

thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Even if some confession was recorded by the Sub Divisional Magistrate during enquiry proceedings that was inadmissible in evidence and enquiry record should not have been summoned for the purpose of proving that confession. The impugned order is, therefore, liable to be quashed.

(5) For the reasons recorded above I allow this petition and quash the order of Sessions Judge, Bhiwani dated 20th November, 1992. The Court will proceed to determine the case in accordance with law.

*J.S.T.*

*Before Hon'ble J. L. Gupta, J.*

THE AMBALA URBAN ESTATE WELFARE SOCIETY,—*Petitioner.*

*versus*

HARYANA URBAN DEVELOPMENT AUTHORITY AND  
ANOTHER,—*Respondents.*

*Civil Writ Petition No. 7260 of 1989.*

April 7, 1994.

*Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act (Act No. 13 of 1977)—Locus Standi—Petitioner a society of plot holders who purchased plots from respondents in 1973—At time of allotment all basic amenities promised by respondents—To date such amenities not provided—Mandamus sought asking respondents to provide modern amenities—Whether a writ would lie or petitioner to be relegated to avail remedy before Civil Court.*

*Held*, that it is no doubt true that sale and purchase of land or plots are primarily matters of contract. An aggrieved party is normally relegated to its remedy before the civil court. However, in a case where a statutory authority is constituted to serve public interest and the law enjoins upon it to provide amenities, the writ court would be failing in its duty if relegates a party to the long drawn proceedings before a civil court.

(Para 22)

*Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act (No. 13 of 1977)—S. 2(a)—Amenities—Court not*

*to deny relief to citizen on technical grounds—Roads sewerage etc. are basic for life and health of residents.*

*Held*, that where the residents of the locality have approached this court for compelling the respondent-authority to honour its promise of providing modern amenities, the court cannot deny the relief to the citizens on the basis of any technical objection. This is all the more so as it has been clearly established on the record that the authority has failed to provide proper roads, sewerage, community buildings, parks any hygienic conditions. These can hardly be considered to be modern amenities. These are basic for the life and health of the residents of the locality.

(Para 24)

*Further held*, that it must, therefore, provide all these amenities within one year from the date of the receipt of this order so that the 'right to life' as guaranteed under the constitution does not become illusory.

(Para 28)

*Constitution of India, 1950—Art. 226—Plea that plot holders are to contribute towards construction of open roads and drains—Not tenable—Such price already included in price of plot.*

*Held*, that before parting with the judgment, it may be mentioned that the plea raised on behalf of the respondent-authority that the plot-holders are liable to contribute towards the construction of open and internal drains at the rate of Rs. 5.67 per square yard is untenable. Initially, the expenditure on account of development cost of public health works which includes sewerage as also towards the building and roads works which include levelling etc. was included in the price of the plots. This having been paid, there was no provision for raising any further demand. The price was not tentative. It was full and final. This having been paid, the respondents are bound to provide all the promised amenities.

(Para 29)

Ashok Aggarwal, Sr. Advocate with Rajesh Bindal, Advocate,  
*for the Petitioners.*

J. K. Sibal, Sr. Advocate, with K. S. Dhaliwal, Advocate, *for the Respondent.*

Jaswant Singh, Advocate Haryana, State.

#### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The Ambala Urban Estates Welfare Society is the petitioner. It alleges that even though the respondents had promised that

Sector 7, Urban Estate, Ambala City shall be developed as a residential area 'with all the modern amenities', it does not have even an underground sullage and storm water drainage system. According to the petitioner, the roads with big pot-holes are virtual death-traps. On account of lack of drainage and sewerage facilities, the cesspools which exist all around are a health hazard. The Haryana Urban Development Authority disputes this. It claims that the plot-holders have already been given more than what was legitimately due to them. It is so ? A few facts as emanating from the pleadings of the parties may be briefly noticed.

In 1973, the Department of Urban Estates, Haryana gave out that it is "developing residential areas with all the modern amenities at Ambala". It offered plots "for sale on full ownerships basis." Various persons who are the members of the petitioner Society applied for these plots. They were given letters of allotment during the years 1973 and 1974. They paid prices as mentioned in the advertisement. They were given possession of these plots in the year 1980-81. Most of them have constructed houses on these plots. In spite of the fact that more than 2 decades have elapsed, the petitioners allege that the respondents have not provided even basic facilities like "underground drainage for storm and sullage water with the necessary provision for the treatment and healthy disposal....." As a result, the ground water level has risen which has caused extensive damage to the buildings. Because of lack of drainage facilities, the area remains water-logged resulting in spread of malaria and jaundice etc. The petitioner also complains that potable water is not available and various facilities, for which payment had been made by the plot holders, have not been provided. Further, it is alleged that the Haryana Urban Development Authority (hereinafter referred to as 'the Authority') to avoid honouring its obligations, passed an order on November 4, 1988 transferring the ownership of public roads, parks and sewerage etc. to the Municipal Committee, Ambala. Faced with this situation, the petitioner has approached this Court through the present writ petition. It challenges the order dated November 4, 1988 and prays that the 'authority' be directed to provide all the facilities.

(2) In response to the notice of motion issued by the Court on May 31, 1989, the Haryana Urban Development Authority had filed a written statement on March 12, 1990. It was *inter alia* stated on its behalf that "there was no provision for underground storm water drainage in the approved rough estimate of Sector 7, Ambala" and that "the sullage water sewerage is being disposed of regularly and

properly. There is no problem of over flowing or choking of sewer at present. The disposal machinery is working properly and smoothly." It further stated that "there is no problem of drinking water and sufficient quantity of good quality potable water is being supplied daily to the residents of Urban Estates, Ambala City. It was also stated that "the averments that locality remains water logged are (is) not correct and thus there is no question of becoming prone to any infectious disease for these reasons." It was submitted that "the basic amenities as per provision in the approved rough cost estimate do exist." On these basis, it was averred that the decision of the authority to transfer the ownership of roads etc. to the Municipal Committee was legal and valid.

(3) The petitioner controverted the claim of the authority by filing a replication. Along with, the petitioner produced a copy of the letter dated April 15, 1988 written by the Deputy Commissioner, Ambala to the Chief Administrator of the respondent-authority and Director, Town and Country Planning and Urban Estates, Haryana which clearly belied the assertions in the written statement and in which it was categorically stated that "accumulation of water is at present creating a problem of high water table and consequent damage to buildings." The petitioner also produced the proceedings of a meeting held on January 10, 1990 under the chairmanship of the Administrator of the authority which shows that "the grass sown in these parks is destroyed due to collection of water in the rainy season owing to low level;" the water supply from Tubewell No. 3 was 'brackish'; the roads needed to be repaired; without the storm water drainage, the sewerage system is also choked during the rainy season; the conversion of land use of a plot measuring 1.000 sq. mt. into a community hall was already under consideration; a pump station is also required in the Sector and that no provision had been made for disposal of the sullage water and that "*at present the affluent is not discharged anywhere.*"

(4) After the filing of this affidavit, the motion Bench called upon the authority to "show that amenities have been provided for the existence of the locality." Ultimately,—*vide* order dated August 1, 1990, the Bench appointed Mr. D. D. Bansal, Advocate as the Local Commissioner to go to Sector 7 and "inspect the place in the presence of the parties or their authorised representatives and to report to the court about the exact situation and the facilities provided for the proper drainage of storm and sewerage water." The Local Commissioner had to submit his report by August 18,

1990, Mr. Bansal submitted his report dated August 18, 1990. Along with it, he filed an inspection note given by Mr. T. S. Tuli, Consultant Civil Engineer. He also produced 25 photographs. In a nut shell, he found that "although Sewerage has been provided by the authorities but the same is not functioning properly and drainage of storm water has not at all been provided to the owners of houses in Sector 7, Urban Estate, Ambala as rain water was found standing on the roads of the locality." On August 22, 1990, the Bench directed the Chief Administrator, HUDA to take notice of the report of the Local Commissioner and report of September 3, 1990 as to what action had been taken to provide all possible civic amenities which a HUDA Colony should have.

(5) In pursuance to these directions, Mr. Dhanpat Singh, Administrator, HUDA, submitted a report to the Court regarding the various remedial measures which were taken in pursuance to the report of the Local Commissioner. It was mentioned that "a portable Diesel Engine Pumping Set has been arranged and is being utilized for pumping out the standing water collected during rains from the low-lying pickets of this sector viz. roads and parks. A gang of 10 labourers has been provided to drain out rain water from the roads manually where water cannot be pumped out by the diesel pumping set....." Standing water from the parks has been pumped out. Two to four feet width of roads berms on both sides have been cleared to allow free flow of surface water during rains. So far as providing of storm sewer is concerned, it was mentioned that in the 'cost calculation' of the price of plots in Sector 7, Urban Estate, Ambala City, the cost of providing underground storm water is being drained out through road surface. The use of the water which has gone 'brackish' has been discontinued. In order to overcome the shortage of drinking water, alternative arrangement has been made through the State Public Health Department for the time being.

(6) Then, after getting various adjournments for filing a detailed written statement, a short affidavit of Mr. Ranjit Singh, Administrator of the Authority which has not even been attested by an Oath Commissioner or anyone else, was filed. In this affidavit, it was *inter alia* averred that the respondents have carved out 68 plots in Sector 7 which is a low lying area. On sympathetic consideration of the representations, it was decided that alternative plots be allotted to the allottees of these plots in Sector 9. The options were invited. Some of the allottees have given only conditional options. As a result, final decision could not be taken. It was further averred

that the estimate for providing storm water drainage in Sector 7 had been sanctioned for Rs. 29.88 lacs. The calculations of amount to be recovered from the allottees was produced as Annexure R.1. According to this document, it was found that every allottee was liable to pay Rs. 5.67 per square yard to the authority to enable it to provide the drainage facility. The petitioner filed an affidavit pointing out various discrepancies and to show that the respondent-authority had failed to carry out its obligations. The respondent-authority then filed an application under Section 151 to place the relevant facts on record "pertaining to expenses incurred.....on the development of amenities in Sector 7." An effort was made to show that while the plot-holders had paid an amount of Rs. 58 lacs only, the authority had incurred an expenditure of Rs. 117.95 lacs on the development, cost of roads etc. and the provision of public health and other facilities. Along with this application, an affidavit of the Executive Engineer was filed. It was also averred that "there was no understanding given or commitment made that all the facilities indicated in the estimates would be developed except the broad assurance that modern amenities will be provided for the township, which include provision of roads, electrification, water supply, drainage etc. These have been provided by spending money far beyond the amounts recovered from the plot-holders". The petitioner filed a reply to this application by way of an affidavit of Mr. Ashok Kumar, the Secretary of the Society. It pointed out that the expenditure incurred in connection with the provision of facilities for shopping centre could not be debited to the account of the plot-holders in the residential area and that the claim regarding the provision of facilities was wholly false and baseless. This was followed by an affidavit of the Executive Engineer, Mr. D. K. Soni. In this affidavit, it was *inter alia* averred that the authority had proposed the construction of storm water project for Section 7 which "envisages open drains on internal roads and underground drains on main roads. If the necessary contribution as stated in the affidavit of Mr. Ranjit Singh, Administrator, HUDA, dated 18th September, 1991 from the residential plot-holders, Sector 7 is available, then the necessary works for the storm water drainage would be completed within one year thereafter". It was further averred that "as regards the sewerage facilities, necessary underground collecting system as envisaged at the time of the original estimates has already been laid down. Unfortunately, because of the non-completion of the Master Sewerage System for Ambala City, which was to be developed by the Municipal Committee but has not been developed to which the existing Sewerage system of Sector 7 was to be linked, Haryana

Urban Development Authority has had to provide alternate arrangement for sewerage system which includes construction of collecting tank and a pumping station to pump the sewerage water into an open Nala. Technically at this point of time, considering the location of Sector 7 there is no possible alternative because Sector 7 is surrounded on the south by Railway track and all other sides by a thick population where there was open drains.....There is no technical way by which the disposal of this sewerage underground as in places like Chandigarh can be done, unless a master sewerage system can be constructed in the surrounded (sic) area, to which it can be connected." Explanation regarding the financial aspect of the matter has also been given.

(7) The petitioner has filed a reply even to this affidavit. It has been *inter alia* averred that the authority had recovered the cost for provision of underground storm water drainage at the time of sale of the plots. It did not provide the facility at the relevant time. The escalation in expenditure is only on account of the delay for which the plot-holders can't be made to pay. Similarly, with regard to the sewerage system, it has been averred that at the time of the planning of the Sector there was no population in the nearby areas and if the authorities had taken adequate steps at the right time, no difficulty would have arisen. The figures as given on behalf of the Authority have also been disputed.

These are the pleadings of the parties.

(8) Learned counsel for the parties have been heard. Mr. Ashok Aggarwal, learned counsel for the petitioner has contended that the respondent-authority is under a statutory obligation to provide all facilities to the plot-holders and that its action in not doing so is arbitrary and unfair. Learned counsel has made repeated reference to the statement showing calculation regarding the computation of sale price of the plots in Urban Estate, Ambala in support of his contention.

(9) It is not clear from the various orders passed by different benches as to how this document came on record. However, its authenticity has not been questioned by the counsel for the Authority. It is consequently taken on record as Mark 'A'.

(10) On the other hand, Mr. J. K. Sibal, learned counsel appearing for the respondent-authority has submitted that all possible facilities have been adequately provided and that in the circumstances of the case, nothing more can be done. So far as respondent

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No. 2 viz. the State of Haryana is concerned, it has not even filed a written statement of controvert or answer the averments made by the petitioner.

(11) Before considering the respective contentions of the parties, a few provisions relevant for the decision of this case may be noticed. The Legislature had originally promulgated the Punjab Urban Estates (Development and Regulation) Act, 1964. In exercise of the powers conferred under the Act, the rules called 'The Punjab Urban Estates (Sale of Sites) Rules, 1965 had been framed. These rules were adopted by the State of Haryana. Under these rules, the plots could be sold by 'auction' or 'allotment'. Further more, the sale price could be either 'fixed' or 'tentative'. In case, the price was tentative it could be revised if there was enhancement of compensation by the Court and additional price could be demanded.

(12) The 1964 Act was repealed and replaced by the Haryana Urban Development Authority Act (Act No. 13 of 1977). Section 58 (the Repeal and Saving provision) of the Act saved not only the acts done or actions taken under the old Act but also any "notification, order, scheme or rule made, granted or issued under" the 1964 Act "so far as it is not inconsistent with the provisions" of the 1977 Act. A few provisions of the 1977 Act deserve to be noticed :—

"2. *Definitions.*—In this Act, unless the context otherwise requires :—

(a) "amenity" includes roads, water supply, street lighting, drainage, sewerage, public works, tourist sports, open spaces parks, landscaping and play fields, and such other conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act ;

xx            xx            xx            xx

(g) "Development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change, in any building or land and includes re-development ;

(h) "engineering operations" include the formation or lying out of means of access to a road or the laying out of



means of water supply, drainage, sewerage or of electricity cables or lines or of telephone lines ;”

By Section 3, the establishment and constitution of the authority are prescribed. Section 15 provides for the disposal of land. It *inter alia* provides as under :—

“15. *Disposal of land.*—(1) Subject to any directions given by the State Government under this Act and to the provisions of sub-section (5), the Authority may dispose of:—

- (a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon ; or
- (b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development.”

(13) A perusal of the above provisions shows that roads, water supply, street lighting, drainage, sewerage, public works, tourist sports, open spaces, parks, land-scaping and play fields besides such other conveniences as the State Government may by notification specify, are the amenities contemplated under the Act. Similarly, the Engineering operations include the providing of water supply, drainage and sewerage etc. Furthermore, the provision for disposal of land has been made in Section 15. Under Section 58, the obligations and liabilities incurred by the State Government under the 1964 Act are deemed to have been incurred by the ‘Authority’. It is in the background of these provisions that the respective contentions raised by counsel for the parties have to be considered.

(14) It deserves notice at the outset that in the advertisement issued by the Director, Urban Estates, Haryana in the year 1973, price ranging from Rs. 31 per square yard to Rs. 35 per square yard was fixed. It was *inter alia* provided that a person who paid the full price with the application “will be allowed a big concession in the price as well as the facility of choosing his own plot on the spot on the basis of ‘First come First Served’.” It was also stipulated that the Department was developing “residential areas with all the modern amenities at Ambala.” The applications had to be submitted upto March 23, 1973. It was in pursuance to this representation made by the Government that the various persons had submitted their applications and purchased the plots at the rates by the

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Government. It is also established on the record that even though the allotments had been made in the years 1973 and 1974, the actual possession was handed over after a lapse of 7 years, in the year 1980-81. The entire controversy in the present case centres around the question—What were the 'modern amenities' promised by the respondents and are the plot-holders liable to pay anything beyond the price which was demanded at the time of the allotment of the plots ?

(15) It is in this context that the reference of the learned counsel for the petitioner to the statement at Mark 'A' becomes relevant. This statement may be reproduced in extenso. It reads as under:—

"Statement showing calculation regarding the fixation of sale price of the plots of Urban Estate Ambala.

Direct Charges		Amount in rupees
S. No.	Item of cost	
1. (a)	Acquisition cost of land measuring 97 acres at the rate of Rs. 20,000/- per acres.	19,10,000
(b)	Demarcation charges	5,000
		<hr/> 19,15,000
2.	Development cost of B&R Works at the rate of 15,000/- per acre for 97 acres for providing roads development, shopping centre, land-scaping & Leveling works including the cost of maintenance of 5 years.	14,55,000
3.	Development cost of public Health Work for providing water supply & Sewerage & their maintenance for 5 years @ Rs. 31,000 per acre on 97 acres.	30,07,000
4.	Cost of constructing community buildings.	8,00,000
5.	Electrification cost of 97 acres residential area i. Interest on Rs. 7.50 lakhs @ Rs 7% P.A. for 5 years.	2,62,500

Direct Charges		Amount in rupees
S. No.	Item of cost	
6.	Cost of street lighting on adhoc basis	50,000
	Total	75,19,500
	indirect charges	
7.	Interest on acquisition cost of Rs. 19,45,000 @ 7% P.A. for one year.	1,36,050
8.	Administrative charges on cost of land of Rs. 19,45,000 @ 9 $\frac{1}{4}$ .	1,79,913
9.	Conservancy charges @ 1250/- PM for 5 years.	75,000
10.	Architectural charges @ paise 5 per sq. yd. on 97 acres land.	23,174
	Total :	4,14,537
	Total of Direct & Indirect charges :	79,30,037
11.	Advertisement charges on Rs. 79,34,037 @ 0.25%	1,835
		79,5,872
12.	Unforeseen charges on Rs. 79,53,872 @ 10%	7,9,387
		87,4,259
13.	Project charges on Rs. 87,49,259 @ 5%	4,3,463
		91,8,722
	Les. expected receipts from the plottable area of 1.26 acres i.e 35% of 3.60 acres @ 250/- per sq. yard.	15,2,600
		76,0,122

(16) When this total cost is spread over the plottake area of 54 acres, it gives the rate of sale price at Rs. 29.32 per sq. ard."

(17) A perusal of the above statement shows that whil working out the cost of plots, the expenditure on the development of public health works like water supply, sewerage, construction of community buildings and electrification/street lighting etc. had been taken into consideration. After taking into consideration various

items of expenditure, the sale price was fixed at Rs. 29.32 per square yard. In the advertisement, the sale price was shown to be ranging from Rs. 31 to Rs. 35 per square yard. A perusal of the document clearly shown that the respondents had fixed the price of the plots after taking into consideration the expenditure on various amenities. Have these been provided ?

(18) The first two items of expenditure in the above-noted statement relate to the provision of roads, landscaping, levelling works, public health works like water-supply and sewerage etc. It is the petitioner's claim that in spite of the cost having been included in the price of the plots, the facilities have not been provided.

(19) In this behalf, the report of the Local Commissioner deserves to be noticed. A perusal thereof shows that rain water was found to be standing almost everywhere. It further appears that at certain points, water had collected to an extent that even the foundation of a house (No. 374-P) was sub-merged. In case of certain six marla plots which had been allotted in the year 1973, the possession had not been delivered to the allottees and the area under the plots was "being used by the respondent-authority as Pond for the disposal of rain water." The road between Plot Nos. 251P—264P and 265P—278P had been constructed but "the entire road was filled with bushes on both sides of the road despite the fact that the plots were sold in the year 1973, the land is being used as long for the disposal of rain water." Similarly, the area of certain other plots is sub-merged in water. Still further it has been reported that there is a sewerage point in the middle of the road in front of House No. 427P. This road had been dug up by the authority for the purpose of providing a channel for the rain water. Similarly, a sewerage point is available on the main road in front of House Nos. 985P—995P which had been used by the respondent-authority for disposal of rain water. It has been observed that people of the said locality came out of their houses and told him that this act of the respondent-authority was dangerous to the residents of the locality. It was also told that a child had fallen in the said pit "and was saved with great difficulty." The Local Commissioner also reports that the open space (Park) near House No. 384 is filled with rain water and lots of snakes were coming out of it. It further appears that one of the areas reserved for a park had been converted into a residence for the executive engineer. It further appears that even the site reserved for a school was found to

be full of rain water and shrubs. The road was "in a dirty condition." In a nut shell, all open spaces were found to be full of water and shrubs leading to unhygienic conditions. This position is clearly borne out from the photographs as also the inspection report given by Mr. Tuli.

(20) The report of the Local Commissioner thus clearly belies the claim made on behalf of the respondent-authority in the written statement dated March 12, 1990. It is clear that there is accumulation of water on the roads, in parks and as a result, unhygienic conditions develop in the entire sector during rains. It is also clear from the report that the land wherein plots for construction of residential houses had been carved out, has developed into a pond where sullage is collected. It has not been shown that adequate arrangements for pumping out the water have been made. In such a situation, unhygienic conditions are bound to exist. The complaint of the petitioners is thus well-founded and the plea raised on behalf of the respondents cannot be accepted.

(21) A perusal of the record of the case also shows that the cost of public health works for providing water supply and sewerage had been assessed at Rs. 30,07,000. Even the cost of constructing community buildings had been assessed at Rs. 8.00 lacs. Neither a proper functioning sewerage nor the community buildings have been provided. The respondents have thus failed to carry out their obligations towards the petitioners. Furthermore, on account of the faulty planning and execution of works, even the over-land drainage is not satisfactory. Similar is the position with regard to the parks. Instead of providing open spaces which may act as lungs and provide fresh air to the body of residents, these abound in snakes and threaten the very lives of residents. One of the open spaces has been converted into a residential area and a house for the Executive Engineer has been constructed thereon. These are the facts on the spot.

(22) It is no doubt true that sale and purchase of land or plots are primarily matters of contract. An aggrieved party is normally relegated to its remedy before the civil court. However, in a case where a statutory authority is constituted to serve public interest and the law enjoins upon it to provide amenities, the writ court would be failing in its duty if it relegates a party to the long drawn proceedings before a Civil Court. The importance of "protection of the environment, open spaces for recreation and fresh air, play

grounds for children, promenade for the residents and other conveniences or amenities" in a development scheme has been emphasised by their Lordships of the Supreme Court in *Bangalore Medical Trust v. B. S. Muddappa* (1). Similarly, the right of "inhabitants of a locality.....whose park was converted into a nursing home.....to invoke equity jurisdiction of the High Court" was specifically upheld. It was observed that "in fact, public spirited citizens having faith in rule of law are rendering social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of *locus standi* or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the courts. *Residents of Locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers.* Even otherwise..... violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the shelter under cover of technicalities of *locus standi* nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations." It was further observed as under :—

"Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier, it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now, it is a, 'gift' from people to themselves.' Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its moto but earning is the

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(1) A.I.R. 1991 S.C. 1902.

objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States requires even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the layout in a development scheme for public parks and play grounds the sale and disposition of which is prohibited under Section 38 A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

(23) Still further in *Subash Kumar v. State of Bihar* (2), "the right of enjoyment of pollution free water and air for full enjoyment of life" has been held to be included in Article 21 of the Constitution. It has been held that "if anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life."

(24) In view of the above, it is clear that in a case like the present one, where the residents of the locality have approached this court for compelling the respondent-authority to honour its promise of providing modern amenities, the court cannot deny the relief to the citizens on the basis of any technical objection. This is all the more so as it has been clearly established on the record that the authority has failed to provide proper roads, sewerage,

community buildings, parks and hygienic conditions. These can hardly be considered to be modern amenities. These are basic for the life and health of the residents of the locality.

(25) In the present case, the respondents had promised the prospective buyers that modern amenities shall be provided. The statutory definition of 'amenity' *inter alia* includes "roads, drainage, sewerage, open spaces, parks, land-scaping and play-fields". There was thus an obligation to provide all these amenities. Still further, under Section 15, the authority is competent to dispose of the land without carrying out any development or after such development as it thinks fit. The Statute defines 'development' to include 'Engineering Operations'. This expression has been defined in Section 2(j) to include "laying out of means of access to a road or the laying out of means of water supply, drainage, sewerage or.....". In the present case, though the plots were transferred in the year 1973, the respondents did not hand over possession for about seven or more years thereafter. Apparently, this time was spent in the development of the area. It is also clear that before fixing the price of the plots, the cost of carrying out all kinds of development works had been worked out and taken into account. The allottees of the plots have paid more than the assessed price and yet they have not been provided most of the amenities which were not only promised but are basic in any civilised society which guarantees right to life as a fundamental right.

(26) The Haryana Urban Development Authority was established "for undertaking urban development". Its inaction in spite of repeated requests from the residents of Sector 7 and failure to provide the promised amenities is not only arbitrary but even wholly illegal. The Authority has failed to carry out its obligations under the Act. It has turned a deaf ear to the loud cries of the residents and shut its eyes to the needs of its customers. In this situation, the Authority may well earn the dubious distinction of being dubbed as the 'Haryana Urban Destruction Authority.'

(27) It also deserves mention that under Section 30 of the Act, the State Government has been provided with effective control over the Authority. It can issue directions, modify the orders and depute officers to inspect or examine the office of the Authority or its development works and take action on the reports submitted to it. It has thus the power to remedy any injustice. In the present case, the State Government has failed to carry out its functions under



Section 30 of the Act. Even when the matter was brought before this Court, the State has maintained a studied silence. It has not even filed a reply to the writ petition. One can only lament this indifference on the part of the State.

(28) After taking all the facts into consideration, it appears clearly that the respondent Authority has not provided the amenities contemplated under the Act. In particular, it has failed to provide the basic amenities like: (i) Drainage; (ii) Sewerage; (iii) Adequate potable water; and (iv) Parks. All these have resulted in pollution of environment. It must, therefore, provide all these amenities within one year from the date of the receipt of this order so that the 'right to life' as guaranteed under the Constitution does not become illusory.

(29) Before parting with the judgment, it may be mentioned that the plea raised on behalf of the respondent-authority that the plot-holders are liable to contribute towards the construction of open and internal drains at the rate of Rs. 5.67 per square yard is untenable. Initially, the expenditure on account of development cost of public health works which includes sewerage as also towards the building and roads works which include levelling etc. was included in the price of the plots. This having been paid, there was no provision for raising any further demand. The price was not tentative. It was full and final. This having been paid, the respondents are bound to provide all the promised amenities.

(30) Accordingly, it is held that the respondents are bound to provide all the facilities as mentioned above and till this is done, they cannot be permitted to transfer the ownership of roads, parks and sewerage etc. to the Municipal Committee. Accordingly, the order at Annexure P.4 is quashed. The respondents are directed to provide the requisite facilities within one year 'from the date of receipt of a copy of this order. The petitioner shall also be entitled to its costs which are assessed at Rs. 2,000.

*J.S.T.*

*Before Hon'ble R. P. Sethi & G. S. Singhvi, JJ.*

**BHAI JASBIR SINGH,—Petitioner.**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents.**

*Civil Writ Petition No. 2491 of 1994*

**May 20, 1994**

*Constitution of India, 1950—Art. 226—Punjab Jail Manual Rule 441—Prisoners (Attendance in Courts) Act, 1955—Punjab Prisoners (Attendance in Court) Rules, 1959—Human, fundamental and civil*