

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision : 23.08.2012

**C.W.P.No.17048 of 2007**

Rajat Kuchhal & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

**C.W.P.No.9534 of 2001**

H.D.Ansani & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

Present: Mr. Arun Palli, Senior Advocate, with  
M/s Munish Behl & Tushar Sharma, Advocates,  
for the petitioners.

Mr. H.S.Hooda, Advocate General, Haryana with  
Ms. Palika Monga, DAG, Haryana,  
for respondent Nos.1 to 5.

Mr. Akshay Bhan, Advocate, &  
Mr. Rajiv Anand, Advocate, for respondent No.6.

**C.W.P.No.4209 of 2002**

Anita Mehta & others ...Petitioners

Vs.

State of Haryana & others ...Respondents

Present: None for the petitioners.

Mr. H.S.Hooda, Advocate General, Haryana with  
Ms. Palika Monga, DAG, Haryana for respondent Nos.1 to 4.

Mr. B.R.Gupta, Advocate, for respondent No.5.

**C.W.P.No.6005 of 2002**

Mrs. Renu Bagrodia & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

**C.W.P.No.158 of 2011**

Suresh Kumar & another

...Petitioners

Vs.

State of Haryana & others

...Respondents

Present: None for the petitioners.

Mr. H.S.Hooda, Advocate General, Haryana with  
Ms. Palika Monga, DAG, Haryana for the respondents.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

**HEMANT GUPTA, J.**

This order shall dispose of above mentioned writ petitions, wherein the construction raised by the petitioners is now situated within the municipal limits of Municipal Corporation, Gurgaon, except CWP No.158 of 2011, wherein house of the petitioners is situated within the municipal limits of Municipal Council, Sonapat. The issues raised in all these petitions are common; therefore, all the writ petitions are being disposed of together. However, for facility of reference, the facts are taken from CWP No.17048 of 2007.

The petitioners are purchasers of a residential plot bearing No.4302 situated in DLF Qutab Enclave, Phase-IV, Gurgaon set up by the DLF Universal Limited after obtaining the licence under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (for

short 'the 1975 Act') and also after obtaining permission of change of land use under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short 'the 1963 Act') being situated within controlled area declared under the said Act. The individual building plans in the licensed colony are required to be approved by the Director, Town & Country Planning, Haryana under the provisions of the 1963 Act. The petitioners assert that they have raised construction in pursuance of the approval of the building plans by a Committee constituted in terms of Section 19(2) of the 1963 Act. The petitioners have been granted occupation certificate as well. It is pointed out that the ground floor of the said building is being used for residential and commercial purposes, whereas the basement is being used by the petitioners only for storage purposes. The petitioners were served with a notice dated 22.07.2003 (Annexure P-8) under the provisions of Section 12 (2) of the 1963 Act for alleged change of user of the basement and ground floor from residential purposes to commercial purposes using the building as showroom and godown and that the petitioners have violated the conditions imposed under Section 8(2) of the 1963 Act. The petitioners submitted reply to the said show cause notice, but the District Town Planner (Enforcement), Gurgaon exercising the powers of the Director, Town & Country Planning, Haryana under Sections 9 and 12 of the 1963 Act ordered that the petitioners shall restore the land and building to its approved state in conformity to the orders issued under Section 8(2) of the 1963 Act. The petitioners have also made reference to the meeting held on 13.02.2001 and also a newspaper report dated 10.01.2002 permitting commercial use of the residential properties in the colonizers' area. But it is alleged that the petitioners have been picked up at the instance of a colonizer. It is also pleaded that the entire area covered under DLF Qutab Enclave was intended to be included

within the Municipal Council, Gurgaon, when a draft notification to this effect was published. The respondents will cease to have jurisdiction and authority if the area is included within the municipal limits. It is pointed out that no decision has been taken to extend the municipal limits after publication of the draft notification. It is also pointed out that the petitioners have filed an appeal before the Tribunal constituted under the 1963 Act, but the same was dismissed on 05.10.2007. The challenge in the writ petition is to the said order as well, inter alia, that the order passed by the District Town Planner in exercise of the powers conferred under 1963 Act on the ground that the provisions of the 1963 Act do not apply to misuse of the property, as the plot in question is situated in licensed colony and has ceased to be a controlled area.

After filing of the writ petition, admittedly, a notification has been issued on 02.06.2008 constituting Municipal Corporation, Gurgaon, which includes an area of the licensed colony as well.

Before this Court, keeping in view the subsequent development of Constitution of Municipal Corporation, learned counsel for the petitioners have raised an argument that in terms of Chapter XX of the Haryana Municipal Corporation Act, 1994 (for short 'the 1994 Act'), the authorities under the 1963 Act particularly the Director, Town & Country Planning or any of the delegate of the Director is not competent to initiate any proceedings against the petitioners for violation of the conditions of licence. The action in respect of any violation of controlled area or the plan sanctioned in terms of 1963 Act can be initiated only by the Commissioner under the 1994 Act. It is also argued that the judgment in **Smt. Poonam Vs. the District Town Planner, Karnal** 2011 (2) PLR 305 of the learned Single Bench of one of us (Hemant Gupta, J.) is not correct

enunciation of law, when it is held that the Director, Town & Country Planning under the 1963 Act is competent to issue notice for demolition of a building situated within the municipal limits. The reliance is also placed upon a Division Bench judgment of this Court reported as **Premier Spinning Mills Pvt. Ltd. & another Vs. State of Haryana & others** 2005 (3) RCR (Civil) 298.

It is also argued that after the erstwhile controlled area comes within the municipal limits, no action can be taken against the petitioners for the alleged violations of the controlled area restrictions. Learned counsel for the petitioners have relied upon a Full Bench of this Court in CWP No.8011 of 1999 titled '**M/s Shiva Ice Factory Vs. State of Haryana & others**' decided on 12.12.2007 and another Division Bench judgment in **Satpal & others Vs. State of Haryana & others** 2010 (4) RCR (Civil) 331.

On the other hand, Mr. Hooda, Learned Advocate General, Haryana has vehemently argued that 1963 Act was enacted to prevent haphazard and sub-standard development along scheduled roads and in the controlled area. Since the Act was enacted to regulate the unrestricted and haphazard growth, the Director, Town & Country Planning under the aforesaid Act has been entrusted with the duties to regulate constructions along scheduled roads and in the controlled area. Therefore, such specific object of unplanned haphazard growth can be better controlled by the Director, Town & Country Planning, as an expert in town development. It is contended that controlled area under the 1963 Act continues to be controlled area even if the erstwhile controlled area falls within municipal limits governed by either the 1973 Act or 1994 Act. Therefore, the Director, Town & Country Planning or the authorities under the aforesaid Act are fully

competent to initiate proceedings to bring the buildings in conformity with the building plans sanctioned under the 1963 Act.

The three statutes i.e the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963; the Haryana Municipal Act, 1973; and the Haryana Municipal Corporation Act, 1994 have under gone many changes in the recent past. The relevant provisions from the three statutes are extracted below in juxtaposition:

<i>Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963</i>	<i>Haryana Municipal Act, 1973</i>	<i>Haryana Municipal Corporation Act, 1994</i>
<p><b>2. Definitions</b> – In this Act, unless the context otherwise requires -</p> <p>XX XX XX</p> <p>(6) “Director” means the Director of Town and Country Planning, Haryana, and includes any person for the time being appointed by the Government by notification to exercise and perform all or any of the powers and functions of the Director under this Act and the rules made thereunder in respect of any scheduled road or controlled area;</p> <p>XX XX XX</p>	<p><b>2. Definitions</b> – In this Act, unless there is anything repugnant in the subject or context –</p> <p>XX XX XX</p> <p><sup>2</sup>(9) “Director” means the Director Urban Development Department, Haryana;</p> <p><sup>2</sup>Substituted by Haryana Act No 5 of 2002. The earlier provision reads as</p> <p>(9) “Director” means the Director of Local Bodies appointed by the State Government;}</p> <p>XX XX XX</p>	<p><b>2. Definitions</b> – In this Act, unless the context otherwise requires –</p> <p>XX XX XX</p> <p>(4) “Commissioner” means the Commissioner of the Corporation, appointed by the State Government;</p> <p>XX XX XX</p>
<p>(12) “erect or re-erect any building” includes –</p> <p>(a) any material alteration or enlargement of any building;</p> <p>(b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;</p> <p>XXX XXX</p>	<p>(10) “erect or re-erect any building” includes –</p> <p>(a) any material alteration or enlargement of any building;</p> <p>(b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;</p>	
<p><b>4. Declaration of controlled area</b> – (1) The government may, by notification in the Official Gazette, declare any area outside the limits of municipal town or any other area, which in its opinion has</p>	<p><sup>3</sup>(7-A) “controlled area” means an area declared under section 203 C of this Act to be a controlled areas;</p> <p>XX XX XX</p>	<p><b>§346. Declaration of controlled area</b> - (1) Notwithstanding any law for the time being in force, the Commissioner may, with the previous approval of the Government, by notification,</p>

<p>the potential for building activities, industrial, commercial, institutional or recreational estate/ activities and uses sub-servient to the above, to be a controlled area for the purposes of this Act.</p> <p><sup>1</sup>Substituted by Haryana Act No 6 of 2007. The earlier provision reads as</p> <p><b>4. Declaration of controlled area – (1)</b> The government may, by notification declare the whole or any part of any area adjacent to and within a distance of – (a) eight kilo-meters on the outer side of the boundary of any town; or</p> <p>(b) two kilo-meters on the outer side of the boundary of any industrial or housing estate, public institution or an ancient and historical monument, specified in such notification to be controlled area for the purposes of this Act)</p> <p>(2) The Government shall also cause the contents of the declaration made under sub-section (1) to be published in at least two newspapers printed in a language other than English.</p> <p><b>5. Publication of plans etc. in controlled area – (1)</b> The Director shall, not later than three months from the declaration under sub-section (1) of Section 4 or within such further period as the Government may allow, prepare plans in the prescribed manner showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the Government.</p> <p>(2) Without prejudice to the generality of the powers specified in subsection (1), the plans may provide for any one or more of the following matters, namely:-</p> <p>(a) the division of any site into plots for the erection or re-erection of any building and the manner in which such plots may be transferred to intending</p>	<p><b>203C. Declaration of controlled area – (1)</b> Notwithstanding anything to the contrary contained in the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Act 41 of 1963), the Director may, with prior approval of the State Government, by notification in the Official Gazette, declare any area within the limits of a municipality to be controlled area. In case any area has already been declared as controlled area by the Director, Town and Country Planning, then the same shall be deemed to be the controlled area for the purpose of this Act.</p> <p>(2) The Director shall not later than six months from the date of declaration under sub-section (1), or within such further period as the State Government may allow, prepare plans showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the State Government;</p> <p>XX XX XX</p> <p><b>203D. Prohibition on use of the land and building in controlled area :- (1)</b> No land and building within the controlled area shall, except with the permission of the Director and on payment of such conversion charges, scrutiny fee and development charges as may be prescribed from time to time, be used for purposes, other than those for which it was used on the date of publication of the notification under sub-section (1) of section 203C and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick field, or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence as may be prescribed.</p> <p><b>203G. Powers and functions of Director –</b> All powers and functions of the Director, Town and Country Planning, Haryana being performed under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (Act 41 of</p>	<p>declare the whole or any part of the area within the Corporation to be a controlled area provided that the same has not been declared as controlled area under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963</p> <p><sup>5</sup>Substituted by Haryana Act No 20 of 2004. The earlier provision reads as</p> <p><b>346. Declaration of controlled area - (1)</b> Notwithstanding any law for the time being in force, the Commissioner may, with the previous approval of the Government, by notification, declare the whole or any part of the area within the Corporation including an area within a distance of 8 kilometres on the outer sides of the boundaries of the Corporation as a controlled area.</p> <p>(2) The Commissioner shall not later than six months from the date of declaration under sub-section (1), or within such further period as the Government may allow, prepare plans showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the Government.</p> <p>XX XX XX</p> <p><b>347. Erection or re-erection of building etc. in controlled area -</b> Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 346 and with the previous permission of the Commissioner.</p> <p><b>348. Prohibition on use of land in controlled area - (1)</b> No land within the controlled area shall, except with the permission of the Commissioner be used for purposes, other than those for which it was used on the date of publication of the notification under sub-section (1) of section 346 and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-</p>
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<p>purchasers or lessees;</p> <p style="text-align: center;">xx xx xx</p> <p>(3) The Government may either approve the plans without modifications with such modifications as it may consider necessary or reject the plans with directions to the Director to prepare fresh plans according to such directions.</p> <p><b>6. Erection or re-erection of buildings etc. in controlled areas</b> – Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation or lay out any means or access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in Section 5 and with the previous permission of the Director;</p> <p><b>7. Prohibition on use of land in controlled areas</b> – (1) No land within the controlled area shall, except with the permission of the Director, and on payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery kiln, lime-kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed;</p> <p><b>8. Application for permission etc. and the grant or refusal thereof</b> – (1) Every person desiring to obtain the permission referred to in Section 3 or Section 6 or Section 7 or licence under Section 7 shall make an application in writing to the Director in such form and containing such information in respect of the land, building, excavation or means of access to a road to which the</p>	<p>1963), and the rules made thereunder as applicable to the areas within municipal limits, shall be exercised and performed by the Director and the acts already done under the provisions of the said Act and the rules made thereunder, shall be construed to be acts done by the Director under this Act. The powers of the Commissioner and Secretary to Government, Haryana, Town and Country Planning Department under the above Act, shall be exercised by the Commissioner and Secretary to Government, Haryana, Urban Development Department, under this Act, within the municipal limits.</p> <p><sup>(3)</sup>Inserted vide Haryana Act No 1 of 2001)</p> <p><sup>4</sup>Earlier inserted vide Haryana Act No 1 of 2001 but later substituted by Haryana Act No 5 of 2002)</p> 	<p>kiln, lime-kiln, brick-kiln or brick-filled or for quarrying stone, bajri, kanker or manufacturing of surkhi or for crushing stone or for other similar extraction or ancillary operations except under and in accordance with the conditions of a licence to be obtained from the Commissioner on payment of such fees and under such conditions as may be prescribed.</p> <p>(2) The licence so granted shall be valid for one year may be renewed annually on payment of such fees as may be prescribed.</p> <p><b>349. Application of permission or licence and the grant or refusal thereof</b> -</p> <p>(1) Every person desiring to obtain the permission or licence referred to in sections 347 and 348 shall make an application in writing to the Commissioner in such form and containing such information in respect of the land, building, excavation or means of access to a road to which the application relates as may be prescribed.</p> <p><sup>6</sup><b>351. Commissioner to carry out functions of the Director</b> – All powers and functions of the Director, Town and Country Planning, shall be exercised and performed by the Commissioner in respect of the Corporation and acts already done under the provisions of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 11963 (Act 41 of 1963) shall be construed to be acts done by the Commissioner under this Act. The powers of the Commissioner of the Division under the aforesaid Act shall be exercised by the Government for the purposes of this Act.</p> <p><b><sup>6</sup>(Omitted by Haryana Act No 20 of 2004)</b></p>
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<p>application relates as may be prescribed.</p> <p>(2) On receipt of such application the Director, after making such enquiry as he considers necessary, shall by order in writing either:-</p> <p>(a) grant the permission or licence subject to such conditions if any, as may be specified in the order, or</p> <p>(b) refuse to grant such permission or license,</p> <p><b>19. Delegation</b> - The Government may by notification direct that any power exercisable by it under this Act, except the power specified in sub-section (1) of Section 4, sub-sections (3) and (7) of Section 5, section 18 and section 25, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the Government as may be specified in the notification.</p> <p>(2) The Director may, with the approval of the Government, by an order in writing delegate any of his powers and functions under this Act or the rules made thereunder to such other officer subordinate to him as may be specified in such order.</p>	<p><b>32. Delegation</b> – (1) The State Government may, by notification, delegate all or any of its powers under this Act except the power to frame forms or make rules under section 257 to any person.</p> <p>(2) The State Government may by notification delegate to any officer not below the rank of an Extra Assistant Commissioner all or any of the powers conferred under this Act on the Deputy Commissioner.</p> <p>(3) Every delegation of power under sub-section (1) or sub-section (2) may be subject to such restrictions and conditions as may be specified in the notification.</p>	<p><b>401. Delegation</b> – (1) The Government, may by notification, delegate all or any of its powers under this Act, except the power to make rules, to any officer not below the rank of an Extra-Assistant Commissioner subject to such restrictions and conditions as may be specified in the notification.</p> <p>(2) The Commissioner may, by order direct that any power conferred, or any duty imposed on him by or under this Act, shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed by a Corporation officer or other Corporation employee.</p>
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In terms of Section 25 of the 1963 Act, the State Government has framed the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965. Part VII of such Rules regulated the construction of the buildings in the controlled area. The colonizers are required to prepare plans for residential, commercial and other purposes as per the conditions of development of colonies in a controlled area. Rule 19 prescribed conditions required to be fulfilled by a colonizer including an undertaking permitting the Director or any other officer authorized by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by

him for ensuring due compliance of the execution of the layout and development works in accordance with the permission granted. Rule 24 empowers the Director to call upon the colonizer to remove the violations in execution of the layout plans or the construction work. An application is required to be made by any person to the Director intending to erect or re-erect any building in the controlled area as per Part VII of the rules. The entire procedure and the conditions for raising of construction of the buildings are prescribed in Part VII of the Rules.

It may be noticed that in terms of Section 5 of the 1963 Act, the Director, Town and Country Planning; Under Section 203C (2) of the 1973 Act, the Director, Urban Development Department and the Commissioner under Section 346(3) of the 1994 Act have to satisfy the similar tests while preparing the plans within the scope of their respective jurisdiction.

We have heard learned counsel for the parties. We find that different authorities have been empowered to act within their jurisdiction such as the Director, Urban Development Department within the municipal limits; the Commissioner with the limits of Municipal Corporation and the Director, Town & Country Planning in respect of the controlled area and the scheduled road outside the municipal limits. Such powers have been conferred to avoid overlapping of jurisdiction with the authorities and for focused implementation of the development plans and the Building Rules within their respective jurisdiction. We do not find any merit in the argument that the controlled area declared under 1963 Act cannot continue either under 1973 or 1994 Acts. Section 4 of the 1963 Act empowers the State Government to declare any area outside the limits of municipal town or any other area to be a controlled area. Therefore, the provisions of 1963 Act are applicable in respect of scheduled roads and the controlled area beyond

the municipal limits or the local authority. In respect of such controlled area, 1963 Act empowers the Director, Town & Country Planning or such other person appointed by the Government by notification to exercise or perform all other powers of the Director under the aforesaid Act. Once the Municipal Council is constituted or the limits of a local authority are extended, the 1973 Act becomes applicable in respect of a controlled area declared under 1963 Act in terms of Section 203C of the 1973 Act. But the power to implement the provisions of the Act lies with the Director, Urban Development Department, as defined in Section 2 (9) of the Act as amended vide Act No.5 of 2002 or on a delegate of the State Government in terms of Section 32 of the 1973 Act. We find that the legislation has used the expression “Director, Town & Country planning” and the “Director” in the 1973 Act for two different purposes. The expression “Director, Town & Country planning” has been used in respect of the Controlled area declared under the 1963 Act but where the expression used is only ‘Director’, it signifies that the jurisdiction within municipal limits is with the Director Urban Development Department. This is evident from reading of Sections 203C, 203D and 203G of the 1973 Act. It is further pointed out that the powers of Director can be delegated to any other person by the State Government in respect of an area governed by 1973 Act.

Similarly, under Section 346 of the 1994 Act, it is the Commissioner, who is competent to ensure compliance of the development plans in respect of controlled area declared under 1963 Act. This is so evident from the reading of Sections 346, 347, 348 & 349 as also when Section 351, which stands omitted by Act No.20 of 2004. The Director, Town & Country Planning has no role in respect of an area falling within the limits of a Municipal Corporation. Therefore, keeping in view the rule of

harmonious construction and to ensure proper working of all the statutes, it transpires that:

- (i) The Director, Town & Country Planning or any officer so appointed by the State Government is to ensure the compliance of the development plans and the provisions of 1963 Act in respect of controlled area and on the scheduled roads, outside the municipal limits;
- (ii) The Director, Urban Development Department is competent to seek compliance of the development plans published under Sections 4 & 5 of the 1963 Act in terms of Section 203C of the Act unless such plans are modified in accordance with the procedure prescribed therein; and also by a delegate notified by the State Government in terms of Section 32 of the 1973 Act.
- (iii) The Commissioner, Municipal Corporation is competent to seek compliance of the development plans published under Sections 4 & 5 of the 1963 Act in terms of Section 346 of the 1994 Act unless such plans are modified in accordance with the procedure prescribed; and also by a delegate notified by the State Government in terms of Section 401 of the 1994 Act.

We may now discuss the judgments referred to by learned Counsel for the parties. Section 203C of the 1973 Act was not brought to the notice either before the Full Bench and to the Division Bench in **M/s Shiva Ice Factory** and in **Satpal's** cases (supra) respectively. Such fact has been noticed by one of us (Hemant Gupta J) sitting singly in **Smt. Poonam's** case (supra). The said judgment has been quoted with approval by another Division Bench in CWP No.18 of 2004 titled '**Women Education Trust & another Vs. State of Haryana & another**' decided on 28.01.2011, wherein it has been held to the following effect:

“It may also be relevant to point out at this stage that though learned counsel for the petitioners raised an argument that the land in question falls within the limits of Municipal Council, Kaithal and therefore, the provisions of the Punjab Scheduled Roads and Controlled Areas Act were not applicable in view of the judgments of this Court in **Kartar Singh’s case, Pritam Singh’s case, Satpal’s case and M/s Shiva Ice Factory’s case (supra)** but could not substantiate the said argument in the face of the judgment of this Court passed in CR No.8353 of 2010 (**Smt. Poonam v. The District Town Planner, Karnal**) decided on 24.12.2010 wherein this Court after considering the aforesaid judgments has clearly laid down that the Hon’ble Full Bench and the Division Benches in the aforesaid cases were not apprised of the amendments in the Statute carried out by the Haryana Act No.1 of 2002, whereby Section 203 C of the Haryana Municipal Act, 1973 was inserted and in view of the aforesaid statutory provisions incorporated in the Haryana Municipal Act, the judgments relied upon by the petitioners were inapplicable.”

Therefore, the judgments relied upon by the learned counsel for the petitioners are not helpful to the arguments raised.

However, in **Premier Spinning Mills Pvt. Ltd.** case (supra), the order passed by the Assistant Town Planner in respect of an area falling within the municipal limits was set aside. In the said case, the reliance was placed upon notifications dated 21.02.1978 and 21.05.2002 issued by the Director under the 1963 Act delegating powers under Sections 9, 12 & 16 to the District Town Planner. The Court held to the following effect:

“20. The notification, Annexure R-10, has its genesis in the various amendments, carried out in the Haryana Municipal Act. With the passage of time, controlled areas, declared under the Scheduled Roads Act, began to be included within the municipal limits. The State, conscious of the fact that such controlled area as would be included within municipal limits, would be subject to the over-lapping jurisdiction of the Municipal Committees and the authorities under the Scheduled Roads Act, enacted the Haryana Municipal (Amendment) Act, 2001 (hereinafter referred to as “the Amending Act”). The Amending Act inserted Section 203-C and 203-G in the Municipal Act. Section 203-C declares that an area already declared as a controlled area, by the Director, Town & Country Planning, shall be deemed to be a controlled area for the purposes of the Haryana Municipal Act. The Amending Act also inserted Section 203-G in the Haryana Municipal Act, pursuant whereto, all powers and functions of the

Director Town and Country Planning, being performed under the Scheduled Roads Act, were henceforth to be performed by the Director, as defined under the Haryana Municipal Act. Section 203-G further declares that acts already done under the provisions of the Scheduled Roads Act and the rules made thereunder shall be construed to be acts done by the Director under the Haryana Municipal Act. It further states that the Director, Town & Country Planning and the Commissioner of the Division shall have no jurisdiction under the Scheduled Roads Act and the rules made thereunder, with respect to the controlled area falling within Municipal limits. The 'Director' under the Haryana Municipal Act is defined in Section 2 (9) as the Director Urban Development Department, Haryana.

21. In view of the above amendments, powers of the Director Town and Country Planning and the other officers under the Scheduled Roads Act stood conferred upon the authorities under the Haryana Municipal Act, qua controlled area, which fell within municipal limits.

22. Faced with the aforementioned situation, the State of Haryana, in its wisdom, vide notification dated 21.05.2002 (Annexure R-10), granted approval to the Director, Urban Development Department, Haryana, Chandigarh to delegate powers, vested in him, under Sections 9 and 12 of the Scheduled Roads Act with respect to controlled areas which had fallen within municipal limits, to all District Town Planners of the Department of Town and Country Planning. The respondents, as noticed earlier, have relied upon the notification (Annexure R-10) to contend that even after the amendment of the Haryana Municipal Act, the District Town Planner continues to exercise jurisdiction, under Section 12 of the Scheduled Roads Act and in his absence, these powers would be exercised by the Assistant Town Planner.

23. We have perused the notifications, Annexures R-9 and R-10 carefully. Though the notifications, prior to and subsequent to the amendment of the Haryana Municipal Act, delegate the powers of the Director Town and Country Planning, in the terms mentioned therein, these notifications are singularly silent about the delegation of any powers, whether of the Director, Town and Country Planning or the Director, Urban Development Department, upon Assistant Town Planners. The notifications do not support the averments in the written statement or the arguments canvassed by counsel for the respondents that in the absence of the District Town Planner Planning, the Assistant Town Planner, Karnal was delegated with powers to pass the impugned order. The respondents have failed to bring to our notice or place on record any other notification in support of their contentions that in the absence of the District Town Planner, the Assistant Town Planner was delegated powers. In this view of the matter, the impugned order, Annexure P-14, which was passed by the Assistant Town

Planner, Karnal, an authority not conferred with any jurisdiction to exercise the powers of the Director, Town and Country Planning, under Section 12 of the Scheduled Roads Act, is null and void.”

The ratio of the said judgment, in fact, supports the findings recorded herein that in terms of Section 203C of the 1973 Act, the controlled area declared under 1963 Act continues to be controlled area under 1973 Act.

Though in **Smt. Poonam's** case (supra), it was held that since the controlled area has been declared under 1963 Act, therefore, the Director, Town & Country Planning under the said Act is competent to issue notice in the petition for demolition, but we find that such observation is not warranted in terms of the provisions of the 1994 Act, as it is only the Commissioner or its delegate under Section 401, who can exercise jurisdiction under 1994 Act. In terms of 1973 Act, the jurisdiction under the said Act can be exercised only by Director Urban Development Department or any other delegate notified by the State Government in terms of Section 32 of the 1973 Act.

Though the provisions of 1973 Act are clear and categorical that the Director, Town & Country Planning shall have no jurisdiction to initiate proceedings in the erstwhile controlled area now forming part of municipal area, but the provisions of 1994 Act are somewhat ambiguous. The Municipal Corporation is generally upgraded to that status from an existing Municipal Council. The interpretation suggested by Mr. Hooda cannot be accepted, as the action within the area of Municipal Council can be initiated only by the Director, Urban Development Department in view of the express provisions of the said Act but in case the argument of Sh. Hooda is accepted then the effect would be that within the limits of the Municipal Corporation, it would be the Director, Town & Country Planning to initiate action for violation of controlled area. Such interpretation would do

violence to the statutory provisions and will defeat the harmonious and purposive construction. A Municipal Corporation, after its upgrading from Municipal Council cannot be reverted to a status as that existed even prior to the Constitution of the Municipal Council.

Though the notices, subject matter of challenge in the present case, were issued prior to amendment in the 1963 Act; 1973 Act & 1994 Act, but the fact remains that after passing of the impugned orders, there are material changes have taken place in the statutory provisions.

Therefore, while quashing the orders passed under the 1963 Act, we give liberty to the petitioners to conform to the building regulations as per the building plans sanctioned within a period of three months. If the petitioners fail to do so, the authorities as discussed above, shall be at liberty to initiate proceedings against the petitioners so as to seek compliance of the statutory provisions.

With the said observations, all the writ petitions stand disposed of.

सत्यमेव जयते (HEMANT GUPTA)  
JUDGE

23.08.2012  
Vimal

(RAJIV NARAIN RAINA)  
JUDGE