. Assignment by an act of the parties may cause assignment of rights or of liabilities under a contract. As a rule, a party to a contract cannot transfer his liabilities under the contract without consent of the other party…"

The said decision, in our opinion, cannot be said to have any application.

Reliance has also been placed on Orissa State Financial Corporation v. Narsingh Ch. Nayak and Others [(2003) 10 SCC 261] for the proposition that a writ court would not direct writing off the amount due or waiver of the interest, stating:

> "…The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper

> direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place."

The High Court, in our opinion, has not re-written the contract nor waived the rights and obligations of the parties.

We may notice that in Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Others [(2004) 2 SCC 130], a Bench of this court while interpreting the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 opined that power of resumption and forfeiture should be taken recourse to as a last resort. While holding that each case may have to be viewed on its own facts, the action of the statutory authority must be judged on the touchstone of Article 14 of the Constitution of India.

This Court applied the doctrine of proportionality having regard to a large number of decisions operating in the field. This Court, however,

also put a note of caution that no order should be passed only on sympathy or sentiment.

Doctrine of proportionality has since been applied in Sandeep Subhash Parate v. State of Maharashtra & Ors. [(2006) 8 SCALE 503] and Jitendra Kumar & Ors. v. State of Haryana & Anr. [2007 (14) SCALE 125 : (2008) 2 SCC 161].

In State of Bihar and Others v. Kameshwar Prasad Singh and Another [(2000) 9 SCC 94] whereupon strong reliance has been placed by Mr. Jaspal Singh to contend that in a given case, this court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India even if the order is found to be illegal. This court was concerned with a service matter. It was held:

> "36. It is further contended that as the respondent was, in the meantime, appointed/promoted in the IPS cadre and as per requirements of the State Government he has already submitted his resignation from the State service, the acceptance of the appeal and setting aside the directions of the High Court would result in great hardship to him and amount to unsettling his settled service rights particularly when his promotion/appointment to the IPS cadre has not been challenged and is not in dispute. Such a plea by itself cannot be accepted as a ground to dismiss the appeal filed

against an order which we have held to be illegal being contrary to law and the Service Rules applicable in the case. Once the judgment is set aside, the consequences have to follow and a person taking advantage or benefit of the wrong orders is to suffer for his own faults which cannot be attributed to anybody else. However, in appropriate cases this Court can mould the relief to safeguard the interests of a person wherever required. For doing complete justice between the parties, appropriate directions can be given to protect the interests of a person who is found to have been conferred the benefits on the basis of judicial pronouncements made in his favour. As the appellant State has been found to be careless and negligent in defending its cases, we feel and are inclined to protect the interests of Brij Bihari Prasad Singh, respondent. We are convinced that the interests of justice would be served by holding that despite setting aside the judgments of the High Court, his interests be protected by not disturbing his promotions made from time to time. However, judgments passed in his favour cannot be permitted to be made a basis for conferment of similar rights upon other persons who are shown to have filed writ petitions or representations which, if accepted, are likely to adversely affect the interests of more than 150 Inspectors and 400 officers in the rank of Deputy SP. Similarly, if any benefit has been conferred upon any other person who has superannuated, no useful purpose would be served by directing his demotion retrospectively and recovery of the excess emoluments paid to him."

Indisputably, the court can balance the equities between the parties but the same does not necessarily mean that in all cases this Court should refuse to exercise its discretionary jurisdiction. Each case must be considered on its own merit and no hard and fast rule can be laid down therefor.

We would consider the question about the balancing equities between the parties in each individual case.

In a case of this nature, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may also consider rendition of individualized justice. [See Shyam Nandan Prasad and Others v. State of Bihar and others (1993) 4 SCC 255]

Our attention has been drawn to the fact that the Punjab High Court in some of the matters in Jaisy Designs v. MD. HSIDC [decided on 4th July, 2006] had issued similar directions. A Bench of this Court, however, dismissed the special leave petition being SLP (C) No. 12074 of 2006 by an order dated 7.08.2006.

However, another Bench of this Court in Civil Appeal arising out of SLP (C) No. 20235 of 2007, presumably, without noticing the said

order directed issuance of notice by an order dated 4.12.2006. Following the said decision, even other Benches had issued notice in other matters including Civil Appeal arising out of SLP (C) No. 14074 of 2006.

Reliance has been placed on State of Kerala and Others v. P.T. Thomas [(2005) 12 SCC 347] where this Court having regard to the orders passed in number of cases in regard to payment of interest dismissed the appeals inter alia taking into consideration the said factor. However, in P.T. Thomas (supra) it was not the sole consideration. This Court noticed that payment of interest was not an issue in the main writ petition and that was the principal reason in dismissing the appeal.

We have noticed hereinbefore that in Kameshwar Prasad Singh (supra), this court made a clear distinction between an order which is illegal and, thus, the order being illegal the benefit thereof would not be extended to persons similarly situated on the premise that Article 14 is a positive concept.

In the instant case, the High Court's jurisdiction is in question. The learned counsel for the parties have addressed us at great length on the individual merit of the matter.

We, therefore, are of the opinion that on the said ground alone, we would not refuse to interfere.

In Civil Appeals arising out of SLP (C) No. 17426 of 2006, no opportunity had been given to the appellants to file counter affidavit. Even the High Court had proceeded on the basis that equity demands that they should be given some extension of time to perform their part of contract. It was submitted that even the doctrine of proportionality is applicable in these cases in view of the decision of this Court in Teri Oat Estates (P) Ltd. (supra).

The conscious decision taken by the appellant that all allotments should be regularized in the event the respondents pay the difference between the amount which has already been paid and the rate prevailing on the date of judgment of the High Court should be made applicable.

The learned counsel would contend that even for the said purpose, suitable instalments could be fixed.

CIVIL APPEAL @ SLP (C) No. 19949 of 2006
HSIDC v. Sanjay Bansal

Respondents herein are directors of M/s. Shiv Shakti Embroidery Pvt. Ltd. (Company). The Company was allotted an industrial plot. An additional facility was granted to the industrial undertakings for allotment of residential plots for their directors. Pursuant to and in furtherance of the said policy decision to grant additional benefit, the respondents were allotted residential plot No. 331 in Sector 1, Manesar. The terms and conditions provided for a schedule of payment, the relevant clauses whereof read as under:

> "3. The balance amount of Rs. 10,69,200/- of the tentative price of the plot can be paid in lumpsum without interest within 60 days from the date of issue of the allotment letter or in six (6) half yearly installments. The first installment will fall due after the expiry (6) six months of the date of issue of this letter. Each installment would be recoverable together with the interest on the balance price at 15% interest on the remaining amount the interest shall, however, accrue from the date of offer of possession.
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> 4. You are requested to remit Rs. 1,78,200/- in order to make the 25% price of the said plot within 30 days (upto 17.08.09) from the date of issue of this letter. The payment shall be made by the Bank Draft payable to the HSIDC, Panchkula and drawn on any scheduled bank at Panchkula. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the 10% earnest money deposited alongwith the application shall stand forfeited to the HSIDC

> against which you shall have no claim for damage.
>
> 5. The balance 75% amount i.e. Rs. 8,91,000/- of the above price of the plot can be paid in lumpsum without interest within 60 days from the date of issue of the allotment letter or in half yearly installments. The first installment will fall due after the expiry of six months of the date of issue of this letter. Each installments would be recoverable together with interest @ 15% interest per annum on the remaining amount as mentioned in clause No. 21."

Payments were made in the name of the Company although allotment had been made in the individual names of the respondents herein. The allotment of the said plot was cancelled on the premise that payment has not been made in terms of Clauses 4 and 5 of the offer of allotment dated 18.07.2003. A proceeding for resumption was initiated and by an order dated 1.06.2004, the said plot was resumed. Aggrieved by and dissatisfied therewith, a writ petition was filed.

The respondents in their rejoinder averred:

> "…Upon cancellation of the allotment of plot in question, the said plot was included in the list of plots available for allotment and pursuant to invitation of applications for allotment of plots by way of advertisement in Newspapers, a draw of lots was held on 1.6.2004, wherein 215

> residential plots including the plot in question were further allotted and the plot in question stands allotted to Shri Suresh Chand Jain s/o Shri Hussan Lal Jain, resident of E-12, Bahubali Enclave, Near Geetanjli Apartments, Karkardooma, New Delhi. Hence, the present petition is liable to be dismissed on account of this score alone."

However, the said subsequent allottee was not impleaded as a party. The High Court allowed the writ petition on the premise that the respondents had deposited a sum of Rs. 1,78,200/- and in view of Clause 3 of offer of allotment, it was for them to make payment in terms thereof. In regard to the purported conflict between Clauses 3 and 4, the High Court opined:

> "If clause 3 is in conflict with clause 4, the petitioners cannot be blamed to have opted for the concession available to them in clause 3. At no point of time, the respondent Corporation had ever chosen to clarify that the petitioners were required to make the payment exclusively in terms of clause 4 of the letter of allotment. On account of inconsistency between the provisions of clauses 3 and 4 of the letter of allotment, confiscatory orders of cancellation could not have been passed by the Corporation against the petitioners.
>
> At this stage, we may notice that even as per the petitioners and as per the schedule of payment, by way of instalments, the petitioners were liable to make payment of the entire amount of plot upto July 2, 2006. However,

> they could not make the payment of instalments on account of cancellation order and on account of the fact that the present writ petition has been pending in this Court.
>
> We further notice that a plea raised by the petitioners is that the order dated October 28, 2004 had never been communicated to them. The petitioners have even maintained that the said order had been ante-dated by the Corporation. The respondent Corporation has however maintained that the said order was duly passed, although no details have been given as to when the said order had ever been communicated to the petitioners. We must also take note of the pleas raised by the respondent Corporation that in pursuance to an advertisement on March 2, 2004, 215 residential plots including plot No. 331 had been allotted by way of draw of lots held on June 1, 2004. However, no details of any such allottee have been given in the written statement. While issuing notice of motion, this Court had specifically directed that the re-allotment of the land allotted to the petitiones would be subject to the final decision of the case."

We agree with the High Court that Clause 3 of the said offer of the order of allotment dated 18.07.2003, on the one hand, and Clauses 4 and 5, on the other, are irreconcilable. Payment to be made under Clause 3 cannot be subject to the stipulations contained in Clauses 4 and 5. They are independent of each other. The allottee in terms of Clause 3 had an option. Mode of payment in terms of Clause 3, on the one hand, and

Clauses 4 and 5, on the other, are distinct and different. However, the High Court was not correct when it directed that re-allotment of land would be subject to the final decision of the case.

Cancellation of plot as also reallotment thereof had been made in June 2004. The writ petition was filed in July, 2005. The subsequent allottee, therefore, was a necessary party and in his absence the writ petition should have been dismissed as not maintainable.

This Court in Rashmi Mishra v. M.P. Public Service Commission and others [(2006) 12 SCC 724] observed:

> "16. In Prabodh Verma this Court held: (SCC pp. 273-74, para 28)
> "The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too

> large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."
> (See also All India SC & ST Employees' Assn. v. A. Arthur Jeen and Indu Shekhar Singh v. State of U.P.)"

By reason of the judgment of the High Court, the right of a third party has been affected. He without having been impleaded as a party in the writ petition cannot suffer an adverse order for which he is no way responsible. A statement has been made before us by the learned Additional Solicitor General that no residential plot is available for allotment. He, however, submits that as and when such a plot is available, the same would be offered to the respondent. We may place on record the aforementioned submission. However, we feel that the respondents were not to be blamed for not depositing the amount. Invocation of Clause 4 is clearly illegal. We, therefore, are of the opinion that the respondent should be suitably compensated on monetary terms. We direct the appellants to pay a sum of Rs. 1,00,000/- to the respondents herein. We, however, also direct that keeping in view the statements made at the Bar, as and when any residential plot becomes

available, the same should be allotted to the respondents on the same terms.

Civil Appeal arising out of SLP (C) No. 19949 of 2006 is allowed in part and to the extent mentioned hereinbefore.

Civil Appeal arising out of SLP(C) No. 19916 of 2006
H.S.I.D.C. & Anr. v.. Mr. Ved Govil & Anr.

Respondent applied for and was allotted an industrial plot at Manesar, Gurgaon by the Appellant Corporation. Indisputably, it deposited a sum of Rs. 3,96,000/- being 10 per cent of the total cost of the said plot. It, however, was not satisfied with the said allotment. A prayer was made to change the plot which was accepted by the appellant Corporation. He was allotted a plot No. 269 in Sector 7 on or about 9.7.2004. They were, however, not satisfied with the said allotment and made another representation for change of plot. On or about 21.9.2004, the appellant deposited an amount of Rs. 6,00,000/- towards 15% of the total price of the plot. He was, however, required to deposit the said amount by 22.7.2004 which was extendable by another 30 days on

interest at 11% per annum after 22.7.2004, but he failed to do so. Appellant took a stand that the letter of allotment elapsed automatically. The amount of Rs. 3,96,000/- was directed to be refunded. The bank draft sent by the respondent for an amount of Rs. 6,00,000/- was also returned. The respondent filed a Writ Petition.

The High Court was of the opinion that although respondent was required to deposit 15% of the price of plot on or before 22.7.2004, but by clause 3 of the Letter of Allotment, the said amount could be deposited by him within 60 days. The High Court accepted that there had been a delay on the part of the appellant. The interim order was passed directing the appellant to re-allot the plot, however the same was not allotted. The High Court directed:

> "Keeping in view the facts and circumstances of the case, as noticed in the above portion of the judgment, we allow the present petition and restore the allotment of plot No. 269, Sector 7, Manesar to the petitioner as per original terms of allotment. Since the petitioner was required to pay the entire amount, even by way of instalments upto January 16, 2007, therefore, the petitioner is directed to make the total payment of the entire amount towards the cost of the plot in question within a period of three months from the date a certified copy of this order is received. On receipt of the entire payment, the actual physical possession of the plot in question shall be handed over to the

> petitioner. The petitioner shall, however, remain bound by all the terms and conditions of the letter of allotment."

It is a clear case where the respondents have failed to abide by any of the terms of contract. It did not deposit even the initial amount in time, there was no reason for it not to do so. Even interest payable on the said amount had not been paid. The appeal should, therefore, be allowed.

Civil Appeal arising out of SLP(C) No. 19833 of 2006
H.S.I.D.C. & ORS. v. M/s. Paradise Engineers & Anr.

A plot admeasuring 1012 sq. meters being plot No. 985, Sector-6, Manesar was allotted in favour of the respondent. He requested for a change of plot. However, a regular letter of allotment was issued on 23.1.2001. The final agreement was entered into on or about 20.9.2001. However, possession was delivered on 31.10.2001.

On the premise that respondent has not complied with the terms and conditions of the agreement, a notice was issued on 17.4.2003. Respondent, however, was asked to take physical possession of the land and also to apply for extension for the purpose of starting construction by

the Estate Manager of the appellant Corporation by a letter dated 24.4.2003. Pursuant thereto physical possession was said to have been handed over on 6.5.2003. Respondent, thereafter applied for grant of water connection on 1.7.2004. He submitted his building plan on 10.7.2004. Alleging that the ownership is in dispute, the plan was not sanctioned. The Town Planner of the appellant asked the Senior Manager of the Corporation to ascertain ownership status before the building plans could be cleared. From an internal communication dated 21.7.2004, however, it appears that building plans were not processed on the premise that ownership clearance had not come from the Corporation. By a letter dated 23.8.2004, respondent informed the concerned authority that the request of clearance of ownership status was being pursued with the authorities of the appellant.

A show cause notice for resumption of the plot, however, was issued on or about 21.9.2004 alleging that construction work had not been started within a period of one and a half year of the handing over of the possession and some amount was outstanding.

Respondents in their show cause, brought the aforementioned fact to the notice of the concerned authority of the appelalnt. It was requested

that the excess period for starting construction may be waived by imposing some penalty. An assurance was given to start construction on clearance of building plan and ownership status. It was pointed out that the sum of Rs. 14,30,940/- had already been deposited.

Respondent filed a further reply on 22.12.2004. No opportunity of personal hearing was granted. By an order dated 7.3.2005, an order of resumption was issued. However, despite the same, letters were written by the appellant communicating the respondent in respect of certain errors in the building plans as would appear from the letters dated 8.4.2005 and 10.11.2005.

Building plans were re-submitted by the respondent on 14.12.2005 whereto again some defects were pointed out therein. In the meantime, the appellant preferred an appeal which was dismissed by the Commissioner by an Order dated 16.2.2006.

A Writ Petition was filed which by reason of the impugned judgment has been allowed.

In the Writ Petition inter alia a contention was raised that the appellant had regularized the delay by extending the period of construction even for a period of four years in favour of the parties named therein which was not denied or disputed. It claimed parity with the decision of the High Court in case of M/s. Jassi Designs Versus Managing Director, HSIDC and Others being C.W.P. No. 4530 of 2005. The SLP preferred thereagainst has been dismissed.

Mr. Prasenjit Keswani, the learned counsel appearing on behalf of the respondent would submit;

(i) The principles of natural justice have not been complied with as no opportunity of personal hearing was given to it. The order of resumption did not contain any reason, there is nothing to show that the points raised deserved due consideration at the hands of the concerned authorities.

(ii) The respondent had been discriminated with insofar as the persons similarly situated had been granted extension even for a period of four years and thus the respondent was not meted with equal treatment.

(iii) Appellants could have cleared the building plan as the same was filed within the stipulated period.

(iv) Appellant cannot take benefit of their own wrong.

(v) All dues with interest have already been paid.

In view of clause 10 of the contract, the respondent being not permitted to transfer the land, it was bound to engage itself only in industrial activity wherefor the allotment was obtained.

In this case, the respondent has clearly been discriminated against. Appellant's action is clearly unfair and unreasonable. In any event, it has waived its right. Furthermore, it was a case where the principles of natural justice should have been complied with.

The High Court in, this case, in its impugned judgment has taken care to see that the object for grant of allotment were fulfilled being promotion of industrial growth.

Applying the principles of law as indicated hereinbefore, we are of the opinion that no case has been made out for our interference with the impugned judgment. This appeal is, therefore, dismissed.

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment dated 29.8.2001 at IMT, Manesar. Thereafter, a final Agreement was entered into between the parties on 24.9.01. On 4.11.01, physical possession was offered to the respondent, which was not taken. Allegedly, no construction was started by the respondent.

On 16.7.02, the appellant issued a show cause notice to the respondent for its failure to take possession and set up the industrial unit.

Respondent vide its letter dated 24.2.03 requested the appellant for handing over the possession. In response thereto, the respondent was asked to clear the outstanding dues in regard to the second installment. Subsequently, the appellant by its letter dated 14.5.03, asked the respondent to attend its office to take over the possession of the plot. Despite being handed the possession on 17.6.03, no construction was commenced by the respondent. On 29.10.03, a show cause notice was issued to the respondent for failure to commence construction. Respondent vide its letter dated 7.11.2003, requested for six months extension. Thereafter, on 7.10.2004, a show cause notice was issued to

the respondent as to why an order of resumption should not be passed against him. On the failure of the respondent to satisfy the concerned authority with regard to the delay in commencement of the construction, the plot was ordered to be resumed vide letter dated 28.2.05. The resumption order was challenged before the Commissioner of Industries, who, vide its order dated 13.1.2006, dismissed the same.

Feeling aggrieved by the order, the respondent herein filed a Writ petition before the High Court. The High Court by its order dated 28.7.2006, allowed the said Writ Petition and quashed the order of resumption.

Respondent had already appointed an architect for construction of the building. It had already started constructions. The fact that it was the Department which did not grant any license. The Appellate Committee, however, did not consider this aspect of the matter at all and thus the appellate orders suffered from total non-application of mind.

This Appeal is, therefore, dismissed.

We may now consider the cases where the High Court passed an order without assigning sufficient and cogent reasons. It did not arrive at a finding of fact that the action on the part of the appellants was unfair and unjust. We intend to notice the fact of these matters separately.

Civil Appeal arising out of SLP (C) No. 16541 of 2006
HSIDC v. S.R. Polysteel

Respondent applied for and was allotted an industrial plot in Industrial Estate IMT, Manesar, by the Appellant Corporation. Allegedly, a dispute arose as regards handing over of the actual possession of the said plot. Respondents contend that the entire 1st installment along with interest was duly paid within the stipulated time except for delay of 22 days. Indisputably, the appellant offered the respondent possession of the plot and asked to commence construction by its letters dated 19.12.2001, 9.8.2002 and 11.11.2003. Respondents contend that though a request was made to hand over possession by its letter dated 2.8.02 however, the same was not granted.

Two show-cause notices dated 1.3.05 and 19.5.05 were issued by the appellant to the respondent. After giving an opportunity of personal hearing to the respondent, the said plot was resumed on 7.7.05.

Respondent filed a Writ Petition before the High Court which was disposed of on 8.08.2006 directing the allottee to appear before the Appellate Authority. Thereafter, the appellate authority dismissed the said appeal. Respondent then filed a Writ Petition before the High Court. The High Court while allowing the petition quashed the resumption order and directed the respondent to complete the construction of the industrial building within a period of six months from the date of offer of the possession of the plot.

Civil Appeal arising out of SLP (C) No. 16708 of 2006
HSIDC v. M/s. Dulari Exports

Respondent applied for and was allotted an industrial plot vide its allotment letter dated 14.6.2000 at IMT, Manesar. On 14.8.2000, a Regular Letter of Allotment was issued to the respondent which inter-alia required it to commence construction of the building within a period of one year and commercial production within a period of three years from the date of offer of possession. The said clause was also incorporated in an Agreement dated 8.9.00 entered into between the two parties. Indisputably, on 24.12.01, the appellant issued a receipt for acceptance of three demand drafts to the respondent towards payment of the installments. On 8.1.03, a show cause notice was issued by the appellant

to the respondent regarding the failure to set up the industrial unit. On 1.1.04, a show cause notice was issued to the Respondent as to why the said plot should not be resumed in view of non-commencement of construction and non-payment of the 4th and 5th installments. Being dissatisfied by the reply so rendered by the respondent, the appellant gave the respondent an opportunity of retaining the plot by allowing him to convey his acceptance to buy the plot at the current price of Rs. 2200/- per sq. meter.

Aggrieved by the order of resumption, the respondent preferred an appeal before the Commissioner of Industries on 9.2.04. The said appeal was rejected by the Commissioner on the ground that the order of resumption was not final. Aggrieved by the two orders, the respondent filed a Writ Petition in the High Court.

The High Court while dismissing the Writ Petition on the ground that an appeal was pending before an appropriate authority, however allowed the respondent to file its objections against the order of resumption. On 26.2.04, the respondent filed its objections. On 23.11.2004, the High Court dismissed the Writ Petition directing the appellant to consider and dispose off the objections. On 27.6.2005, the

objections were dismissed by the appellant on the ground that the said plot had become liable for resumption. However, before resumption, an opportunity was given to the respondent to retain the plot at the current price of Rs. 2200/- per sq. meter. The same having not being accepted by the respondent, the objections were rejected by the appellant and the amount was refunded as per the terms of the Agreement. Aggrieved by the said order, the respondent preferred an appeal before the Commissioner. On 12.7.05, the appellant issued a letter to the respondent intimating the withdrawal of the possession of the plot. Aggrieved by the order and during the pendency of the appeal before the commissioner, the respondent filed a Writ Petition before the High Court on 18.7.2005. On 8.5.2006, the High Court without going into the merits of the case, allowed the Writ Petition.

Civil Appeal arising out of SLP (C) No. 16711 of 2006
HSIDC v. Gopal Chand Kapoor

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment dated 26.6.2000 at IMT, Manesar. An Agreement containing the terms and conditions of the allotment was executed between the two parties on 12.9.2000. Physical possession of the plot was taken over on 28.2.2003.

Civil Appeal arising out of SLP (C) No. 17426 of 2006
HSIDC v. Prateek Industries

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment dated 22.10.1998 at Growth Centre Investate Bawal, District Rewari. Physical possession of the plot was offered on 21.5.02. However, the respondent failed to take over the possession. On 21.4.04, the appellant issued a show-cause notice to the respondent directing him to start commence construction within a period of two years and to implement the project on or before 21.5.05. The respondent intimated the appellant that the construction would start immediately and requested for a three year extension period. On 17.1.2005, the appellant issued a show-cause notice to the respondent for delay in taking the physical possession of the plot and for non-commencement of

construction. Vide its letter dated 31.1.05 the respondent informed the appellant that due to loss in its business, they were unable to continue industrial activity and had decided to surrender the plot. It thus requested for a refund. On 25.2.06, the respondent requested for a personal hearing. After hearing the respondent in person, the appellant passed an order of resumption. Aggrieved by the said order, the respondent filed a Writ Petition before the High Court. By its order dated 25.8.06, the High Court set aside the Resumption order.

Civil Appeal arising out of SLP (C) No. 18011 of 2006
HSIDC v. G.M. Precision

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment (RLA) dated 13.3.02 at IMT, Manesar. On 12.4.02, a final Agreement was entered into between the parties incorporating the terms and conditions of the allotment letter. On 18.11.2003, the respondent took physical possession of the plot. On 2.11.04, a show-cause notice was issued to the respondent on account of its failure to commence construction and default in making the payment of the 4th and 5th installments. Due to unsatisfactory reply of the respondent by his letter dated 14.12.04, the appellant resumed the plot by its order dated 18.2.05. Aggrieved by the said order, the respondent on

11.11.1999 filed an appeal before the Financial Commissioner Industries. The said appeal was dismissed by the commissioner on the basis that it was devoid of any merit. Feeling aggrieved by the order of resumption and the order dismissing the appeal, the respondent filed a Writ Petition before the High Court. By an order dated 7.8.06, the High Court set aside the order of resumption.

Civil Appeal arising out of SLP (C) No. 2331 of 2007
HSIDC v. Matesh Kumar Katyal

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment (RLA) dated 9.4.01 at Kundli Industrial Estate. On 11.04.01, a final agreement was entered into between the parties incorporating the terms and conditions of the allotment letter. Vide its letter dated 3.5.01 the appellant offered the respondent the physical possession of the plot. On 24.12.03, the appellant issued a show-cause notice to the respondent for failure to commence construction as well as commercial production within the stipulated time. Respondent on grounds of illness of his mother and other financial constraints requested for an extension to commence construction. Vide its letter dated 18.1.05 the appellant passed an order of resumption of the plot against the respondent and refunded his cheque after making the

necessary deductions. Aggrieved by the said order, the respondent on 14.1.05 filed an appeal before the Financial Commissioner Industries. Vide its letter dated 28.8.06, the appellant informed the respondent that the commissioner had dismissed his appeal by an order dated 1.8.06 on the ground that it was devoid of any merit. Being aggrieved by the order of resumption and the order dismissing the appeal, the respondent filed a Writ Petition before the High Court. On 5.12.06, the High Court set aside the order of resumption.

Civil Appeal arising out of SLP (C) No. 2702 of 2007
HSIDC v. At Home India P. Ltd.

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment (RLA) dated 24.5.04 at IMT, Manesar. Allegedly, the petitioner requested the appellant vide its letters dated 15.6.04 and 05.7.04 to change the site of the plot on the ground that the area where it was so situated was not developed. Allegedly, on 19.8.04, the respondent met the appellant for the change of plot who were then informed that the plot could not be changed. On 22.7.04, the RLA lapsed. On 23.8.04, the respondent remitted 15% of the cost of the plot. Vide its letter dated 12.1.05, the appellant cancelled the allotment and refunded the amount paid by the respondent on the ground that he had failed to

comply with clause 3 of the Allotment letter providing for the payment and thus the RLA had lapsed automatically. On 19.1.05, the respondent requested the appellant to reconsider his case. Vide its letter dated 21.3.05 the appellant informed the respondent that his request had been rejected and refunded the amount so paid. Aggrieved by the said order, the respondent preferred an appeal before the Commissioner of Industries which by its order dated 13.1.06, dismissed the appeal. Aggrieved by the order of the commissioner, on 4.9.06, the respondent filed a Writ Petition before the High Court. The High Court by its order dated 5.12.06 while allowing the Writ Petition, quashed the letter dated 12.1.05 and the appellate order on the premise that the respondent had always showed his eagerness to initiate construction and the delay in making the payment had been on account of a genuine belief by the respondent that the request for an alternative plot was pending before the appellant.

Civil Appeal arising out of SLP (C) No. 2343 of 2007
HSIDC v. RMDK Projects

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment (RLA) dated 23.1.01 at IMT, Manesar. Thereafter, a formal Agreement was entered into between the parties incorporating the terms and conditions of the RLA. Allegedly, the

respondent made various requests to the appellant for delivering the physical possession of the plot after making necessary developments. On 19.12.01, the appellant issued a letter thereby offering the respondent physical possession of the plot. On the other hand, on 24.2.03, the appellant issued a notice to the respondent to show-cause why the plot should not be resumed on account of its failure to comply with the terms and conditions of the allotment letter. Subsequently, two more show-cause notices dated 13.10.03 and 8.12.03 were issued. Allegedly, an authorization letter dated 10.2.04 was issued to the respondent for taking over the physical possession. Allegedly, the respondent by its letter dated 4.2.04 requested the appellant to hand over the possession of the plot. Thereafter by its letter dated 15.2.05, the respondent gave an undertaking to the appellant to commence construction immediately, if it delivered the possession of the plot. On 7.2.05, the appellant issued a notice to the respondent to show-cause as to why the plot should not be resumed in light of the default made. On being unsatisfied by the reply of the respondent vide its letter dated 15.2.05 to the show-cause notice, the appellant passed an order of resumption of the plot on 7.7.05. Being aggrieved by the said order, the respondent on 5.08.05 preferred an appeal before the Commissioner of Industries. Vide its letter dated 19.4.06, the appellant informed the respondent that the commissioner had

dismissed his appeal by an order dated 13.1.06 on the ground that it was devoid of any merit. Being aggrieved by the order of resumption and the order dismissing the appeal, on 25.6.06, the respondent filed a Writ Petition before the High Court. The High Court, by its judgment and final order dated 27.11.06, set aside the order of resumption.

Civil Appeal arising out of SLP (C) No. 2891 of 2007
HSIDC v. Trikuta

Respondent applied for and was allotted an industrial plot vide its Regular Letter of Allotment (RLA) dated 30.6.99 at Industrial Estate, EPIP, Kundli. On 18.1.00, on a request made by the respondent, the allotment of the said plot was changed due to a change in the constitution of the respondent's company. Subsequently, on 20.1.00, a supplementary agreement was entered into between the parties. As per the terms of the new Agreement, the respondent was to commence construction within a period of six months. Appellant issued two show-cause notices to the respondent dated 14.8.00 and 26.2.01 for its failure to commence construction. Vide its letter dated 7.11.01, the respondent sought extension of time to start construction and commercial production.

Upon the new Industrial Infrastructure Development Policy coming into force, the appellant extended the time for implementation of

the project to three years i.e. up to 29.6.02. Allegedly, the respondent made several requests by its various letters dated 26.2.03, 07.5.03, 18.5.03, 20.6.03 and 29.8.03 for extension of time which was purportedly rejected or not considered by the appellant. On 22.1.03, a show-cause notice was issued by the appellant to the respondent to explain why a resumption order should not be passed for non-erection of the building within the stipulated time. After being given a personal opportunity of hearing on 18.6.03, the appellant vide its letter dated 27.8.03 resumed the plot and requested the respondent to collect the cheque of the amount deposited by him. Allegedly, the order of resumption was passed against the respondent without a personal hearing. Being aggrieved by the said order, the respondent on 28.9.03 preferred an appeal before the Commissioner of Industries. Vide its letter dated 28.8.06, the appellant informed the respondent that the commissioner had dismissed his appeal by an order dated 1.8.06 on the ground that it was devoid of any merit. Being aggrieved by the order of resumption and the order dismissing the appeal, on 9.10.06, the respondent filed a Writ Petition before the High Court. The High Court, by its judgment and final order dated 12.12.06, set aside the order of resumption.

In all these cases, it is difficult to uphold the order of the High Court. But a general offer was made by the learned Additional Solicitor General that those who intend to obtain reallotment of plot may do so on payment of the price as per the current rate as on the date of the order of the High Court.

Before us, several allottees had categorically made a statement that they are ready and willing to pay the prevailing price as fixed by the appellant- Corporation. Keeping in view the facts and circumstances of this cases, we are of the opinion that in the event, respondents offer the prevailing price as on the date of judgment of the High Court, the plot, in question, shall stand re-allotted and should be subject to the same terms and conditions. Such reallotment may be made even in cases where we have found the order of the High Court to be unsustainable.

Respondents shall deposit the amount within six weeks from date. Appellant shall hand over the possession of the plot, in question, within four weeks thereafter. The highest executive of Appellant – Corporation shall see to it that the order of this Court is complied with. It is, however, made clear that in the event of failure on the part of the respondents concerned in making payment in terms of this order, it

would be open to the appellant to take recourse to such action as is permissible in law.

Subject, of course, to the directions issued in individual cases, the appeals are disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

…….J.
[S.B. Sinha]

..……J.
[V.S. Sirpurkar]

New Delhi;
May 16, 2008