REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10930 OF 2013
(@ Special Leave Petition (Civil) No.34275 of 2009)

DLF Limited ..... Appellant

Versus

Manmohan Lowe and others .....Respondents

WITH

Contempt Petition (Civil) No. of 2013 (D.No.29500/12)
IN
CIVIL APPEAL NO. 10930 OF 2013
(@ Special Leave Petition (Civil) No.34275 of 2009)

DLF Limited ..... Petitioner

Versus

B. Jaishankar & Ors. .....Respondents

J U D G M E N T

K.S. Radhakrishnan, J.

Leave granted.

2. This appeal arises out of a writ petition filed by the Apartment owners of Silver Oaks Apartments, DLF Qutub Enclave, Phase-1, Gurgaon, seeking a writ of certiorari to quash the declaration dated 19.04.2001 filed by the Appellant, on the ground that the same is not

in conformity with Section 3(f) of the Haryana Apartment Ownership Act, 1983 (for short "the Apartment Act") since the appellant failed to include certain areas of the complex as "common areas and facilities" within the declaration, thereby effectively depriving the apartment owners of their rights over the same.

3. The Division Bench of the Punjab and Haryana High Court accepted their contention and held that the apartment owners are entitled to undivided interest in common areas and common facilities under Section 6 of the Apartment Act and would be vitally affected if those areas are not declared as common areas. The Court also held, inter alia, that the competent authority under Section 3(i) of the Apartment Act is under an obligation to decide the objections of the apartment owners to the declaration filed by the colonizer–appellant herein. Aggrieved by the same, this appeal has been preferred by the colonizer.

4. The colonizer purchased large extent of lands in villages Chakarpur, Sarhaul, Shahpur, Nathupur and Sikanderpur Ghosi, Tehsil and District Gurgaon, Haryana, with a view to develop a residential colony to be known as DLF Qutab Enclave Complex. Any intending company or association having land for converting it in the colony, was required to apply for licence under the Haryana

Development and Regulation of Urban Areas Act, 1975 (for short 'the Development Act'). The colonizer submitted an application in accordance with Section 3 of the Development Act for necessary licences. During the years 1980-81 seven licences were obtained by the Colonizer in relation to 130.62 acres. Licences were granted by the Director, Town and Country Planning, Haryana (DTCP) in accordance with the provisions of the Development Act. The Department of Town and Country Planning, Haryana (the Department) in the year 1982 approved the group complex, Silver Oaks, as part of the colony being developed by the Colonizer. Licences were initially granted for two years, and later got periodically renewed. On 30.05.1990 a condition was imposed by the Competent Authority that the Colonizer should provide Economically Weaker Sections Complex (EWS) and service units to the extent of 10% of main dwelling units. Consequently, revised plan was submitted, which was approved by the Competent Authority on 08.11.1990 in which residential blocks comprising parking in basement, EWS Flats and three shops were approved. There was further revision for zoning and building plan in the years 1992 and 1995.

5. The Department, in the meantime, circulated norms for provision of community facilities vide DTCP Endst No.20028 dated

24.11.1988. During the year 1990, agreements were entered into between the Colonizer and the Apartment Owners of the above-mentioned complex. Apartment buyers agreement provided for sale of a quantified 'super area' against the sale consideration specified in the agreement. The 'super area' comprises of an exclusive right to use the common area within the building in which the apartment was situated. Agreement also states that the colonizer will transfer and convey its right, title and interest in the said site, common area and common facilities in favour of the co-operative society or limited company or association of persons, etc. in accordance with the provisions of the Apartment Act and the Rules framed thereunder.

6. The Colonizer later applied for completion certificate on 15.04.1996 for group housing scheme measuring 14.75 acres. The Apartment Act, though was enforced by notification dated 08.09.1986, issued by the Haryana Department, the same was rescinded on 24.10.1997 as the concerned department which notified the Act was the Town Planning Department. Consequently, a fresh notification dated 10.11.1997 was issued by the Department notifying the applicability of the Act in the entire State of Haryana. Later several sale deeds were executed by the Colonizer in favour of the apartment owners in the year 1997, wherein both had agreed that they would conform to the provisions of the Apartment Act. Writ

Petition No.960 of 2000 was filed by respondents 1 to 5, before the Punjab & Haryana High Court, seeking a direction to the Colonizer to file a deed of declaration in relation to the Complex under the Apartment Act.

7. The Department later gave a partial completion certificate to the Colonizer on 22.01.2001, subject to the condition of filing a deed of declaration under the Apartment Act within 90 days. Later the Department on 14.03.2001 revised the earlier partial completion certificate for the complex, inter alia, requiring the Colonizer to file a deed of declaration within a period of 90 days. It was also provided that the responsibility of the ownership of common areas and common facilities as well as their management and maintenance should continue to vest with the Colonizer till such time the responsibility was transferred to the statutory condominium association under the Apartment Act. The Colonizer accordingly on 19.04.2001 filed the "deed of declaration" along with bye-laws of the statutory condominium association (Silver Oaks Condominium Association for short 'the SOCA') as required under Section 11(2) of the Apartment Act. The Colonizer on 20.04.2001 issued a letter to the SOCA stating that all the dwelling units, areas, with the common areas and facilities along with other assets, plant and machinery and equipments, as declared in the declaration stands transferred to the

SOCA for the maintenance. The Colonizer on 23.04.2001 also wrote a letter to the SOCA requesting them to take over the responsibility of maintaining common areas and facilities along with other assets, plant and machinery and equipments etc.

8. The SOCA on 27.04.2001 passed a resolution that it would take over the responsibility of managing of common areas and facilities along with other assets, plants and machinery and other equipments, as transferred to the Association by the Colonizer. The same was confirmed by the Association by sending a letter on 03.05.2001 to the Colonizer.

9. Writ Petition No.960 of 2000, filed by respondents 1 to 5 was later amended, challenging the declaration filed by the Colonizer, stating that the same was not in conformity with the mandate of the Apartment Act, and that the common areas and facilities should also include shops or parking areas, community centers, nursery school and other common facilities. Amendment sought was allowed by the High Court on 26.11.2001. Before the High Court Silver Oak Society also got themselves impleaded as party. The High Court also impleaded the statutory SOCA as a party respondent to the writ petition. The High Court also sought a clarification from the Department with regard to the meaning of expression “common areas

and facilities". The Department clarified that the "common areas and common facilities" need to be defined categorically in the declaration to be filed under Section 2 of the Apartment Act which may or may not include community buildings, shops etc.

10. The Division Bench of the High Court after hearing all the parties took the view that the question whether primary schools, shops or community center are common areas or any other objection of the flat owners could be decided by the Competent Authority, having regard to the provisions, objects and spirit of the Act. Further, the Court also took the view that it is not the intention of the Legislature that the developer/Colonizer assumes absolute power of declaring or not declaring areas, normally in common use, to be common areas. The Court also held that Section 11, which deals with the contents of the declaration, cannot be read as giving absolute power to the Colonizer/developer to exclude common areas from the said concept. The Court also held that the apartment owners are entitled to object to the contents of the declaration and it is for the Competent Authority to decide cross-objections. The Court after holding so, disposed of the writ petition with a direction to the Competent Authority to take a decision on the various objections raised by the apartment owners and the association. The legality of which is the question that arises for consideration in this appeal.

11. Shri Mukul Rohatgi, learned senior counsel appearing for the Colonizer, submitted that the High Court has completely misunderstood the scope of various provisions of the Development Act and the Rules framed thereunder as well as the Apartment Act, and the Rules framed thereunder. Learned senior counsel submitted that the judgment of the High Court has the effect of rendering the provisions of the Development Act, particularly, Section 3(3)(a)(iv) *otiose* in as much as it compels the Colonizer to divest its ownership rights in relation to community and commercial facilities developed by it in terms of the provision of the Development Act. Learned senior counsel also submitted that the direction of the High Court that the declaration must categorise the whole property into "apartment, common areas and facilities" and "limited common areas and facilities" is contrary to Section 3(f) of the Apartment Act, which itself, according to the learned senior counsel, does not compel the Colonizer to divest its ownership rights in community and common facilities developed by it as part of the obligation under the Development Act. Learned senior counsel also submitted that the High Court has failed to appreciate that the community and commercial facilities, in SOCA, were provided as part of the Colonizer's over all obligations under Section 3(3)(a)(iv) of the Development Act for the colony as a whole and the same cannot be

considered separate only on account of being located at a specific site in the colony i.e. inside the Silver Oaks Complex. Learned senior counsel placed considerable reliance on the Judgment of this Court in ***DLF Qutub Enclave Complex Educational Charitable Trust*** v. ***State of Haryana and others*** (2003) 5 SCC 622 and submitted that community facilities and amenities are not part of the "development work" under the Development Act.

12. Shri Vikas Singh, learned senior counsel appearing for the applicants in IA No.4 of 2013, supported the Colonizer's contentions and also submitted that the High Court has not properly appreciated the scope of Section 3(f) of the Apartment Act. Learned senior counsel pointed out that the expression "unless the context requires in the declaration" or "lawful amendments thereto" which finds a place in Section 3(f) of the Act has been completely overlooked by the High Court. Learned senior counsel also submitted that the Colonizer is not under an obligation either under the conditions of licence under the Development Act or under the provisions of the Apartment Act to declare certain areas to be common areas and facilities.

13. Mr. Narender Hooda, learned Additional Advocate General, Haryana, appearing for the State of Haryana, submitted that the

internal community facilities are required to be provided by the colonizer in terms of Section 3(3)(a)(iv) of the Development Act, at his own cost and the expenditure incurred cannot be passed on to the apartment owners and colonizer continues to be the exclusive owner of such community facilities and is free to incorporate or not, any or all such internal community facilities in the declaration required to be filed in terms of the Apartment Act. Learned AAG also submitted that in the instant case Silver Oaks is a part of a large colony of 130 acres and the same cannot be treated as an independent colony but only a portion of large colony of 130 acres. Further it is pointed out that all community facilities provided in the colony of 130 acres of which Silver Oaks is only one part is meant for the use and enjoyment of all the residents of the colony.

14. Shri T.R. Andhiyarujina, learned senior counsel appearing for the applicants in IA No.3 of 2010 submitted that the High Court is right in holding that the intention of the legislature is that the Colonizer cannot be conferred with an absolute power to declare or not to declare areas normally in common use, to be common areas. Learned senior counsel submitted that apartment owners are always entitled to object to the contents of the declaration if the contents are not in conformity with the statutory provisions and spirit of the Apartment Act. Learned senior counsel submitted that the High

Court has only directed the Competent Authority to examine the objections raised by the apartment owners and it is for the Competent Authority to decide as to whether the declaration is in conformity with the Apartment Act and the Rules and Regulations framed thereunder.

15. Mrs. Madhu Tewatia, learned counsel appearing for the SOCA, took us extensively to the provisions of the Apartment Ownership Act and the Rules framed thereunder and submitted that the group housing complexes are totally independent and distinct entity in terms of sanctions, applicability of development, control, norms etc. vis-à-vis plotted colonies. Learned counsel also submitted that the internal development work shall include common facilities in the building complex, for example, common sewerage, water supply, common staircases, corridors, ramps, lifts, chutes etc. and the community buildings are in addition to the provisions of development work mentioned in Rule 5 of Development Rules, 1976. Referring to the licence agreement under the Development Act, learned counsel pointed out that the common areas and facilities do not vest or belong to the builder and the responsibility of ownership or common areas and facilities, as well as their management, shall continue to vest with the Colonizer only till the responsibility is transferred to the owners of the dwelling units under the Apartment Act.

16. Learned counsel also submitted that the development charges and construction work in the colony are paid for by the apartment owners. Learned counsel also referred to the Judgment of this Court in ***Naharchand Laloochand Private Limited*** v. ***Panchali Co-operative Housing Socities Limited*** (2010) 9 SCC 536, and submitted that this Court, while interpreting para-materia definition of common areas and facilities held that parking area, common area and facilities and that even the factum of not having taken money from the apartment owners could not change the character and nature of common area even though the builder may not have charged. Learned counsel also submitted that Judgment in ***DLF Qutub Enclave*** (supra) can be distinguished on facts and law and is not applicable to the case on hand since in the instant case, learned counsel submits, this Court is concerned with the group housing multi-storied society unlike plotted colonies.

17. Shri Santosh Paul, learned counsel appearing for the applicants in IA No.5 of 2013, submitted that the Colonizer/Developer in the State of Haryana have with impunity violated the provisions of the Apartment Act. Learned counsel submitted that under Section 6 of the Act each apartment owner is entitled to an undivided interest in common areas and facilities and that percentage of undivided

interest of common areas and facilities shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or instrument. Learned counsel also made reference to the licence format LC-7 and other relevant provisions of the Development Act as well as the Apartment Act and submitted that the Developer/Colonizer having connivance with the authorities taken shelter under Section 3(1) to sustain for profiteering. Learned counsel, therefore, submitted that there is no reason to upset the findings recorded by the High Court which are in tune with the over all public interest so that the rights of the vulnerable sections of the society would be safeguarded from the colonizers.

18. We find that the issue involved in this case is of considerable importance in the real estate sector, especially in the urban areas, while developing a Scheme in connection with the plot development or group housing, hence, it is necessary to examine the various legal issues which arise for consideration in this appeal. The primary question that has come up for consideration is with regard to the rights of the apartment owners, vis-à-vis the colonizers over "community and commercial facilities" referred to in Section 3(f)(7) of the Apartment Act.

19. Apartments owners, as already stated, maintained the stand that "community and commercial facilities", like providing community centre, schools, shops etc., would fall within the statutory definition of "common areas and facilities" under Section 3(f) of the Apartment Act. The colonizers maintained the stand that it can be so only if the colonizer has provided so in the statutory declaration filed by it under Section 3(f) of the Apartment Act.

20. We are, in this case, concerned with the rights and obligations which flow to a colonizer, vis-à-vis, the apartment owners on the basis of the Development Act as well as the Apartment Act. Let us first examine the relevant provisions of the Development Act.

The Development Act:

21. Section 2(c) of the Development Act defines the term "colony", which reads as follows:

> **"2(c)** "colony" means an area of land divided or proposed to be divided into plots or flats for residential, commercial, industrial, cyber city or cyber park purposes or for the construction of flats in the form of group housing or for the construction of integrated commercial complexes, but an area of land divided or proposed to be divided-

(i) for the purpose of agriculture; or

(ii) as a result of family partition, inheritance, succession or partition of joint holding not with the motive or earning profit; or

(ii) in furtherance of any scheme sanction under any other law; or

(iii) by the owner of a factory for setting up a housing colony for the labour or the employees working in the factory; provided there is no profit motive; or

(iv) when it does not exceed one thousand square metres or such less area as may be decided from time to time in an urban area by Government for the purposes of this sub-clause, shall not be a colony."

The expression "colonizer" is defined under Section 2(d) which reads as follows :-

> "**2(d)**. "colonizer" means an individual, company or association or body of individuals, whether incorporated or not, owning land for converting it into a colony and to whom a licence has been granted under this Act."

The expression "development works" is defined under Section 2(e) of the Act to mean as "internal and external development works". Section 2(g) defines the expression "external development works" and reads as follows:

> "**2(g).** "External development works" include water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area."

The word "flat" is defined under Section 2(gg) of the Act, which reads as follows:

> "**2(gg).** "Flat" means a part of any property, intended to be used for residential purposes, including one or more rooms with enclosed spaces located on one or more floors, with direct exit to a public street or road or to a common area leading to such streets or roads and includes any garage or room whether or not adjacent to the building in which such flat is located provided by the colonizer/owner of such property for use by the owner of such flat for parking any vehicle or for residence of any person employed in such flat, as the case may be."

The expression "group housing" is defined under Section 2(hh) of the Development Act, which reads as follows:

> "**2(hh).** "Group housing" means a building designed and developed in the form of flats for residential purpose or any ancillary or appurtenant building including community facilities, public amenities and public utility as may be prescribed."

Section 2(hhh) defines the expression "integrated commercial complex", which reads as follows :-

> "**2(hhh).** "integrated commercial complex" means building containing apartments sharing common services and facilities and having their undivided share in the land and meant to be used for office or for practicing of any profession or for carrying on any occupation, trade, business or such other type of independent use, as may be prescribed."

The expression "internal development works" is defined under Section 2(i), which reads as follows:

"**2(i).** "Internal development works" mean –

(i) metalling of roads and paving of footpaths;

(ii) turfing and plantation with trees of open spaces;

(iii) street lighting;

(iv) adequate and wholesome water-supply;

(v) sewers and drains both from storm and sullage water and necessary provision for their treatment and disposal; and

(vi) any other work that the Director may think necessary in the interest of proper development of a colony."

Section 3 of the Development Act deals with application for licence, which reads as follows :-

"**3. Application for licence.-** (1) Any owner desiring to convert his land into a colony shall, unless exempted under section 9, make an application to the Director, for the grant of licence to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed. The application shall be accompanied by an income-tax clearance certificate;

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.

(2) On receipt of the application under sub section (1), the Director shall, among other things, enquire into the following matters, namely:-

(a) title to the land;

(b) extent and situation of the land;

(c) capacity to develop a colony;

(d) the layout of a colony;

(e) plan regarding the development schemes of the colony land to those of the neighbouring areas.

(f) conformity of the development schemes of the colony land to those of the neighbouring areas.

(3) After the enquiry under sub-section (2), the Director, by an order in writing, shall –

(a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per centum of the estimated cost of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case of cyber city or cyber park purposes as certified by the director and has undertaken-

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with licence granted;

(ii) to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director;

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centers and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centers and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institutions including a local authority on such terms and conditions as it may deem fit;

(v) to permit 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 licence granted;

Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the locality, is of the opinion that it is not necessary or possible to provide one or more such amenities, may exempt the licensee from providing such amenities either wholly or in part;

(vi) to fulfill such terms and conditions as may be specified by the director at the time of grant of license through bilateral agreement as may be prescribed.

(b) refuse to grant a licence, by means of a speaking order, after affording the applicant an opportunity of being heard.

4. the license so granted shall be valid for a period of two years, and will be renewable from time to time for a period of one year, on payment of prescribed fee:

Provided that in the licensed colony permitted as a special project by the Government, the license shall be valid for a maximum period of five years and shall be renewable for a period as decided by the Government."

22. The colonizer, in the instant case, has entered into an agreement LC-IVA under Rule 11 of the Development Rules, 1976, whereby the colonizer has agreed to comply with the execution of internal development works, external development works and to construct at his own cost, community centers, community buildings, schools, hospitals etc. in the areas earmarked for the same in the layout plan of the colony. Internal development works are to be executed by the colonizer between boundaries of the licensed colony and the cost of the internal development works, to be recovered from the plot holders/apartment owners in the colony. External development works are works required to be executed at the periphery of the colony or outside the colony limits which are of larger and more substantial nature and meant to serve the needs of a larger area than one colony like town level infrastructure work

facilities etc. External development works, which includes water supply, sewerage, roads, electrical works, solid waste management disposal, colleges, hospitals, stadium etc. are to be executed exclusively by the State Government and not by the colonizer. Section 3(3)(a)(ii) and the statutory agreement to be entered into between the colonizer and the State Government would indicate that colonizer is required to deposit with the Government the entire cost of external development works as quantified by the State Government, cost of the same invariably passed on by the colonizer to the plot holders/apartments owners on pro-rata basis. Further, the responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years is on the Colonizer from the date of issue of the completion certificate.

23. We may now examine the most crucial issue with regard to the scope of Section 3(3)(a)(iv) of the Development Act. As per the said provision, an obligation is cast on the colonizer to construct "at its own cost" or get constructed by any other institution or an individual at its own cost, schools, hospitals, community centers and other community buildings on the land set apart for the said purpose. In the alternative, the colonizer can also transfer to the Government, at any time, if so decided by the Government, free of cost, the land set

apart for schools, hospitals, community centers and community buildings, in which case, the Government shall be at liberty to transfer such land to any person or institution, including a local authority on such terms and conditions, as it may deem fit. In such situation, the cost of construction can either be met by the Government or by the transferee of the Government. The cost incurred in discharging the obligations under Section 3(3)(a)(iv), as already indicated, has to be borne either by the colonizer or, on transfer of the land free of cost, by the Government or the Government transferee. The cost incurred for construction, in that event, cannot be passed on or recovered from the plot holders/apartment owners in the colony.

24. Section 3(3)(a)(iv) obliges the colonizer to construct at his own cost schools, hospitals, community centers and other buildings on the lands set apart for that purpose, or also can get them constructed by any other institution or an individual, at its own cost, but the ownership of land set apart for the said purpose continues with the colonizer. Option is also provided under Section 3(3)(a)(iv) to the colonizer to transfer to the Government, at any time, if so desired by the Government, free of cost, the land set apart for schools, hospitals, community centers and community buildings, in which case, the Government shall be at liberty to transfer such land

to any person or institution, including a local authority on such terms and conditions as it may deem fit. But, the ownership of the Colonizer cannot be transferred or divested, unless the colonizer volunteers to transfer the same free of cost to the Government. The colonizer has taken a specific ground in this appeal that even before filing the writ petition, they had already transferred its right to construct two nursery schools, community center and the shops in Silver Oaks Group Housing to third parties and it is for the third parties to construct the same, though ownership of the land vests with the colonizer.

25. Community and other facilities like schools, hospitals, community centers, shops etc. provided in the land set apart under Section 3(3)(a)(iv) are, therefore, meant for the benefit of the entire colony and not for the apartment owners in one part of the colony and the costs incurred in discharge of the statutory obligations cannot be passed on/transferred from the plot owners/apartment owners by the colonizer. The facilities to be provided under Section 3(3)(a)(iv) are based on the prescribed norms which are population based and the number of each type of amenity and its placement at various places in the colony (plotted areas or group housing) are, as per the lay-out plans duly approved by the DTCP under the Development Act. DTCP has prescribed the requirement for each

amenity/commercial facility for DLF City Phase I, II & III, comprising of a total area of 1542 acres, under a composite layout plan of all the three phases, treating three phases as a single colony. As per the approved layout plans, these amenities are earmarked at various sites in the colony, some in the plotted areas and some in the group housing areas. So far as the present case is concerned, we notice that the layout plans pertaining to lands covered under various licenses in the colony are not restricted to 130 acres alone, wherein Silver Oaks Group Housing is located in 14.75 acres.

26. In ***Ansal Properties and Industries Limited. V. State of Haryana and Another*** (2009) 3 SCC 553, this Court had occasion to examine the scope of Section 3(3)(a)(iv) along with the Regulations Act. In that case, the Court held as follows:

> "42. The responsibility regarding construction of community centres and other community buildings could be discharged by adopting any of the three options as mentioned hereinbefore and each one of such options is an independent option and one cannot be connected and related with the other. We cannot read the provision relating to construction at the own cost of the developer the schools, hospitals, community centres and other community buildings on the land set apart for this purpose, into an independent alternative provision relating to transfer of such land to the Government free of cost. The aforesaid option given to the developer to construct the community centres and other community buildings at its own cost is when he can utilise himself to manage it. Therefore, we cannot read the aforesaid provision in the manner sought to be read by Mr Chaudhari, for reading by

> adding certain words in the aforesaid manner does not appear to be the intention of the legislature while enacting the aforesaid legislation, for otherwise the legislature would have explicitly said so in the body of the main part of the section itself.

In that case, the State Government sought to recover the cost of construction over the land set apart for providing facilities which were taken over by the Government as part of "external development charges". This Court held that Section 3(3)(a)(iv) only provides for the land to be transferred to the State and no provision of the Act authorizes the State Government to recover charges towards cost of construction.

27. Later, in ***DLF Qutub Enclave Complex Educational Charitable Trust v. State of Haayana and Others*** (2003) 5 SCC 622, while dealing with the scope of the above mentioned provision, this Court held as follows:

> "34. At the outset, we may notice that the cost of development works indisputably is to be raised from the plot-holders, but as construction of schools, hospitals, community centres and other community buildings do not come within the purview of the term "development works", the costs therefore are not to be borne by them.
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> 35. The expression "development works" as noticed hereinbefore is not synonymous with "amenity". The expression "amenity" has been used only in the proviso appended to sub-clause (*v*) of Section 3(3)(*a*) and Rule 2(*b*) of the Rules. Rules are subservient to the Act, although

> they may be read conjointly with the Act, if any necessity arises therefor. Even Rule 5 specifies the obligation of the colonizer as regard providing for the development works. The expression "amenity" as defined in Rule 2(*b*) of the Rules is wider than "development works". No principle of construction of statute suggests that a wider expression used in the rule may be read in the statute employing narrower expression. Even in the rule the said expressions have been used for different purposes. The licence also does not postulate that all amenities must be provided by the colonizer at its own expense. If the terms "development works" and "amenity" are treated as carrying the same meaning, the plot-holders may be held to be bound to meet the costs for construction of schools, hospitals, community centres etc. The cost of construction in terms of the said provisions thereof is to be borne by DLF or its nominees.
>
> 36. Right of transfer of land is indisputably incidental to the right of ownership. Such a right can be curtailed or taken away only by reason of a statute. An embargo upon the owner of the land to transfer the same in the opinion of this Court should not be readily inferred. Section 3(3)(*a*)(*iv*) of the Act does not expressly impose any restriction. The same is merely a part of an undertaking. ….."

28. We have to now examine the rights of apartment owners over the facilities referred to in Section 3(3)(a)(iv) of the Development Act in the light of the Apartment Act. As already indicated, it is the obligation of the colonizer to construct schools, community centers and commercial facilities on the lands set apart for that purpose in the colony under Section 3(3)(a)(iv) of the Development Act and also on the basis of agreement executed between the colonizer and the DTCP. No obligation is cast on the colonizer under the Apartment Act or the Rules framed thereunder to provide those facilities which

are specifically mentioned under Section 3(3)(a)(iv) of the Development Act. But the Colonizer has to provide various other facilities like "common areas and facilities", to the apartment owners, as provided under the Apartment Act. In this regard, reference may be made to certain provisions of the Apartment Act.

The Apartment Act:

29. Section 3(a) of the Apartment Act deals with the word "apartment", which reads as follows:

> "3(a). "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or part or parts thereof, in a building, intended to be used for residential purposes and with a direct exit to a public street, road or highway or to a common area leading to such street, road or highway."

Section 3(b) defines the term "apartment owner" which reads as follows:

> "3(b) "Apartment owner" means the person or persons owning an apartment and undivided interest in the common areas and facilities in the percentage specified and established in the declaration."

Section 3(f) defines the term "common areas and facilities" which reads as follows:

> "3(f) "Common areas and facilities: unless otherwise provided in the declaration or lawful amendments thereto means-

(1) the land on which the building is located;

(2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair ways, fire escapes and entrances and exits of the building;

(3) the basements, cellars, yards, gardens, parking area and storage spaces;

(4) the premises for the lodging of janitors or persons employed for management of the property;

(5) installation of central services such as power, light, gas, hot and cold water, heating refrigeration, air conditioning and incinerating;

(6) the elevators, tanks, pumps, motors, fans compressors, ducts and in general all apparatus and installations existing for common use;

(7) such community and commercial facilities as may be provided for in the declaration; and

(8) all other parts of the property necessary or convenient to its existing maintenance and safety or normally in common use."

Section 3(h) defines the term "common profits" which reads as follows:

> "3(h). "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses."

Section 3(j) defines the word "declaration" which reads as under;

> "3(j). "Declaration" means the instrument to be executed and got registered in the prescribed form and includes the amended declaration."

Section 4 of the Act deals with the "status of apartments" which reads as under:

> "**4. Status of apartments.-** Each apartment, together with its undivided interest in the common areas and facilities, appurtenant to such apartment, shall for all purposes constitute heritable and transferable immovable property within the meaning of any law for the time being in force in the State of Haryana."

Section 5 of the Act deals with "Ownership of apartments" which reads as follows:

> **'5. Ownership of apartments.-** (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the declaration.
>
> (2) Each apartment owner shall execute a deed of apartment in relation to his apartment in the manner prescribed."

30. The status of apartments together with its undivided interest in common areas and facilities, appurtenant to such apartment, shall for all purposes constitute heritable and transferable immovable property and each apartment owner shall be entitled to the exclusive ownership and possession of his apartment in accordance with the declaration.

31. Section 6 of the Act deals with "common areas and facilities" which reads as follows:

> "**6. Common areas and facilities**. – (1) Each apartment owner shall be entitled to an undivided interest in the

common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof unless the property has been removed from the provisions of this Act as provided in Sections 14 and 22. Any covenant to the contrary shall be null and void.

(4) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvements thereto shall be carried out as provided herein and in the bye-laws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the Manager or Board of Managers thereof, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible there from or for making emergency repairs

therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments."

Declaration:

32. The Apartment Act casts an obligation on the colonizer to file a statutory declaration. Section 6 read with Section 3(f) of the Apartment Act clearly indicates that clauses 1 to 8, except 7 of Section 3(f) are to be provided by the colonizer to the apartment owners and each apartment owner is entitled to an undivided interest in the common areas and facilities, in the percentage expressed in the declaration. The only exception is clause 7, which gives a right to the colonizer either to provide or not to provide in the declaration, the community and commercial facilities referred to in Section 3(3)(a)(iv) of the Development Act. There is a marked difference between "common areas and facilities" and "community and commercial facilities". A colonizer is duty bound to provide all the common areas and facilities as per Section 3(f), except community and commercial facilities referred to in Section 3(f)(7). "Common areas and facilities" referred to in Section 3(f)(7) of the Apartment Act has a co-relation with the "Community and Commercial facilities" referred to in Section 3(3)(a)(iv) of the Development Act. It is for that reason that a discretion has been given to the colonizer to either provide the same or not to provide the same in the declaration referred to in Section 3(f) of the Apartment Act. The expression "may" used in Section 3(f)(7) of

the Apartment Act clearly indicates that no duty is cast on the colonizer to give an undivided interest over those community and commercial facilities exclusively to the apartment owners of a particular colony, since the same have to be enjoyed by other apartment owners of DLF City, Phase I, II and III as well. Even otherwise, the colonizer could not have parted with his ownership rights exclusively to one Colony alone.

33. Section 11 of the Act deals with "contents of declaration" which is extracted below:

> "**11. Contents of declaration** – (1) The declaration shall contain the following particulars, namely :-

description of land on which the building and improvements are to be located and whether the land is freehold or leasehold;

description of the building stating the number of storeyes and basement, the number of apartments and the principal materials of which it is or is to be constructed;

the apartment number of each apartment and statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification;

description of the limited common area and facilities;

description of the limited common area and facilities, if any, stating to which apartment their use is reserved;

value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting and a statement that the apartment and such

percentage of undivided interest are not encumbered in any manner whatsoever or not on the date of the declaration;

statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

the name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such persons which shall be within the city, town or village in which the building is located;

provisions as to the percentages of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property;

any other details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this Act; and

The method by which the declaration may be amended consistent with the provisions of this Act.

(2) A true copy of each of the declaration and bye-laws and all amendments to the declaration or the bye-laws shall be filed in the office of the competent authority."

"Contents of deed of apartment" is dealt with in Section 12 of the Act

which reads as follows:

"**12. Contents of deed of apartment.** – (1) The deed of apartment shall include the following particulars, namely :-

(a) a description of the land as provided in Section 11 or the postal address of the property, including in either case the number, page and date of executing the declaration, the date and serial number of its registration under the Indian Registration Act, 1908 and the date and other reference, if any, of its filing with the competent authority;

(b) the apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(c) statement of the use for which the apartment is intended and restrictions on its use, if any;

(d) the percentage of undivided interest appertaining to the apartment in the common areas and facilities; and

(e) any further details which may be desirable to set forth consistent with the declaration and this Act.

(2) A true copy of every deed of apartment shall be filed in the office of the competent authority."

34. Section 13 of the Act states that the declaration and all amendments thereto and the deed of apartment in respect of each apartment and the floor plan of the building referred to in sub-section (2) shall be registered under the Indian Registration Act.

35. If we scan through the above mentioned provisions, what is discernible is that each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration and such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property. Common areas and facilities shall also remain undivided and the apartment owner or any other person can use the common areas and facilities in accordance with the purpose for which they are intended without entering or encroaching upon the rights of other apartment owners. Apartment owners are entitled to

an undivided interest in the common areas and facilities in the percentage expressed in the declaration, within the meaning of Section 3(f) (1) to (6) and (8) and it is also open to the colonizer to provide, at its own cost, the community and commercial facilities referred to in clause 7 of Section 3(f) read with Section 3(3)(f)(iv) of the Development Act by including them in the declaration. Colonizer cannot also, under certain circumstances, confer any undivided interest to an exclusive set of apartment owners to the detriment of similar apartment owners, who have apartments in other phases of a larger colony or city. Apartment owners are, therefore, not entitled to an undivided interest or possession over those community and commercial facilities, referred to in Section 3(3)(a)(iv) of the Development Act, unless specifically provided by the colonizer in the statutory declaration.

Ownership Vs. User:

36. We have clearly indicated that the ownership right over the land earmarked for schools, hospitals, community centers and other community buildings referred to in Section 3(3)(a)(iv) of the Development Act vests on the colonizer. That ownership can be divested, as already indicated, by the colonizer through a declaration under Sections 11 to 13 read with Section 3(f) of the Apartment Act.

The colonizer has to provide those facilities in discharge of its legal obligations under the Development Act and the Act itself has recognized its or his legal ownership over the area set apart for those facilities under Section 3(3)(a)(iv) of the Act. All the same, the right to enjoy those facilities referred to in Section 3(3)(a)(iv) of the Development Act, whether shown in the declaration or not, under the Apartment Act, cannot be restricted or curtailed and the apartment owners have no other right, except the right of "user". Community centers, nursery schools, shops etc., therefore, being part of the approved layout plans by the DTCP, can be used by the apartment owners and, being part of the larger colony, are intended for independent use of all the apartment owners having direct exit to common areas, to the public street, road, etc. All those facts would indicate, so far as apartment owners are concerned, they have only a right of user, so far as the facilities provided under Section 3(3)(a)(iv) of the Development Act are concerned.

37. Learned counsel for respondents sought to argue that the Silver Oaks Apartments is a 'gated' colony and, therefore, the developments which have taken place inside the boundary walls of that colony are to be treated as parts of internal development works and, therefore, these are parts of common areas. In this very direction, it was further submitted that these are the necessary and essential facilities

which have to be provided to the flat owners by the developers, for the common use of the flat owners. Though, this argument appears to be attractive, it has no merit when we examine the nature of structures developed by the developer i.e. the appellant to which it is claiming its exclusive right. These structures are two nursery schools, three shops and one community centre, which cannot be treated as "common areas and facilities" within the definition of Section 3(f) of the Act. As already pointed out above, they are parts of planning for larger area, which plans were submitted by the appellant. It is not meant for the exclusive use of the flat owners of Silver Oaks Apartments. Position would have been different had these been integral parts of the facilities, in the sense that these facilities are essential for the enjoyment of the flats.

38. Common passages, staircases, lifts etc. are the examples of such common areas and facilities. Likewise, stilt parking area may be treated as part of common areas and facilities, in certain circumstances. Here these structures are the part of the larger area of about 130 acres in respect of which 7 licenses were obtained for development of the colony. Silver Oaks Apartments, which comprises of 14.75 acres, is only a part thereof. The nursery schools, shops and community centre are meant for the development of the entire colony and are not confined only to these apartments, as already noted in

detail above. Further, as per our detailed discussion hereinabove, it is clear that the developer is given right to transfer these "community buildings and community centers". Likewise, even schools cannot be termed as part of "integral development" use whereof would be confined to residents of these apartments. Even the shops which are inside the boundary walls have their opening from outside to enable the shopkeepers to cater to the customers not only from these apartments, but outsiders as well. Therefore, on these facts, we are not impressed by the argument predicated on "gated colony".

Cost not on Apartment owners:

39. We have found that the Colonizer is legally obliged under Section 3(3)(a)(iv) of the Act to construct at his own cost the community and commercial facilities stipulated therein and an agreement has to be entered into by the Colonizer with the DTCP under the Development Act by which the Colonizer is prohibited by law from recovering the cost of providing those facilities from the apartment owners. The operative portion of the agreement executed by the colonizer reads as follows:

> "j) That only convenient shopping sufficient for requirement of the Group Housing will be allowed which shall be approximate one shop per one thousand persons, covering a maximum area of 200 sq. ft. per shop.

k) That adequate educational, health, recreational and cultural amenities to the norms and standards provided in the respective Development plan of the area shall be provided.

The owner shall at his own cost construct the primary-cum-nursery school, community building/dispensary and first aid centre on the land set apart for this purpose, or if so desired by the Govt. shall transfer to the Govt. at any time free of cost land thus set apart for primary cum nursery school, community building/dispensary and first aid centre, in which case the Govt. shall be at liberty to transfer such land to any person or instruction including a local authority on such terms and conditions as it may lay down.

o) That the owner shall abide by the provisions of the Haryana Apartment and Ownership Act, 1983.

p) That the responsibility of the ownership of the common areas and facilities as well as their management and maintenance shall continue to vest with the colonizer till such time the responsibility is transferred to the owners of the dwelling units under the Haryana Apartment and Ownership Act, 1983."

40. Section 3(3)(a)(iv) of the Development Act read with the above-mentioned clauses in the agreement would indicate that ownership of the portion of the land set apart for the common areas and facilities referred to therein vest with the Colonizer so also the obligation "at his own cost" to provide those facilities in the land set apart for the said purpose. The Colonizer cannot recover cost of land or the amounts spent by him for providing those facilities from the apartment owners. It is for the said reason that clause 7 of Section 3(f) of the Apartment Act has not made it obligatory, on the

part of the Colonizer to include the "community and commercial" facilities in the declaration. If the colonizer includes the same within the declaration, then Section 6 of the Apartment Act will kick in, consequently, the apartment owners would be entitled to the undivided interest in respect of the community and commercial facilities provided therein without bearing the cost incurred by the colonizer in purchasing the land and the cost of construction. In our view, the colonizer could not have included the community and commercial facilities referred to in Section 3(3)(a)(iv) of the Development Act, because the same is meant for the benefit of the entire colony, not merely the flat/apartment owners in one part of the colony since they form part of the lay out plans duly approved, which takes in plotted area and the group housing societies area as well.

41. We have also gone through the Apartment Buyer's agreement/conveyance deed. The exact extent of area sold by the colonizer to an apartment owner is mentioned therein. The operative portion of the same reads as follows:

> "1. That the Company hereby agrees to sell and the Apartment Allottee hereby agrees to acquire the said **premises as detailed below** at the rate mentioned against it and upon the terms and conditions set out hereunder as mutually agreed by and between the parties thereto.
>
> Particulars Apartment Super Area Rate (s) per

i.e. Bldg. No.	No.	(Appx)	sq meter
121	82	98.28 sq. mtr.	Rs.6189/-

3(a) That the Apartment Allottee agress that the **Super Area** for the purpose of calculating the sale price in respect of the said premises shall be inclusive of the area under the periphery walls, area under columns and walls **within the Apartment**, half of the area of the walls common with other apartments adjoining the said apartment and also **proportionate share of the common area in the building i.e. stairs, ramps, walk ways, lobbies, lift wells, shafts and the like**……."

42. Considerable reliance was placed by the apartment owners on the Judgment of this Court in ***Naharchand Laloochand Private Limited*** (supra). First of all, the Judgment is not at all dealing with the community and commercial facilities in a group housing society with reference to the provisions of Section 3(3)(a)(iv) of Development Act. The above-mentioned Judgment was delivered in the context of the Maharashtra Ownership of Flats Act, 1963 (MOFA) and the Development Control Regulation (DCR) framed under the Maharashtra Regional Town Planning Act, 1966. In that case this Court was required to examine as to whether a stilt parking can be considered to be a garage under the definition of "flat" under MOFA. As per the format provided under MOFA only a "flat" or "dwelling unit" or "shop" or "garage" can be sold by a developer. Stilt parking could not be separately sold in terms of the provisions of the MOFA,

a statutory format of the agreement and the provisions of the DCR. Such a restriction is not there either under the 1975 Regulation Act or the Apartment Act and there is no occasion to consider whether stilt parking can be sold along with the apartment. In any view, the present case is not concerned with the question of stilt parking. We are in this case, pointedly concerned with the facilities provided under Section 3(3)(a)(iv) of Development Act, consequently, the reasoning of ***Naharchand Laloochand Private Limited*** (supra) are inapplicable to the facts of this case, if examined in the light of the Regulation Act and the Apartment Act.

Competent Authority:

43. We are also of the view that the High Court has committed an error in directing the DTCP to decide the objections of the apartment owners with regard to the declaration made by the colonizer. The Competent Authority is defined under Section 3(i) of the Apartment Act. Section 11(2) provides for filing of declaration in the office of the Competent Authority. Section 24A of the Act prescribes penalties and prosecution for failure to file a declaration and Section 24B permits the prosecution only with the sanction of the Competent Authority. In a given case if the developer does not provide common

areas or facilities like corridors, lobbies, staircases, lifts and fire escape etc. the Competent Authority can look into the objections of the apartment owners but when statute has given a discretion to the colonizer to provide or not to provide as per Section 3(f)(7) of the Apartment Act the facilities referred to in Section 3(3)(a)(iv) of Development Act, in our view no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user. In the instant case the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(a)(iv) of Regulation Act, but they cannot claim an undivided interest or right of management over them.

44. We may also refer to the contention raised by the apartment owners that the Judgment in ***DLF Qutab Enclave*** (supra) is not applicable in view of the Haryana Development and Regulation of Urban Areas (Management) Act, 2003 which came into force on 03.04.2003. We have gone through the amended definition of "external development works". By virtue of the amendment, the scope of the said expression has been widened and the State Government has given a wider discretion in expending the amount collected from the colonizer as external development charges. The Amendment Act does not seek to transfer an obligation of actually

carrying out the external development work upon the colonizer. The Statement of Objects and Reasons of the Bill of 2003 which led to the amendment indicates that though the various decisions of the High Court have gone in favour of the Department, the amendment was necessitated to make certain provisions more comprehensive. In other words, the amendment has no effect on the Judgment of this Court in ***DLF Qutab Enclave*** (supra).

45. We are of the view that the High Court has not properly appreciated or applied the various statutory provisions of the Regulation Act and the Rules framed thereunder, the terms of licences issued, agreements executed between the colonizer and the DTCP vis-à-vis the various provisions of the Apartment Act, the statutory declaration made by the colonizer and the Sale Deeds executed between the parties. In such circumstances, we are inclined to set aside the judgment of the High Court and dismiss the writ petition filed before the High Court. The appeal is, therefore allowed. However, there will be no order as to costs. Applications for intervention are allowed.

Contempt Petition (Civil) No. of 2013(D.No.29500/12)

46. The interim orders passed by this Court are merged in the aforesaid judgment. In such circumstances, no further orders are necessary in the Contempt Petition and the same is disposed of accordingly.

.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
December 10, 2013.

ITEM NO.1-A **COURT NO.7** **SECTION IVB**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).34275/2009

DLF LIMITED **Petitioner(s)**

VERSUS

MANMOHAN LOWE & ORS. **Respondent(s)**

Contempt Petition (Civil) D.No. 29500 Of 2012
in Special Leave Petition (Civil) No. 34275 of 2009

Date: 10/12/2013 These Petitions were called on for pronouncement of Judgment today.

For Petitioner(s)
Mr. Rajan Narain, Adv.

Mr. Gagan Gupta, Adv.

For Respondent(s)
Mr. Chander Shekhar Ashri, Adv.

Mr. Kamal Mohan Gupta, Adv.

Hon'ble Mr. Justice K.S. Radhakrishnan pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice A.K. Sikri.

Leave granted.

The appeal is allowed.

The contempt petition is disposed of.

(N.S.K. Kamesh)
Court Master

(Renuka Sadana)
Court Master

(signed reportable judgment is placed on the file)