***Before M.M. Kumar & Jora Singh, J.J.***

**M/S JAMES HOTELS LTD.,—*Petitioner***

**versus**

**U.T. CHANDIGARH AND OTHERS,—*Respondents***

C.W.P. No. 10814 of 2008

24th February, 2009

***Constitution of India, 1950—Art. 226—Inordinate delay on part of company to raise construction on site—Rule 16 requires construction to be raised within a period of 3 years from date of allotment and possession—Company failing to complete construction despite specific prayer for period of one year—Order of resumption—Neither in public nor private interest—Huge expenditure incurred on hotel building—Whether petitioner Company deserves to be granted further extension of time for completion of construction of hotel building—Petitioner deserves to be granted more breathing time—Conduct of petitioner after passing of the order by Revisional authority also displaying its good intention to complete the project—Adequate financial resources at their command—Apart from five and a half months taken by Estate Office for sanctioning site plans, a further period of six months deserves to be granted.***

*Held*, that the order of the Advisor can be summed up to say that the petitioner did not lack *bona fide* and that it was to gain any advantage by delaying erection of the six storey building by investing in the purchase of land through an open auction. If resumption was to continue then it would result into demolition and reconstruction, which is marred by legal proceedings which has already consumed six years. He has hoped in his order that the Estate Officer would ensure that all steps on their part are taken timely without any malice to harm the petitioner and that the extension of one year was being granted in larger public interest and the condition of completing the building within the one year was not to be avoided either by change of ownership or by change of management etc. or any other event. The period of five and a half months for sanctioning the site plans, which has been consumed

by the respondent Administration deserves to be added to the period of one year granted by the Advisor. The apprehension expressed by the Advisor found basis in the aforesaid delay caused by the Estate Office. Therefore, there was no warrant in reviving the resumption order against the petitioner by virtue of principle laid down under Section 8-A of the 1952 Act as well as the view expressed by the Advisor in his order dated 2nd May, 2007.

(Paras 50 & 51)

Further held, that the petitioner deserves to be granted more breathing time, especially when their *bona fides* are established before the revisional authority i.e. Advisor. The conduct of the petitioner after the passing of the order by the Advisor also display its good intention to complete the project. They have adequate financial resources at their command. Therefore, we feel that apart from five and a half months taken by the Estate Office for sanctioning the site plans, a further period of six months deserves to be granted.

(Para 58)

Further held, that it is true that the order of Advisor dated 2nd May, 2007 is reasonable, balanced and equitable, however, we cannot lose sight of the fact that the Advisor himself contemplated and cautioned against any delay by the Estate Office, which, in fact, had happened. The order of the Advisor itself may answer the principle of proportionality or so to say the *Wednesbury* rule but the subsequent events cannot be ignored. As far as the petitioner is concerned, it has come up to the expectation of the revisional authority because the order repeatedly expressed an apprehension that the resumption may result into alienation paving way for excessively high profits and delaying the construction of the hotel, which would defeat the very object of completion of City Plaza and ensuring compliance with the rules. There is neither any alienation nor any intentional delay. The facts further show that the intentions of the petitioners are *bona fide* as it has raised a loan of Rs. 45 crores and had worked day and night to complete the project. Even partial completion certificate was issued albeit withdrawn.

(Para 59)

Rajive Atma Ram, Senior Advocate, with Sunish Bindlish, Advocate, and Daman Dhir, Advocate, *for the petitioner.*

Anupam Gupta, Sr. Standing Counsel U.T. Chandigarh, with Ashish Rawal, Advocate *for the respondents.*

***M.M. KUMAR, J.***

(1) After availing statutory remedies of appeal and revision and various rounds of litigation before the statutory departmental authorities, the petitioner Company has filed the instant petition under Article 226 of the Constitution challenging orders dated 23rd May, 2008 (P-13 & P-14), 26th May, 2007 (P-15), 5th June, 2008 (P-16) and 25th June, 2008 (P-14/A). A further prayer has been made for commanding the revisional authority to pass orders granting extension of time for completing construction at site in question or in the alternative to quash the offending portion of order dated 2nd May, 2007 (P-3) passed by the revisional authority fixing one year period for completion of construction of the building. Still further another prayer has been made for issuance of direction to decide the appeal and application for stay filed by the petitioner Company.

(2) Brief facts of the case are that in pursuance to an auction held on 1st August, 1985, Hotel Site No. 10, Sector 17, Chandigarh (for brevity, 'the site'), was allotted in favour of the petitioner Company on lease hold basis for a period of 99 years,—*vide* allotment letter dated 23rd January, 1986. as per conditions for the allotment letter, 75% of the balance price was to be paid in three equal annual installments alongwith interest @ 7% per annum. The construction of the building was to be accomplished within three years from the date of auction. The possession of the site was handed over to the petitioner Company on 24th January, 1986. On 25th January, 1986, a lease deed was also executed between the parties. The petitioner Company could not pay the installments and ground rent within the stipulated time. On 13th December, 2001, the Estate Officer-respondent No. 3 after issuance of show cause notice etc. passed orders of cancellation of the lease of the site. The appeal preferred by the petitioner Company was dismissed by the Chief Administrator-cum-Appellate Authority-respondent No. 2 on 7th May, 2004.

(3) Feeling aggrieved, the petitioner Company filed a revision petition before the Advisor to the Administrator-respondent No. 1, which was allowed,—vide order, dated 8th December, 2004 (P-1). The revisional authority-respondent No. 1 restored the site subject to the condition that the petitioner Company would deposit the outstanding amount within one month of the supply of account statement by the Estate Officer failing which the order of the Chief Administrator was to spring back in operation. It was also directed to accept two demand drafts of Rs. 80,00,000 which were presented by the petitioner Company during the course of revision petition. Since the issue of non-construction/ non-completion of the building was not covered in the order, dated 8th December, 2004 (P-1), the petitioner Company preferred a review application before respondent No. 1, which was dismissed.

(4) On 5th September, 2005, the Estate Officer-respondent No. 3 issued a notice under Rule 20 of the Chandigarh Lease Hold of Site and Building Rules, 1973 (for brevity, 'the Rules'). According to the notice the petitioner Company was to show cause why the lease of the plot be not cancelled by pleading the ground that the building has not been completed within three years from the date of auction. The petitioner Company sought extension of time uptil 31st March, 2006 enabling it to complete the construction. For the purpose of grant of extension, the Estate Officer-respondent No. 3 raised a demand of Rs. 1.37 crore as extension fee on 24th October, 2005, which was challenged by the petitioner Company by filing an appeal. During the pendency of appeal, the Estate Officer again resumed the site,—*vide* order dated 15th February, 2006 (P-1/A). The petitioner Company then filed yet another appeal against the order dated 15th February, 2006, which was dismissed by the Chief Administrator-respondent No. 2 on 7th March, 2007 (P-2).

(5) Challenging order dated 7th March, 2007 (P-2), the petitioner company preferred a revision petition before the Advisor-respondent No. 1, which was allowed,—*vide* order, dated 2nd May, 2007 (P-3). The site was restored back subject to the condition that the building was to be completed within one year from the date of order failing which the site was to be resumed. The petitioner Company was also directed to pay the extension fee as determined by the Estate Officer.

The petitioner Company deposited a sum of Rs. 1,99,82,655 on account of extension fee on 2nd May, 2007 itself. On 3rd May, 2007, the petitioner Company requested to the Estate Officer to intimate any other dues pending against it so that the same could also be deposited (P-4).

(6) The Site Plans earlier submitted by the petitioner Company were not found answering the latest building bye-laws, therefore, the petitioner Company submitted the revised building plans for sanction on 18th May, 2007. It is claimed that the revised building plans were not accepted, which sent through Speed Post on 19th May, 2007 alongwith a covering letter (P-5). On 23rd May, 2007 (P-6), a reminder was sent by the petitioner Company to the Estate Officer regarding sanctioning of revised building plans at the earliest. It was also requested to allow the time limit of one year from the date of approval of the building plans and not from the date of passing of order, dated 2nd May, 2007 passed by the Advisor. Another letter was sent by the architect of the petitioner Company on 9th August, 2007 (P-6A). On 28th September, 2007 i.e. after four and half months the respondents approved the revised building plans and sanction was granted for erection of the building (P-7). The Estate Officer-respondent No. 3 also required the petitioner Company to deposit another sum of Rs. 80,28,876 towards extension fee, which was payable upto 31st March, 2008,—*vide* order, dated 28th September, 2007 (P-8). The amount paid by the petitioner Company,—*vide* Cheque No. 182201 drawn on State Bank of India on 28th September, 2007 itself.

(7) It is claimed that despite severe financial crunch, debts and various rounds of litigation, the promoters of the petitioner Company raised approximately Rs. 20 crores from their personal resources and repaid all of its debts. The petitioner Company also raised a loan of Rs. 45 crores from the State Bank of India in the month of August, 2007 for which sanction was granted. The Estate Officer granted permission to mortgage the hotel site to State Bank of India,—*vide* order, dated 2nd November, 2007 (P-9). Thereafter, the petitioner Company proceeded for completion of the building at site by setting in operation in full swing. In para 24 of the petition, the petitioner Company has given the details regarding engagement of consultants, civil works status from 2nd September, 2007 to 15th November, 2007 and also placed

on record some photographs of interior and exterior of the building (P-10/A).

(8) In February 2008, the petitioner Company again submitted revised building plans for approval by adding 6th floor and double basements at the rear block. The approval and sanction for erection of building as per the aforementioned revised building plans was accorded by the respondents on 31st March, 2008 (P-10). It is claimed that in the month of March 2008 building was almost near completion except for furnishing and minor works. Therefore, the petitioner Company applied for grant of 'partial occupation certificate' as per Rule 18(c) of the Rules.

(9) On 29th April, 2008, the Assistant Estate Officer was requested to carry out inspection of the building (P-11). It has been asserted that after the site was inspected the matter was considered by the Advisory Committee of the respondents and it was decided to grant 'partial occupation certificate' for one year only. On 22nd May, 2008, the Estate Officer exercising the powers of Chief Administrator also granted permission for sewerage connection and permission for occupation and use of the building as per Rule 18(6) of the Rules (P-12). The partial occupation certificate was granted for one year in respect of ground floor of Block-B, ground floor, first floor and second floor of Block-A. The petitioner Company also deposited a sum of Rs. 10,82,250 towards composition fee.

(10) However, on 23rd May, 2008 (P-13), the Estate Officer passed an order under Rule 117(2) of the Rules, withdrawing the 'partial occupation certificate' dated 22nd May, 2008 (P-12). No reasons for withdrawal were assigned nor any show cause notice in this regard was issued. On the same date, another cancellation order was passed by the Estate Officer-respondent No. 3 on the ground that the petitioner Company has failed to complete the site in terms of order dated 2nd May, 2007 passed by the Advisor to the Administrator (P-14). The order reads thus :—

> "Reference order of the Adviser to the Administrator, dated 2nd May, 2007. You were required to complete the construction

of the building by 1st May, 2008 in compliance to the above orders. However, you failed to complete the construction within the stipulated time period. Therefore, the cancellation orders passed by the Estate Officer, dated 15th February, 2006 have become operative."

(11) The petitioner Company immediately filed an appeal alongwith an application for stay against the order dated 23rd May, 2008, which is stated to be pending and listed before the Appellate Authority for 28th January, 2009. The application filed by the petitioner Company before the Appellate Authority for preponing the date of hearing has been rejected,—*vide* order, dated 25th June, 2008 (P-14/A).

(12) The composition fee of Rs. 10,82,250 has also been refunded back to the petitioner Company,—*vide* letter, dated 26th May, 2008 (P-15). On 5th June, 2008, the petitioner Company was directed to stop construction with immediate effect failing which action would be taken under the Public Premises Act (P-16).

(13) The petitioner Company has filed the instant petition claiming that delay in decision of the appeal would adversely affect its rights and it would also suffer monetary loss @ Rs. 63 lacs per month on account of re-payment of loans etc. The petitioner Company has also cited the example of adjoining hotel site which was initially allotted to M/s Indian Tourism Development Corporation Ltd. (a Government of India Undertaking),—*vide* allotment letter, dated 24th June, 1981. On 12th October, 1984, the lease of the said plot/hotel site was cancelled on the ground of non-construction. On 27th March, 1986, the revisional authority set aside the cancellation order, which was challenged in this Court by the Union Territory, Chandigarh by filing C.W.P. No. 15993 of 1996 **(Union Territory, Chandigarh** *versus* **Indian Tourism Development Corporation Ltd. and another).** The writ petition was dismissed on 5th December, 1997. Thereafter, period for construction was extended from time to time on payment of extension fee. Without even raising construction M/s ITDC Ltd. transferred the site to M/s Taj Group of Hotels, who raised the construction and became functional

only in the year 2005. In this manner, the ground of discrimination has been raised by the petitioner Company.

(14) When the petitioner Company originally filed the instant petition, this Court has passed an interim order, dated 1st July, 2008 that proceedings under the Public Premises Act shall remain in abeyance till the matter is heard and decided. On 22nd July, 2008, a short reply by way of affidavit was filed by the Assistant Estate Officer (P-17/A). After giving exhaustive status report of the site, it has been asserted that it was not possible for the petitioner Company to complete the building in a period of 7 to 8 months even if the work is to be carried out on war footing in two shifts by engaging separate work forces for different item of work on each floot. It was further mentioned that any further extension would completely impair and erode the sanctity of town planning in the city, more particularly in the City Centre, which was envisioned by Le Corbusier himself. It has been further emphasised that order dated 2nd May, 2007, was never challenged by the petitioner Company and the same is final between the parties. With regard to allegation of delay of 4½ months in approving the revised building plans it has been submitted that during this period the petitioner Company did not stop its construction activities at site and continued with the same and even made proposed changes without even waiting for the approval of the revised site plans. For this reason also composition fee was also imposed on the petitioner Company under Rule 5 of the Rules. Regarding issuance of 'partial occupation certificate' dated 22nd May, 2008, it has been mentioned that the same was issued inadvertently, overlooking the order, dated 2nd May, 2007 passed by the Advisor-respondent No. 1 (P-3) and accordingly withdrawn on the very next day,—*vide* order, dated 23rd May, 2008 (P-13).

(15) Controverting the assertions made in the aforementioned affidavit, a replication was filed by the petitioner Company on 7th August, 2008 projecting the efforts made and the actual status, which according to them is existing at the site. In sum and substance the petitioner Company has prayed that if some reasonable time is granted, it would complete the project (P-17/B). Since the issue of non-challenge of order dated, 2nd May, 2007 passed by the Advisor has been raised in the aforementioned affidavit filed by the Assistant Estate Officer, the

petitioner Company after permission of this Court filed amended writ petition challenging aforementioned order. The petitioner Company has also placed on record an application filed by it before the revisional authority seeking extension in time for raising construction (P-18).

(16) Short reply to the amended writ petition, dated 8th November, 2008 by the respondents and replication thereof dated 10th November, 2008 by the petitioner Company have also been filed. Apart from the factual position which has already been narrated above, only legal issues and various provisions of the Rules have been highlighted in the aforementioned short reply and replication, therefore, we deem it appropriate to deal with the same at appropriate stage in the succeeding paras.

(17) Mr. Rajive Atma Ram, learned senior counsel for the petitioner Company has raised various submissions before us. His first submission is that resumption of a property in respect of which possession has been delivered to the allottee is a measure which should be taken in rare cases, as has been laid down by a Full Bench of this court in the case of **Ram Puri** *versus* **Chief Commissioner, Chandigarh, (1)** and a Division Bench Judgment of this Court in the case of **Mai Ram Jain** *versus* **U.T., Chandigarh, (2).** He has pointed out that the view taken by the Full Bench that principle of proportionality would apply and one must avoid use of hammer to swat a fly, has also been favoured by Hon'ble the Supreme Court in the case of **Teri Oat Estates (P) Ltd.** *versus* **U.T., Chandigarh, (3).** Learned counsel has also placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of **M/s Gagan Food Processors** *versus* **U.T., Chandigarh, (4)** and argued that the power of resumption is not mandatory for the authority to be exercised in each and every case. In the aforesaid case, Hon'ble Supreme Court has held that the respondent should have given more time in that case to the allottee to deposit the deficit amount. He has also placed reliance on a Single Bench judgment of this Court

(1) AIR 1982 P&H 301
(2) 1989 PLJ 537
(3) (2004) 2 S.C.C. 130
(4) J.T. 2002 (Suppl. 1) S.C. 88

rendered in the case of **Brij Bhushan** *versus* **U.T., Administration, (5)** to argue that delay in completion of construction could not be imputed to the petitioner along and according to the aforesaid judgment it is on account of un-certain future of the city that such a delay has occurred. He has also submitted that the rules have carved out adequate room for adjusting delays by incorporating the formulas of extension fee, which are aimed at avoiding extreme and harsh action of resumption and forfeiture of the price paid. The aforesaid view is discernible from the judgment of this Court given by the learned Single Judge in the case of **Mrs. Sita Rani Gupta** *versus* **State of Haryana, (6)** and a Divison Bench judgment rendered in the case of **M/s Rashmani Exports** *versus* **State of Haryana (7).**

(18) Highlighting the facts of the present case, learned counsel has submitted that the whole price of the plot stand paid off and various charges on account of extension fee or building fee etc. have been deposited, which runs in crores of rupees.

(19) The second submission made by the learned counsel is that Rule 16 of the 1973 Rules, which contemplate the maximum time that could be granted for erection of building, is not mandatory. It is true that the initial period of completion of building given in the rule is three years but still the period could be extended. He has maintained that the date of completion of the building would be the date of receipt of application for permission to occupy the building as per the provisions of Rule 16 of the 1973 Rules. He has also submitted that according to the last proviso, the Administrator, U.T. in exceptional cases of hardship is competent to grant extension beyond the stipulated period on such conditions as he may consider fit and proper. Once the position of Rule 16 of the 1973 Rules is so plastic, learned counsel has maintained that grant of further period in the facts and circumstances of the present case would be well within the statutory power of the respondents and in any case extension in time for completion of construction was available as a matter of right up to 31st March, 2008

(5) 1987 (1) P.L.R. 598 (P&H)
(6) 1992 (2) RRR 417
(7) 1992 (2) RRR 96

in terms of Rule 16 of the 1973 Rules and no resumption order could have been passed prior to that date.

(20) He has then contended that the Advisor to the Administrator while exercising power of revisional authority,—*vide* order dated 2nd May, 2007 (P-3) has extended the time for a period of one year, which was wholly un-realistic and sticking to time schedule on one year was not mandatory. According to the learned counsel, period of five and a half months was consumed by the Estate Officer and other authorities in sanctioning the revised building plans submitted by the petitioner Company. The site plans were submitted on 19th May, 2007, which could be sanctioned only on 28th September, 2007 (P-7). He has maintained that the sanction accorded to the revised building plans is valid for five years as per the provisions of Rule 17 of the Punjab Capital (Development and Regulation) Building Rules, 1952 (for brevity, 'the 1952 Rules'). He has, thus, argued that period of four and a half months consumed by the respondents in sanctioning of site plans has to be set off from the period of one year, which have been illegally counted by the respondents from the date of the order i.e. 2nd May, 2007. As a second limb of the same very argument, learned counsel has submitted that the petitioner Company submitted the revised plans in February, 2008 but the same could be sanctioned after a period of one month. The aforesaid facts were brought to the notice of the respondents in the reminders sent by the petitioner Company on 23rd May, 2007 and 9th August, 2007. Moreover, the application of the petitioner Company for grant in extension of time is still pending consideration of the Advisor-respondent No. 1 (P-18), who is sitting tight over the matter without deciding the same.

(21) He has also argued that before passing the orders cancelling the lease deed on 23rd May, 2008 (P-14) and withdrawing the partial occupation certificate (P-13) by exercising the power under Rule 117(2) of the 1952 Rules, no opportunity of hearing was granted.

(22) Mr. Atma Ram has also maintained that the petitioner Company is committed beyond recall by mortgaging the plot to the State Bank of Patiala with the prior permission of the Estate Officer when it obtained loan amounting to Rs. Forty-five crores. More than

Rs. Twenty-eight crores have already been spent on the hotel site after passing of order by the Advisor on 2nd May, 2007 (P-3). The petitioner Company is stated to have spent a total amount of Rs. 51-0028-00 crores on the hotel project till date including a sum of Rs. 3,90,33,831, which stand paid to the Estate Officer on account of extension fee. He has maintained that the *bona fide* of the petitioner Company cannot be doubted. The petitioner Company has already completed substantial part of construction by spending huge amount and in such a case allotment of plot should not be cancelled. In that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Banarasidass Musadilal** *versus* **State of U.P., (8).** He has gone to the extent of submitting that in cases where 25% of the consideration amount was paid without paying any further installment and allotment was cancelled, Hon'ble the Supreme Court has allowed the restoration of allotment on payment of the entire amount in the case of **Jasbir Singh Bakshi** *versus* **U.T., Chandigarh (9).** According to the learned counsel the State should not be permitted to indulge in profiteering from a citizen, which cannot be the aim and object of a Welfare State. In that regard, he has placed reliance on a Division Bench judgment of this Court in the case of **Anil Kumar** *versus* **U.T., Chandigarh, (10).**

(23) He has then submitted that the construction of additional seventh floor in Block 'A' and an additional Block 'C', which comprised in twin basements and ground floor for parking were undertaken after passing of the orders, which cannot be included for fixing the time frame of one year in accordance with order dated 2nd May, 2007. Therefore, the aforesaid items have to be either viewed separately and if they are to be included as a part of the project then the period ought to be extended. He has also submitted that the petitioner Company is entitled to the benefit of Rule 8 of the Chandigarh Estate Rules, 2007 (for brevity, 'the 2007 Rules'), which do not prescribe maximum time limit for grant of extension and, therefore, there is adequate room left for grant of extension. In any case, learned counsel has submitted that Rule 21A of the 1973 Rules should have been invoked for granting relaxation

(8) AIR 1984 S.C. 408
(9) 2004 (3) R.C.R. 232 (S.C.)
(10) 2006 (2) R.C.R. (Civil) 211

because relaxing rule would be justified on account of exceptional circumstances operating in the present case and would serve larger public interest because if the lease of the site has been cancelled then under Rule 21 of the 1973 Rules the building has to be demolished, which would result into wastage of more than Rs. 51 crores spent by the petitioner Company on the site.

(24) His last submission is that the petitioner Company has been subjected to hostile discrimination as in the case of Indian Tourism Development Corporation huge time was granted for erection of the hotel by Taj Group of Hotels. He has drawn our attention to the attempt made by the U.T. Administration to challenge the orders passed by the Advisor and the petition was dismissed by a Division Bench (P-4A).

(25) Mr. Anupam Gupta, learned counsel for the respondents has vehemently opposed the submissions made by the learned counsel for the petitioner Company. He has argued that the order of Advisor to the Administrator, dated 2nd May, 2007 (P-3), passed in exercise of the revisional jurisdiction under the Capital of Punjab (Development and Regulation) Act, 1952 (for brevity, 'the 1952 Act') views the entire matter and problem of building construction, urban development and town planning in Le Corbusier's Chandigarh in a highly enlightened and principles perspective and it stands out both in its fairness and conformity with the law laid down by Hon'ble the Supreme Court including the doctrine of proportionality in **Teri Oat case** *(supra).* He has argued that enough is enough and the petitioner Company has been granted a lot of accommodation by working out the rules to the extremes and any further extension would completely erode the sanctity of town planning in the city, which involved City Centre of Sector 17, which was envisioned by Le Corbusier himself. According to the learned counsel, all the pleas which are now put forward before this Court, have been advanced before the Advisor when he passed order, dated 2nd May, 2007 (P-3). He has highlighted the conduct of the petitioner Company after passing of the order by the Advisor on 2nd May, 2007 because it did not take even the last and final extension of one year seriously and acted as if there was virtually no time limit for completion of the building. According to the learned counsel any further extension

to the petitioner would serve only to create or strengthen the impression that all time limits for completion of construction are notional or illusory and that there is, in the real and ultimate analysis, no accountability or sanction whatsoever for violation of such time limits however repeated, continuous and persistent they might be.

(26) Mr. Gupta has argued that the petitioner's financial resources, the investment claimed to have been made for the purpose of construction of the hotel or consequential financial loss claimed to have been suffered or projected for the future, cannot be the measure of the discipline and rigour of the law. The aforesaid argument, in fact, is violative of equality clause enshrined in the Constitution as it would permit classification based on wealth or financial/monetary resources. He has pointed out that extension of one year granted by the Advisor was firstly termed as too short and unrealistic and directory and not mandatory, which has substituted in the amended petition that it was impossible to undertake completion of the hotel building. Such arguments, according to the learned counsel are transparently specious, especially when the period of one year was granted to the petitioner Company following its own undertaking that it would complete the building within one year, as is evident from paras 6 and 17 of the order dated, 2nd May, 2007 (P-3).

(27) He has then submitted that Rule 16 of the 1973 Rules, on which reliance has been placed by the petitioner, must be read subject to the quasi-judicial exercise of power under Sections 8-A and 10 of the 1952 Act. Learned counsel has also submitted that partial occupation certificate was inadvertently issued on 22nd May, 2008, which overlooked order dated 2nd May, 2007 (P-3) passed by the Advisor and the same was withdrawn within 24 hours on 23rd May, 2008.

(28) Learned counsel has then argued that there is no power of review under the 1952 Act, as has been held b y a Division Bench of this Court in the case of **Maharani Deepinder Kaur** *versus* **U.T. Chandigarh (11).**

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(11) 1996 (3) PLR 598

(29) Mr. Gupta learned counsel for the respondents has then argued that judicial review of administrative order on the basis of the doctrine of proportionality and Wednesbury principle, has to be examined in view of various judgments of Hon'ble the Supreme Court including **Tata Cellular** *versus* **Union of India, (12),** which laid down that Wednesbury principle would be attracted to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have reached such a decision. According to the learned counsel, by no stretch of reasoning, order of the Advisor could be considered as outrageous in its defiance of logic and on the contrary is an eminently logical, sensible and fair decision that deserves to be upheld by this Court.

(30) After hearing learned counsel for the parties, perusing the paper book with their able assistance and various statutory provisions and judgments, the question which arises before us is whether the petitioner Company deserves to be granted further extension of time for completion of the construction of hotel building which has been substantially built.

(31) We would endeavour firstly to notice the facts which weigh in favour of the petitioner Company. The petitioner were highest bidder and paid 25% of the amount. The allotment letter was issued on 23rd January, 1986. The possession of the site was given on 24th January, 1986 and lease deed was executed on 25th January, 1986. The revision filed by the petitioner Company challenging order, dated 13rd December, 2001, passed by the Estate Officer-respondent No. 3, cancelling the lease deed, was allowed on 8th December, 2004 (P-1). The petitioner Company had paid a sum of Rs. 80 lacs during the pendency of the revision petition. It then filed a review petition with a prayer for extension of time for construction, which was dismissed.

(32) On 5th September, 2005, the petitioner Company filed another petition before the Estate Officer under Rule 20 of the 1973 Rules. On 24th October, 2005, it was asked to deposit Rs. 1.37 crores on account of extension fee. The petitoner Company went before the

(12) (1994) 6 S.C.C. 651

Chief Administratior in appeal, which eventually culminated in passing of the order dated 2nd May, 2007 (P-3) by the Administrator granting a period of one year. The petitioner Company accordingly deposited a sum of Rs. 1,99,82,655. The concluding paras 19, 20 and 21 of the Advisor are extracted below for the purpose of showing the condition of the rules and the flexibility of the direction issued :—

> "19. I find it difficult to understand the contention of the Estate Office that the petitioners cannot claim extension as a right. Once a rule is made, anyone to whom the rule applies can claim the benefit of the rule as a right if he fulfills the conditionss attached to the rule. Any other interpretation would be repugnant to the concept of rule of law.
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> 20. Though neither the petitioner (understandably), nor the respondents (surprisingly) have mentioned the matter, I am all too aware that the termination of resumption proceedings would add substantial value to the property in question. The possibility of the property being aliented and there being a further delay in the construction of the hotel needs to be guarded against.
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> 21. In view of the foregoing discussion I order as follows :—
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> (i) The site is restored to the petitioners for the completion of the hotel building subject to the condition that the building shall be completed within one year of the date of this order, failing which the site shall resumed. Extension fees as determined by the Estate Office shall be paid by the petitioners. I expect and am confident that the Estate Officer will ensure that his office does not act out of a sense of injured amour propre and that there is no undue delay in the communication of amounts payable by the petitioners or any other associated matter.

(ii) a major consideration for this order has been the satisfaction of a public purpose. It is therefore clarified that no events subsequent to this order (including change of ownership, change of management etc.) shall affect the condition of completion of building within one year of the date of this order.

(iii) The Chief Administrator is advised to place, as soon as possible, rules and guidelines (as appropriate) in the spirit of the Supreme Court's judgement in Teri Oat's case on the subject of resumption before the Administrator of the Union Territory for his consideration and for seeking his guidance. The rules should be transparent to the public and the functionaries of the State responsible for administering the rules, should honour the principles of predictability and proportionality, and aim to minimize, if not altogether eliminate, the discretionary powers, implicit or explict, exercised by the Estate Office." (emphasis added)

(33) The other facts which have come on record are that a period of four and a half months time was taken for according sanction to the revised site plans submitted by the petitioner Company; that the petitioner Company submitted revised site plans on 19th May, 2007 and the sanction was granted only on 28th September, 2007 (P-7). The sanction to the revised plans is stated to be valid for a period of five years i.e. till the year 2013 and moreover there was increase in the built up area when the revised plans were also sanctioned on 31st March, 2008 by the respondents by making addition of two besements and sixth floor of the building along with banquet hall. Moreover, the petitioner Company was asked to deposit a sum of Rs. 80,28,876 in pursuance of order dated 2nd May, 2007, only on 28th September, 2007 and the amount was payable up to 31st March, 2008. The petitioner Company, however, paid the aforementioned amount on 28th September, 2007 itself. It has further come on record that prior permission was

granted to the petitioner Company for mortgaging the plot on 2nd November, 2007 (P-9) for obtaining loan of Rs. 45 Crores from the State Bank of Patiala, which it has availed.

(34) The huge civil work at site has been executed , which has not been denied by the Estate Officer in his short reply. However, he has stated some work has been left out. The status of civil works at the site is evident from the un-controverted averments made by the petitioner Company in para 24, which reads thus :—

"CIVIL WORKS STATUS

| S. No. | Activity | Start | Status |
|---|---|---|---|
| 1 | Brick Work (II, III, IV, V Floor) | 2.9.2007 | Complete |
| 2 | Plaster Work (II, III, IV, V Floor) | 10.9.2007 | Complete |
| 3 | Stab VI Floor | 1.1.2007 | Complete |
| 4 | BW (VI Floor) | 7.1.2007 | Complete |
| 5 | BW (Basement) Block A | 8.11.2007 | Complete |
| 6 | BW (Plaster) | 15.11.2007 | Complete |
| 7 | Existing lift well for Guest Elevator | 15.9.2007 | Repair Work-Complete |
| 8 | Lift well for service Stair case | 15.9.2007 | Complete |
| 9 | Stair FBI Side | 1.9.2007 | Complete |
| 10 | Stair Taj Side | 1.9.2007 | Complete |
| 11 | Guest Stair Case | 15.11.2007 | Complete upto 4th Floor" |

(35) The aforesaid position has also been highlighted by photographs (P-10A). The petitioner Company was also issued partial occupation certificate under Rule 18(c) of the 1952 Rules (P-11) after the site was inspected by the officials of the respondents in March, 2008 although claimed to be issued inadvertently. On 22nd May, 2008, sewerage connection under Rule 18(c) of the 1952 Rules and permission for occupation and use of the building have been issued (P-12). A perusal of the letter would show that partial occupation certificate was granted for one year for ground floor of Block-'B' and ground floor, first floor and second floor of Block 'A'. In lieu of the aforesaid letter, the petitioner Company had deposited an amount of Rs. 10,82,250 towards composition fee.

(36) The facts which weigh in favour of the respondents are that the site was allotted to the petitioner Company by granting 99 years lease *vide* allotment letter, dated 23rd January, 1986 and it was cancelled on 13th December, 2001. There is in-ordinate delay on the part of the petitioner Company to raise construction on the site which as per Rule 16 of the 1973 Rules is required to be raised within a period of three years from the date of allotment and possession. The partial occupation certificate was issued inadvertently on 22nd May, 2008 but the same was immediately withdrawn within less than 24 hours on 23rd May, 2008 (P-13). The petitioner Company despite their specific prayer for period of one year have failed to complete the construction and the rule of proportionality which is *Wednesbury principle* has to be applied only in a situation where the administrative order is so irrational and so outrageous in its defiance of logic that no sensible person would have passed such an order. The order of the Advisor, dated 2nd May, 2007 (P-3) does not attract application of the aforesaid principle.

(37) If the rival factual position as extracted in the preceding paras is weighed in juxtaposition then a reasonable person is bound to reach a conclusion that the scale of the petitioner's side is heavier as against the facts favourable to the respondents. It would not advance any public or private interest if the order of resumption is upheld because huge expenditure already incurred on the hotel building, which is near completion, would be sheer wastage as according to Rule 21 of the 1973 Rules, the whole building has to be razed and demolished,

especially when such construction was raised after obtaining sanction of the site plans and no illegality has been pointed out. The rules are further relaxable as per the provisions of Rule 21 A of the 1973 Rules.

(38) The aforesaid facts must find their legal slots as per the statute and rules applicable. The first question, which falls for consideration is the norms and parameters prescribed for cancellation of the lease of the site. In that regard, Section 8-A of the 1952 Act deserves to be noticed, which reads thus :

> "8-A. *Resumption and forfeiture for breach of conditions of transfer.* —(1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale , the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.
>
> (2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable, opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be so sold and directing the forfeiture as provided in sub-section (1) of the whole or any part of the money paid in respect of such sale."

(39) The aforesaid provision has been subject matter of detailed consideration by various judgments of this court and then Hon'ble the Supreme Court. The first significant judgment on the issue is the case

of **Ram Puri** *(supra)* delivered by a Full Bench of this court wherein the Constitutional validity of Section 8-A of the 1952 Act, which was inserted by Central Act 17 of 1973 , was upheld. The Full Bench then proceeded to consider the core question, namely, the import of the word *'resumption'*, which, in fact, necessitated the reference to the Full Bench. The question, thus, posed was 'does it connote in essence a divestiture of title ? Or, does it mean only a temporary divesting of possession in favour of a trustee who is obliged restore the same if the default is later rectified.' The Full Bench regarded the question covered by authoritative precedent on account of the language of Section 8-A and proceeded to consider the issue by referring to the earlier binding precedents like the Full Bench Judgement in the case of **Brij Mohan** *versus* **Chief Administrator, (13).** The view taken by the earlier Full Bench was that the order of resumption has duel consequences *viz.* (i) the depriving of ownership right in the site or building, which concerns only the owner of the site or building ; and (ii) the deprivation of the lessee of his lawful possession thereof. Accordingly, the Full Bench in Ram Puri's case *(supra)* concluded that on existing precedent, it was authoritatively settled that resumption under Section 8-A means clearly the divestiture of title of a building or the site as the case may be. However, the contrary view taken by the Division Bench in the case of **Amrit Sagar Kashyap** *versus* **Chief Commissioner, U.T. Chandigarh, (14),** was overruled.

40. The majority view taken by the Full Bench was laid down by the then Chief Justice Hon'ble Mr. Justice S.S. Sandhawalia holding that provisions of Section 8-A providing for sanction of resumption would be attracted only on the existence of three alternative pre-conditions- (i) the failure to pay the consideration money for the sale of any site or building ; (ii) failure to pay any instalment due of the aforesaid consideration moneys; and (iii) breach of any other condition of the sale. If anyone of the aforesaid three conditions is satisfied, although the use of this power is not mandatory, then an enabling power was conferred on the Estate Officer either to resume the site and building or forfeit the condisderation money, interest and other dues

(13) AIR 1980 Punjab & Haryana 236

(14) (1980) 82 P.L.R. 441

payable in respect of the sale there are two distinct sanctions, namely, (i) the divestiture of title and possession of the transferee with regard to the site or building as such ; and (ii) the forfeiture up to 10 per cent of the consideration money paid. However, the Full Bench went on to observe that such a power would be the ultimate civil sanction in the armory of the authorities to effectuate the twin purpose of a regulated and planned development as also the expeditious creation of the capital city in the State. The view of the Full Bench is descernible from para 87 of the judgment , which reads thus :—

> "87. I must, however, sound a sharp note of caution. It bears repetition that the power of resumption is the ultimate of Civil sanction and must, therefore, be a weapon of last resort . Inevitably it should be used with great caution and circumspection. The Act and the Rules framed thereunder vest the authority with a variety of vide ranging powers to effectuate and regulate the planned development of the city. Reference in this connection may be made to Section 4 which empowers the Central Government or the Chief Administrator to issue directions in respect of the erection of buildings and also to Section 5 which bars the erection of buildings in contravention of the building Rules. Again Section 6 empowers the authority to require a proper maintenance of sites and buildings. Section 8 then confers the power to impose penalties and prescribes the mode for the recovery of arrears. More specifically Sections 13, 14 and 15 provide for penalities for the contravention of directions and the violation of the Trees Preservation Order and the Advertisement Control Order as also for the breach of Rules. Section 17 then warrants an entry into building and land after notice for purpose of survey and verification that the construction thereon is in confornity with the law. A violation of the statutory provisions and the directions given thereunder can also be visited by criminal prosecutions and Section 18 prescribes the procedure therefore. Without pretending to be exhaustive, other sanctions are also spelt out in the Rules framed under the Act. From all this it seems

to follow that normally resort would be first made to the lesser sanctions aforesaid and it is only when they are ineffective. or in the exteme cases where resumption may rightly seem to be the only appropriate sanction the authority, that recourse will be made thereto. I see no genuine basis for the needless apprehension expressed by the leaned counsel for the petitioner that the administration would use a hammer to swat a fly or in other words resort to resumption for relatively insignificant infraction of the conditions of sale or the payment of consideration money. Equally it is well to remember that even where resumption has necessarily to be resorted to it should be liberally tampered with the provisions of the recently inserted Rule 11-D which empowers the authority to retransfer the site to the original transferee in specified situation. I would therefore, hold that though the judicious and lawful exercise of the powers of resumption must be upheld and in certain situations may be both necessary and desirable, yet any arbitrary or discriminatory application thereof would at once attract the ever vigilant power of the Court under the writ jurisdiction." (emphasis added)

(41) Section 8-A of the 1952 Act is not mandatory as has been held by the Full Bench and later by Hon'ble the Supreme Court in **M/s Gagan Food Processors** *(supra).* In other words, it is not the requirement of law that for every lapse the power of resumption must be resorted. In the case of **M/s Gagan Food Processors** *(supra)* this Court while deciding C.W.P. No. 4342 of 1993 on 21st September, 1993 has ordered as under :—

"After hearing counsel for the parties and keeping in view the nature of the controversy which has been raised with regard to the work to be completed and the amenities to be provided and also the financial requirements necessary for the purpose, we dispose of this writ petition with the direction to the respondents to complete the approach road to the premises of the petitioners and parking lot in front of their premises by on or before March 1, 1994. The petitioners

are in the meanwhile, given time to pay the entire amount due including interest and penalty as may be due on the date of payment by on or before 15th December, 1993. If the amount is not paid by that dare, it would be open to the respondents to take necessary procedings against the petitioner in accordance with law."

(42) The SLP was dismissed against the aforesaid order. However, Hon'ble the Supreme Court granted further time to deposit the remaining amount of the instalments. It is worthwhile to notice that M/s Gagan Food Processors was the highest bidder and had deposited merely 25% of the amount. The remaining amount was to be paid in three equal annual instalments. The petitioner in that case had completed construction of the property but could not utilise the same in yielding income so as to finance the payment of instalement because of lack of timely completion of infrastructural facilities like approach roads and parking by the Administration. Before passing of the order by this Court as well as by Hon'ble the Supreme Court, the site alloted to M/s Gagan Food Processors was resumed and the amount deposited was forfeited. The allottee approached the revisional authority for setting aside the order of cancellation with a request to deposit the balance amount. The revision petition was allowed on 25th October, 1995 and site was restored by accepting the offer that the amount was to be paid in 15 days. The amount was deposited but interest remained outstanding . Again an application for extending the time for making payment of the outstanding amount was filed which was dismissed. Even the appeal and revision did not yield any result.

(43) M/s Gagan Food Processors then again approached the High Court by filing writ petition, which was dismissed holding that the allottee was under a duty to challenge the order of resumption dated 5th May, 1993 when it filed the writ petition earlier. The petition was admitted with an interim direction to the allottee to deposit a sum of Rs. 1,10,00,000 which was to be accepted by the authority without prejudice to its rights to resume possession of the disputed property. The amount of Rs. 1,10,00,000, as per the direction issued by the Supreme Court, later on was deposited. Taking into consideration that the allottee had already raised multi-storey building and also the fact

that the power of resumption of building under Section 8-A of the 1952 Act is a discretionary and enabling power and it was not mandatory for the authority to exercise that power in each and every case but to consider the facts and circumstances of each case before passing order of resumption, Hon'ble the Supreme Court concluded that the authority ought to have exercised its discretionary power by giving sometime to the appellant to deposit the remaining amount by charging penal interest. Accordingly the appeal was allowed and the resumption order was set aside and the allottee was directed to pay the amount found due and payable within one month from the date of judgment.

(44) The aforesaid judgment leads to two conclusions - (a) that the power of resumption is not mandatory and it must be exercised by examining facts of each and every case; and (b) if huge structure has already been raised then the power ought not to be exercised and alternate power of penalising the allottee be used even in a case where there was default in depositing huge amount.

(45) Hon'ble the Supreme Court in another judgment in **Teri Oat Estates (P) Ltd.** *(supra)* reiterated the aforesaid principles holding that no hard and fast rules could be laid down guiding the use of power of resumption but it has to be exercise only as a last resort. The Supreme Court refused to permit exercise of such power in a case where dishonest intention or motive on the part of the allottee in not making due payments was not established.

(46) Coming back to the facts of the instant case, the Revisional Authority-cum-Advisor in his order dated 2nd May, 2007 (P-3) has considered the question by referring to the judgment of Hon'ble the Supreme Court rendered in the case of **Teri Oat Estates (P) Ltd.** *(supra)* 'whether this is a fit case of imposing the drastic penalty of resumption and proceeded to decide the question on the principles laid down in **Teri Oat Estates (P) Ltd.** *(supra).* The Advisor held that the public purpose of building a hotel remains unchanged and the *"rationale for the proceedings initiated by the Estate Office is that the hotel has not been built. It has nowhere been stated that there is an alternative use of the site contemplated. I find unpersuasive the stance of the counsel of the Estate Office that 'resume first, think*

*of the alternative use later'. If accepted such a stance would give undesirable licence to the Estate Office."*

(47) The Advisor then considered the question about the *bona fide* by holding that the petitioner had paid all dues of the site with the prescribed rate of interest and has also offered to pay the extension fee with interest and that mere failure to pay is not by itself sufficient reason to invoke resumption. Likewise, mere failure to complete construction is also not by itself sufficient reason to invoke resumption. Holding the conduct of the petitioner to be *bona fide,* the Advisor proceeded to hold as under :—

> "16. .....As recently as 24th October, 2005 the Estate Ofice was willing to grant an extension on payment of the extension fee, that is to say, condone all past delays. This action of the Estate Office effectively undermines the arguments of the counsel based on delays before 2005. For much of the time since then the matter has remained under litigation. The petitioners offered to pay the extension fee on 20th September, 2006, when their appeal was still pending. If the Estate Office could not accept the extension fee while the site stood resumed, neither could the petitioners construct while the site stood resumed, first on grounds of non-payment from 2001 and then on ground of non-completion from 15th February, 2006. The cumulative effect of the actions of the Estate Office and the petitioners has been further delay in the building of the hotel, which remains the public purpose of the site. A dishonest or ill-motive should have been aimed at some gain or profit. The Estate Office has made no submissions whatever on how the petitioner would gain by investing in the purchase of land through an auction, erecting a six-story structure on it, and letting the investment remain idle for more than a decade.
>
> 17. Another important factor is time. If the petitioners are sincere in their avowed eagerness to complete the building in one year, that path remains the shortest available route for the construction of the hotel. Resumption of the site, if upheld

in the consequent litigation would have to be followed by demolition and reconstruction etc. Considering that the set of proceedings initiated by the Estate Office have already consumed six years, this path would certainly be the longer route."

(48) The Advisor then proceeded to notice another aspect that termination of resumption proceedings would add substantial value to the property in question and that the possibility of property being alienated and there being a further delay in the construction of the hotel was required to be guarded against. There is no indication from the record nor even a whisper from the learned counsel for the respondent Administration that any attempt has been made by the petitioner to alienate. The whole attempt or the petitioner appears to be to complete construction by working extra time.

(49) It is significant to notice that the Advisor was conscious of causing any intentional delay on the part of the Estate Office. The aforesaid thinking has been expressed by the Advisor while issuing direction that *"I expect and am confident that the Estate Officer will ensure that his office does not act out of a sense of injured amour propre and that there is no undue delay in the communication of amounts payable by the petitioners or any other associated matter"* and that a major consideration of the order passed by him was the satisfaction of a public purpose and emphasis is that change of ownership or management was not to affect the condition of completion of building within one year.

(50) The order of the Advisor can be summed up to say that the petitioner did not lack *bona fide* and that it was to gain any advantage by delaying erection of the six storey building by investing in the purchase of land through an open auction. If resumption was to continue then it would result into demolition and re-construction. which is marred by legal proceedings which had already consumed six years. He has hopped in his order that the Estate Officer would ensure that all steps on their part are taken timely without any malice to harms the petitioner and that the extension of one year was being granted in larger public interest and the condition of completing the building within one

year was not to be avoided either by change of ownership or by change of management etc. or any other event.

(51) It has already come on record that the petitioner submitted their site plans on 19th May, 2007(P-5), which could be approved only on 28th September, 2007 (P-7 & P-8). Thereafter the respondents again took about a month's time to sanction the site plans submitted in February, 2008, which could be sanctioned only on 31st March, 2008 (P-10). They have been granted permission to add 6th Floor and also double basement in the rear blook. Therefore, the period of five and a half months, which has been consumed by the respondent Administration deserves to be added to the period of one year granted by the Advisor. The apprehension expressed by the Advisor found basis in the aforesaid delay caused by the Estate Office. Therefore, we are of the considered view that there was no warrant in reviving the resumption order against the petitioner by virtue of principle laid down under Section 8-A of the 1952 Act as well as the view expressed by the Advisor in his order dated 2nd May, 2007 (P-3).

(52) We are further of the view that even on the proper construction of the rules there were options available with the respondents before resorting to resumption. Firstly, Rule 16 of the 1973 Rules provide for time within which the building is to be erected. The principal clause of the rule providing for three years initial period reads as under :—

> "16. *Time within which building is to be erected.*–In the case of the lease site the lessee shall complete the buildings within 3 years from the date of allotment/auction in accordance with the rules regulating the erection of buildings. This time limit may be extended by the Estate Officer for good and sufficient reasons. The date of completion will be date of receipt of application for permission to occupy the building or at an earlier date as may be determined by the Chief Administrator in terms of rule 18-A of the Punjab Capital (Development and Regulation) Building Rules, 1952 in form 'B' annexed in the Punjab Capital (Development and Regulation) Building Rules, 1952 accompanied by a completion certificate from he licensed supervisor/qualified

architect who supervised the construction of the building provided the building is also certified to have been completed according to the sanctioned plan by the Chief Administrator."

(53) A perusal of the aforesaid rule shows that a lessee is to complete building within three years from the date of allotment in accordance with the rules regulating the erection of buildings. The aforesaid time limit could be extended by the Estate Officer for good and sufficient reasons. Accordingly, the principal clause is an open - ended rule. However, a number of provisos were added starting from the year 1977. There are more than 10 provisos added thereafter by making provision that the lessee who could not complete the building by the specified date then he was liable to pay extension fee. According to the last proviso added on 24th August, 2007, the lessees who did not complete the building up to 31st March, 2007, were to be given another opportunity to complete the same, subject to various conditions, up to 31st March, 2008. The aforesaid amendment made on 24th August, 2007 alongwith other amendments are necessary to read for the decision of the instant case and is reproduced in *extenso* :–

"The lessees, who could not complete the building within the extended period upto 31st March, 2007, may be given another opportunity to complete the building as below :–

(i) 1st year (beyond the three years allowed) 10% of the premium of the site/building.

(ii) 2nd year on payment of 15% of the premium of the site/building.

(iii) 3rd year on payment of 20% of the premium of the site/building.

(iv) 4th year on payment of 25% of the premium of the site/ building.

(v) 5th year on payment of 30% of the premium of the site/ building.

In case the construction of the building is not completed within the aforesaid stipulated period, the Estate Officer shall proceed for the resumption of the site under the rules and forfeit the whole money paid in respect of the site and the applicant shall have no claim to any damage :

Provided that existing allottees who have not completed the construction of the building up to 31st March, 2007 shall be given last opportunity to complete the building by 31st March, 2008 subject to the payment of extension fee as under :–

(i) Rs. 500 per sq. mtr. for residential/institutional and others.

(ii) Rs. 1,000 per sq. mtr. for commercial/industrial :

Provided further, if the allotment is less than eight years the existing allottees who have not completed the building shall be given last opportunity to complete the building up to 31st July, 2008, subject to the payment extension fee as equivalent to the year of default, as provided for under these Rules, or Rs. 500 per sq. mtr. Rs. 1,000 per sq. mtr., as the case may be, whichever is higher .

Provided that no extension in time limit beyond 3 years shall be granted by the Estate Officer under any circumstances unless the lessee pays the extension fee at the rate of Rs. 1.50, Rs. 3.00 and Rs. 600 per square metre for the first, second and third year of extension, respectively.

Provided further that the extension fee may be paid on half yearly basis in proportion to the rates prescribed above :

Provided further, that the Administrator, Union Territory, Chandigarh shall, in exceptional

> cases of hardship, for reasons to be recorded in writing, be competent to grant extension beyond the stipulated period on such conditions as he may deem fit and proper."

(54) Referring to the aforesaid aspect, the Advisor has expressed his dis-satisfaction particularly about Rule 16. In paragraph 10 of the order dated 2nd May, 2007 (P-3), the aforesaid dis-satisfaction is discernible, which reads thus :–

> "10. it is necessary to place the rules and arguments in perspective. The construction of Chandigarh was taken up soon after Independence and soon after the trauma of partition. A traumatized nation and a traumatized population were pulling themselves up by their boot-straps. Given the harsh economic realities of the time, and given the desideratum of building the city in reasonable time, there are some extra-ordinary provisions in the rules framed under the Capital of Punjab (Development and Regulation) Act of 1952. Only two of them need to be mentioned here. First, by providing a scheme for deferred payments the State, in effect, provided interest free loans to transferees. Secondly, the State gave itself the competence to alter the terms of the auction in favour of the transferees after the auction, by permitting delayed payments (with rates of interest specified from time to time) and for extending the period for completion of buildings beyond the date specified in the auction (with extension fees specified from time to time). There was a single supplier of property (the State) and myriad individual transferees. Financial services (such as banking loans) were not plentifully available, and construction technology was not very advanced. At each stage the imperatives of orderly (including timely) city building had to be balanced against the private circumstances of individual transferees to ensure city building without undue hardship. It is pertinent to note that the State placed no limitations of time upon itself for accepting delayed payments or for extending the time for construction. The

competence to alter the terms of the auction in favour of the transferees after the auction has not been capped, even though circumstances have changed. Bank finance is usually available for investments in real estate. There is increasing participation of corporate entities in auctions for large projects. Typically, companies have greater resources than individuals. Moreover, these corporations are not atomistic entities seeking to build a homestead or to run a shop. They are participants in large projects in order to make profits for their shareholders. These changed realities need to be reflected in the rules."

(55) It was on the basis of aforesaid position that the Advisor went on to advise the Chief Administrator to place the rules and guidelines in the sprit of the judgment of Hon'ble the Supreme Court in the case of Teri Oat Estates (P) Ltd. *(supra)* on the subject of resumption before the Administrator of the Union Territory so as to make the rules transparent to the public and the functionaries of the State and they should own the principles of predictability and proportionality to minimize the exercise of discretionary power by the Estate Officer implicit or explicit.

(56) It is also pertinent to notice that Rule 21-A of the 1973 Rules provide for according relaxation of any provision of these rules in public interest and in exceptional circumstances, which further affect the mandatory nature of the rules.

(57) Rule 17 of the 1952 Rules provide that sanctioned site plan shall remain valid for a period of five years and thereafter the sanction is deemed to have lapsed. Likewise, Rule 18(v) of the 1952 Rules postulates issuance of partial completion and partial occupation certificate in respect of a building. Sub-clause (a) of Rule 18(v) deals with commercial building where the particular floor has been completed truly in accordance with the sanctioned building plan without any building violation. It has come on record that inspection was carried which is required as per the provisions of Rule 18-A of the 1952 Rules. In case the inspection reveals that the applicant did not complete

construction as per the requirement of Rule 18(v) then the permission must be refused.

(58) Various provisions of the statutory rules and the view expressed by the Advisor would show that there is no satisfactory provision made in respect of time for payment of instalments by allottees or for completion of construction by them. It is true that in the earlier years when the development of the city was at slow pace, much more tolerant attitude was prevalent as is evident from the observation made by this Court in the case of **Brij Bhushan** *(supra)*. A learned Single Judge of this court had held that if an allottee of the site did not raise construction for over 20 years, it was on account of un-certain future of the city and he cannot be accused of delay even if he has not commenced construction. The judgment in **Ram Puri's case** *(supra)* came handy to rely upon. Those observations would no longer be applicable because 'City Beautiful' is now a vibrant, much sought after and well organized city. It is humming with professional and commercial activities attracting the entrepreneurs from all over the world, particularly NRIs. However, the project of the present nature undertaken by the petitioner, which is near completion, cannot be judged by the situation prevailing today. The city has tasted the effect of globalization relatively later. Therefore, we are of the view that the petitioner deserves to be granted more breathing time, especially when their *bona fides* are established before the revisional authority i.e. Advisor. The conduct of the petitioner after the passing of the order by the Advisor also display its good intention to complete the project. They have adequate financial resources at their command as they have raised a loan of Rs. 45 crores from the State Bank of Patiala by mortgaging the site with the prior permission of the Estate Officer after order was passed by the Advisor. They have already invested huge amount of Rs. 51 crores out of which Rs. 3,90,33,831/- stand paid to the Estate Officer on account of extension fee etc. Therefore, we feel that apart from five and a half months taken by the Estate Officer for sanctioning the site plans, a further period of six months deserves to be granted.

(59) Before parting, it is necessary in fairness to Mr. Anupam Gupta to notice his submission. Mr. Gupta has argued that order dated

2nd May, 2007 passed by the Advisor would not attract application of *Wednesbury principle* or so to say the rule of proportionality so as to set aside that order. It is true that the order of the Advisor, dated 2nd May, 2007, is reasonable, balanced and equitable, however, we cannot lose sight of the fact that the Advisor himself contemplated and cautioned against any delay by the Estate Office, which, in fact, had happened. The order of the Advisor itself may answer the principle of proportionality or so to say the *Wednesbury* rule but the subsequent events cannot be ignored. As far as the petitioner is concerned, it has come up to the expectation of the revisional authority because the order repeatedly expressed an apprehension that the resumption may result into alienation paving way for excessively high profits and delaying the construction of the hotel, which would defeat the very object of completion of City Plaza and ensuring compliance with the rules. There is neither any alienation nor any intentional delay. The facts further show that the intentions of the petitioners are *bona fide* as it has raised a loan of Rs. 45 crores and had worked day and night to complete the project. Even partial completion certificate was issued albeit withdrawn. We may further observe that the principle of *Wednesbury Corporation* were again reiterated by a Constitution Bench of Hon'ble the Supreme Court in **Rameshwar Prasad (VI)** *versus* **Union of India (15).** The 5-Judge Constitution Bench has concluded in para 242 by observing as under :–

> "*242. The Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, (1948) 1 KB 223]* principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the *Wednesbury principle* is that a decision will be said to be unreasonable in the *Wednesbury* sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it."

(15) (2006) 2 S.C.C. 1

(60) A perusal of the re-statement of the *Wednesbury principle* shows that wholly irrelevant material or consideration would vitiate an administrative decision if it is based on such a material or it has ignored the same. The third proposition is that if it is so absurd that no sensible person would pass such an order. It would be profitable to mention that *Wednesbury principle* has acquired a nick name from a case decided in England, which is known as **Associated Provincial Picture Houses Ltd.** *versus* **Wednesbury Corporation (16).** It is in that case that *Lord Greene MR* has expounded the principle in the following para :–

> "It is true that discretion must be exercised reasonably. Now what does that mean ? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short* versus. *Poole Corporation* [1926] Ch. 66 gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

(61) When the principles of *Wednesbury's case* as adopted by Hon'ble the Supreme Court are applied to the facts of the present case,

(16) (1948) 1 KB 223

the order passed by the Advisor may meet the norms and standards of discretion laid down in those cases. However, the lapse committed thereafter and the context in which the period of one year was granted apprehending the alienation of property to make profit at the hands of the petitioner has impelled us firstly to carve out the delay as per the doubt expressed by the Advisor himself and then the fact that the petitioner has come to the expectation of the Advisor by not alienating etc. has persuaded us to grant them further time of six months, especially when their *bona fides* have been established. Therefore, we partially agree with the view canvassed by Mr. Anupam Gupta, yet we have granted further time to the petitioner to feed the *Wednesbury principle* and strengthen the doctrine of proportionality.

(62) As a sequel to the above discussion the writ petition is allowed. Order dated 23rd May, 2008 (P-13) withdrawing the partial occupation certificate, dated 22nd May, 2008 (P-12) and the order of the even date restoring the order of cancellation of lease deed, dated 23rd May, 2008 (P-14) is also quashed. The petitioner company is held entitled to five and a half months time consumed by the respondent Administration for according sanction to the site plans, without payment of any extension fee. However, we are further of the view that the ends of justice would be met if a further period of six months in addition to five and a half months is also given to the petitioner Company for completion of construction. The extended period of six months would attract payment of extension fee as per the rules. We clarify that the building should now be completed within eleven and a half months, which shall count from the date of receipt of a copy of this order.

(63) The writ petition stands disposed of in the above terms.

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***R.N.R.***

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