

Before S. J. Vazifdar, C.J. & Harinder Singh Sidhu, J.

INNOVATIVE TECHNO PARK PRIVATE LIMITED—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.17818 of 2017

January 30, 2018

(I) Constitution of India, 1950—Art. 226—Haryana Development and Regulation of Urban Areas Act, 1975—Ss. 18 and 24—Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963—S. 24—Petitioner sought direction/permission to utilize land for purposes as permitted in similarly zoned sectors developed by HUDA—Petitioner’s land in category ‘600 Public and Semi Public Use’ of Development Plan—Whether corporate offices would fall within said category—Held, no Land sought to be utilized for different purpose than that sought in obtaining change of land user—not permitted—Government not to use the land contrary to development plan.

Held that petitioner was granted permission for change of land user from agricultural use to use for setting up a Research & Development Centre institution. The petitioner sought permission to lease a part of the property with the construction thereon for the use thereof as a corporate office by the lessee. The question is whether corporate offices would fall within the category-600 Public and Semi Public Use. We have come to the conclusion that corporate offices do not fall within this category. The petitioner, however, has placed considerable reliance upon the fact that the respondents officers have themselves construed the category-“600 Public and Semi Public Use” to include corporate offices. HUDA has itself dealt with its properties in Sectors 32 and 44 which fall within the same category on the basis that corporate offices fall within these sectors. We have rejected the respondents’ contention that under sections 18 and 24 of the Haryana Development and Regulation of Urban Areas Act, 1975 and under section 24 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, Government and other authorities are permitted to use the land even contrary to the provisions of the development plan.

(Para 4)

(II) *Doctrine of Contemporanea Expositio—No conscious decision taken for permitting purchasers to put up corporate offices—Held doctrine of contemporanea expositio not invoked.*

Held that although in the correspondence the authorities have given the impression that the institutional plots can be used for purposes of putting up corporate offices, we are not inclined to accept their stand while interpreting the category: “600 Public and Semi Public Use”. We will presume that by relying upon the respondents’ conduct and representation it is the doctrine of contemporanea expositio that was actually sought to be invoked although not in so many words and not supported by any authority. We are not at all sure of the circumstances in and of the reasons for which the authorities took the aforesaid stand over the years. If it was merely for the purpose of enabling the HUDA to use the land by permitting its purchasers to put up corporate offices, we would be reluctant to invoke the doctrine of contemporanea expositio in favour of the petitioner. There is nothing to indicate that a conscious decision was taken to consider the ambit of the reservation.

(Para 53)

(III) *Sanctity of Development Plan—To be maintained despite petitioner’s open, fair, transparent conduct.*

Held that petitioner and its proposed lessees have in this matter throughout proceeded in an open, fair and transparent manner. They have gone out of their way to ensure that they do not do anything illegal. This is apparent from the number and the nature of clarifications sought from time to time. Their conduct in this matter is commendable. Despite the same we regret our inability to pass any orders in their favour. The sanctity of a development plan must be maintained.

(Para 55)

Chetan Mittal, Senior Advocate with
Dheeraj Malhotra, Akshay Ringe and
Prateek Gupta, Advocates
for the petitioner

Deepak Balyan, Additonal Advocate General, Haryana.

Lokesh Sinhal, Advocate
for respondent No.4.

S.J. VAZIFDAR, CHIEF JUSTICE

(1) The petitioner has challenged an order dated 01.04.2016 issued by respondent No.2 and an order dated 19.05.2017 passed by respondent No.1 and has sought a writ of mandamus directing the respondents to permit it to utilise its land and buildings for all purposes and in the manner permitted to institutional buildings in similarly zoned sectors developed by Haryana Urban Development Authority (HUDA).

(2) Respondent No.1 is impleaded through the Financial Commissioner-cum-Principal Secretary, Town and Country Planning Department, Haryana. Respondent No.2 is the Urban Local Bodies Haryana. Respondent No.3 is the Director General, Town & Country Planning, Haryana. Respondent No.4 is the Municipal Corporation, Gurugram, Haryana. Respondent No.5 is the Haryana Urban Development Authority (HUDA).

(3) The case in essence is this. In the Development Plan, the petitioner's land falls under the category:-

- “600 PUBLIC AND SEMI PUBLIC USE
- 610 MINI SECRETARIAT, JUDICIAL COMPLES, JAIL POLICE STATION AND OTHER INSTITUTIONS
- 620 EDUCATIONAL, CULTURAL, RELIGIOUS INSTITUTIONS
- 630 MEDICAL AND HEALTH INSTITUTIONS
- 640 CULTURAL INSTITUTIONS LIKE THEATRES, OPERA HOUSES ETC. OF NON-COMMERCIAL NATURE
- 650 DEFENCE LAND”

(4) The petitioner was granted permission for change of land user from agricultural use to use for setting up a Research & Development Centre institution. The petitioner sought permission to lease a part of the property with the construction thereon for the use thereof as a corporate office by the lessee. The question is whether corporate offices would fall within the category-600 Public and Semi Public Use. We have come to the conclusion that corporate offices do not fall within this category. The petitioner, however, has placed considerable reliance upon the fact that the respondents officers have themselves construed the category-“600 Public and Semi Public Use” to include corporate offices. HUDA has itself dealt with its properties in Sectors 32 and 44 which fall within the same category on the basis that corporate offices fall within these sectors. We have rejected the respondents' contention that under sections 18 and 24 of the Haryana

Development and Regulation of Urban Areas Act, 1975 and under section 24 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, Government and other authorities are permitted to use the land even contrary to the provisions of the development plan.

(5) Thus on the one hand we have construed category-“600 Public and Semi Public Use” as not including corporate offices and on the other we have found that the respondents and in particular the HUDA have proceeded on the basis that it does. We have, however, not invoked the doctrine of contemporanea *exposition* in favour of the petitioner as we are of the view that it is essential to preserve Development Plan.

(6) The petitioner owns land admeasuring 63 kanals –73 marla in Sector 75, District Gurugram. The Town and Country Planning Department of respondent No.1 published a draft development plan for controlled areas dated 16.04.2010 under section 5(4) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereafter to be referred to as “the 1963 Act”). The development plan stipulates the use in respect of the sectors including for residential (group housing/plotted), commercial, industrial, transport and communication, public utilities, public and semi public use, open spaces, agricultural zone, special zone and natural conservation zone hubs. The parties invited us to proceed on the basis that sectors 32, 44 and 75 have been reserved under the category-“600 Public and Semi Public Use”.

(7) The petitioner made an application dated 12.02.2011 under section 10F of the 1963 Act to the Director, Town & Country Planning for permission to change the existing use of land for the purpose of developing the land into buildings for R & D Centre (Institutional). The letters “R & D” stand for research and development. One of the enclosures to the application was a ‘Project Report, R & D Institutional Project, Innovative Techno park Private Limited’. The project report stated:-

“KEY INFORMATION ABOUT THE PROJECT

.....

Proposed Project

R & D INSTITUTIONAL PROJECT

It proposes to start its business of research & development activities for corporate and other institutional usage.

In the Present Scenario when the patents regime is coming to an end. An Era when designing of content innovation can only make a nation not only compete but survive in the fast changing business environment.

Our present project wish to take a small step in this direction to fill a large void in the present rush to blindly copy the westend advanced countries.

Research & Development in the field of Genetic Engineering, Telecommunication, Software, Designing in sundry fields, pharmaceuticals, foods processing etc. are some of fields where interdisciplinary approach has to be followed.

A campus like development would be perfect to give such as (sic) atmosphere for the growth in this field.

R.S. Technologies Pvt. Ltd. along with its subsidiary are active in the institutional field for the last 10 years of its existence having successfully developed, one institutional property at sec – 44 & 18.

Research & Development, training & Corporate Office are our forte presently 3000 people are getting direct & indirect employment at our projects. Encore Capital, Punj Lloyd Ltd., Fibcom India Ltd, Tellabs India Pvt. Ltd are our main pillars of strength, having net worth of more than 150 Cr.

Innovative Techno Park Pvt. Ltd. wish to propel this achievement to new level by developing our new/present projects as R & D Centre for the upcoming business enterprises.

.....

Land

The owners have decided to setup the R & D Institution Project at village Badashpur, Tehsil Gurgaon and Distt. Gurgaon. The Available size of plot is 32298.704 sq.meter. The cost of the land is Rs.2725.0 Lacs.

Building

It is proposed to construct R & D Institution Block, office block total of area 39650 Sq. Mts. Approx. at the above

size and the approximate cost for the building is Rs.2379 lacks. (sic)

.....

BRIEF PARTICULARS ABOUT THE PROJECT

In the present scenario when trade barriers are going down, when patents are the buzz word for long term revenue stream. The generic drugs are open to lie researched upon.

The fields of Genetic Engineering, Pharmaceutical research, F.M.C.G., Designing etc. are going to be the true harbingers of growth for the country.

Not to mention that existing Business in the field of Telecom, software, automation etc. too can't survive without constant investment in innovation, research & development. It is now high time that we provide suitable H.U.B. is for such development.

Present Project is one little footstep in this direction.

.....

R & D and Office space combination with Campus like setting is ideal project for Innovative Techno Park Pvt. Ltd to achieve the above said mission. Gurgaon vis a vis Noida or smaller Tier – II cities are lagging behind in this field.

.....

ORGANISATION & MANAGEMENT OF THE R & D INSTITUTION PROJECT

The R & D Institution Project will be managed by experienced persons which will be for the Yoga and naturopathy services for the human health and will serve their services to all kind of rural and urban areas all over the surrounding areas of Gurgaon Distt.

All activities of the R & D Institution Project shall be handled within the jurisdiction of Gurgaon district most likely at the site of the proposed Project.

.....

The Concept of Responsibility Centers shall be enforced so that the R & D Institution Project is run at the best management principles with complete responsibility and

accountability, which shall be the thrust area where the management generally does not take care.

MARKETING ARRANGEMENTS

The proposed R & D Institution Project is being set up with a view to provide better and specialized services to the people in the urban and rural as well as backward areas where there is no such type of R & D Institution Project. Arrangement for Mobile services for the nearby rural areas will be made.

There is a very good scope for setting up a R & D Institution Project equipped with all type of modern facilities related to the R & D services in this area as population of all types of communities of this place is increasing day by day due to the coming up companies in Gurgaon. Further, the location of this place is easily approachable from I.G. Airport and so it shall be convenient and easy for the services done in India. It is therefore anticipated that there shall be a very good scope of different type of related services.”

(8) Thus, the application was made on the basis of a project for research & development.

(9) (A) By a letter dated 06.07.2011, the Directorate of Town & Country Planning, Haryana (DTCP) stated that it had been decided in principle to grant the CLU permission subject to certain terms and conditions. The letter in so far as it is relevant reads as under:-

“Your request for grant of change of land use of an Institution for setting up of a Research and Development Centre.....has been considered in view of willingness shown by the core persons in executing the project and it has been decided in principle to grant change of land use permission on the land as shown in the enclosed site plan for activities i.e. Genetics research and engineering for medicine and agriculture applications, process automation in Urban Infrastructure, Homeland security & Defense, Software systems/Product development, System Integrating and testing, Renewable energy, Pharmaceuticals research and generic formulations work after patent expire, Telecom, Technology consultancy and Technology related human resources development.”

(B) Ultimately, by a letter dated 06.09.2011, the DTCP granted the CLU permission for setting up a Research and Development Centre (Institution) for the activities mentioned therein which are the same as those mentioned in the above letter dated 06.07.2011.

(C) The DTCP, by a letter dated 01.06.2012, granted the petitioner permission to erect buildings in accordance with the plans that were submitted. The permission was subject to the provisions of the 1963 Act and its rules and the zoning plan framed thereunder.

(10) On 09.11.2012, the Gurgaon – Manesar Urban Complex – 2031 AD Final Development Plan was published. In so far as it is relevant to this petition, the final plan is identical to the draft plan. In other words, sectors 32, 44 and 75 fell under the category “600 Public and Semi Public Use”. The nature of this use stipulated was identical to the nature of the use stipulated in the draft development plan dated 25.08.2010. We have already set out the relevant provisions thereof. A revised plan was sanctioned on 29.08.2013 which did not alter this aspect.

(11) Considering the issue raised in this petition, Mr. Chetan Mittal, the learned senior counsel appearing on behalf of the petitioner, placed strong reliance on a letter dated 09.01.2014 addressed by the Chief Administrator of HUDA to all the Administrators and Estate Officers of HUDA which in so far as it is relevant, reads as under:-

“Subject: Clarification regarding leasing out of Institutional plots.

Vide office memo No.A-1-2001/27097 dated 04.10.2001, the leasing out policy of the Institutional plots was circulated for compliance. However, under the title “subject” it was shown, “Institutional Plot No.47, Sector-32-Request regarding leasing out of the plot”, which gave the impression that permission has been granted for this specific Institutional Plot.

Now, it is clarified that the Institutional plots which have been allotted by HUDA in Gurgaon and at all other Urban Estates, the following uses as communicated earlier vide letter *ibid*, shall be permitted in the building to be constructed on the Institutional Plots:-

1. Corporate Offices.
2. Research & Development Centres.

3. Education and Training Centres.
4. Offices of the Professional Groups/Association or Societies, not engaged in the commercial/manufacturing activities.
5. Other Institutional Uses.

The leasing/renting upto 75% portion of the building may be allowed for such institutions who have constructed their buildings subject to following terms and conditions:-

1. The plot/building shall not be used for any purpose other than that for which it has been allotted and the uses that have been indicated from Sr. No.1 to 5 above.

....

3. Fee for leasing/renting may be charged @ 25% of the transfer fees fixed for Industrial plots for a portion upto 25% of the building and 50% transfer fee for the portion above 25% and below 50% and 75% of the transfer fee upto covered area of 75%.”

11(A) The petitioner, by a letter dated 04.06.2015, sought a clarification in respect of the said letter dated 09.01.2014. The letter reads as under:-

“Respected Sir,

As per the present norms the following usages are allowed in the institutional Sectors

1. Corporate Offices.
2. Research & Development Centres.
3. Education and Training Centres.
4. Offices of the Professional Groups/ Association or Societies, not engaged in commercial/manufacturing activities.
5. Other Institutional Uses.

Also as per the Memo (MEMO No.A-1 (UB)-2014/889 from the Chief Administrator HUDA attached along with these usages are interchangeable for the purpose of leasing of the institutional Properties in the Institutional Sectors.

Sir kindly do clarify whether the same usage and leasing norms shall be applied for all the Institutional properties (allotted/converted) in the Institutional Sectors of Gurgaon.”

(B) The Estate Officer, by his reply dated 09.06.2015, stated that the letter dated 09.01.2014 “is also applicable to Institutional Sectors of Gurgaon.”

(12) In the meantime, the petitioner made an application on 12.03.2015 seeking CLU permission for the use of the remainder land for R & D Centre (Institution) purpose. The DGTCP, by a letter dated 24.03.2015 stated that the site fell within the limits of the Municipal Corporation, Gurgaon and that the petitioner would, therefore, have to apply for the CLU permission to the Commissioner, Municipal Corporation, Gurgaon. The petitioner’s application was, therefore, returned with a direction to make the application to the Commissioner.

(13) (A) By an undated letter (Annexure P/18) (stated in the index to be dated 13.07.2015), the petitioner requested the DGTCP for permission to give parts of its buildings on lease for “the usage defined in our CLU permission/approved building plan/occupation certificate/usage allowed in institutional sectors”.

(B) The DGTCP, by its letter dated 26.08.2015, granted the permission as follows:-

“Please refer to your application dated 13.07.2015 on the above cited subject.

Your request on the above cited subject has been examined in terms of Rule 26-D(e) of the Punjab Scheduled Road and Controlled Areas Restriction of Unregulated Development Rules, 1965 and this office has no objection for leasing part of building for which occupation certificate has already been granted with the condition that you shall not alter/change the use of building as permitted in the change of land use permission i.e. Research and Development Centre Institution purpose.

(emphasis supplied)”

(C) The petitioner, by a letter dated 14.09.2015, requested the Commissioner, Municipal Corporation, Gurgaon – respondent No.4 to clarify if it could lease part of its premises, inter alia, for the purpose of a corporate office. The petitioner drew the attention of respondent No.4

to the circular dated 09.01.2014 issued by the Chief Administrator of HUDA.

(D) Respondent No.4 – Municipal Commissioner, by its letter dated 22.09.2015, inter alia, stated:-

“Regarding your seeking permission for lease, as per the terms & conditions of CLU permission, this office do not have any objection for leasing part of this building for which occupation certificate has already been granted with the condition that you shall not alter/change the use of building as permitted in the change of land use permission/approved building plans i.e. Research and Development Centre Institution purpose. Besides this clarification issued by CA, HUDA vide memo no.A-1(UB)- 2014/889 dated 09.01.2014 as follows, are also in force:

1. Corporate Offices.
2. Research & Development Centres.
3. Education and Training Centres.
4. Offices of the Professional Groups/Association or Societies, not engaged in the commercial/manufacturing activities.
5. Other institutional Uses.

If you seek any fresh permission in future from Municipal Corporation, Gurgaon then you are hereby requested to apply in proper format and enclosures.”

(E) By a further letter dated 29.10.2015, the petitioner requested respondent No.4 – Commissioner, Municipal Corporation to clarify whether its lessee may use its premises for all the institutional usages allowed as per the HUDA’s said circular dated 09.01.2014 in addition to the usage granted in the CLU i.e. Research and Development Centre.

(F) Respondent No.4, by its reply dated 04.11.2015, stated as under:-

“With reference to the subject cited above, details comments were given vide memo No.MCG/TP/STP/2015/3920 dated 22.09.2015. Although it is again clarifying that lessee can use premises for all the usage as per the condition of CLU granted vide memo no.G-2492/SD(BS)/20141587 dated

20.01.2014 by Department of Town & Country Planning, Haryana beside this all other usage specified as per HUDA vide memo no. A-1(UB)- 2014/889 may be allowed as per the policy decision of the Urban Local Bodies.”

(14) By a further letter dated 05.01.2016 addressed to the Director Urban Local Bodies, the petitioner requested for the amendment of its CLU permission to accord permission to use the premises for setting up corporate offices and/or allowing the premises to be used for corporate offices independent of the activities already permitted under their CLU permission. Mr. Mittal stated that this was in view of the petitioner’s proposed lessee’s insistence for a specific clarification to this effect.

(15) The Assistant Town Planner by a letter dated 27.01.2016 requested the Director General, Town & Country Planning, Haryana to transfer the original file relating to the petitioner’s case in order to enable him to examine the petitioner’s above request.

(16) By a letter dated 03.03.2016 the petitioner requested the Commissioner, Municipal Corporation, Gurgaon, Haryana to issue an NOC/permission to lease a part of its premises comprising of six floors to its respective tenants. The Commissioner, Municipal Corporation, Gurgaon by a letter dated 10.03.2016 stated as under:-

“Your request has been examined as per CLU permission granted vide memo No.G-2492-JE(S)-2011/6555 dated 06.09.2011. This office has no objection for leasing part of the building i.e. Block-C to ADIDAS Group (Adidas India Marketing Pvt. Ltd., Reebok India Company and Adidas Technical Services Pvt. Ltd.) for the uses of Corporate office after the occupation certificate is granted by competent authority, with the condition that you should not alter/change the use of building other than for the purposes for which building plan is approved i.e. office and research. You may also not sell this building in part and FAR will remain same as per the permission granted by Town and Country Planning Department.

(emphasis supplied).

(17) The petitioner had apparently made an application dated 21.03.2016 for NOC/permission for leasing. This application was replied to by the Municipal Corporation by its letter dated 30.04.2016 which inter-alia stated:-

“Your application has been considered by Commissioner, Municipal Corporation, Gurgaon, vide his order dated 11.04.2016 and Municipal Corporation, Gurgaon do not have any objection to leasing out the premises BLOCK-C AND B for the purposes of Research & Development Centre (Institution) and activities i.e. software system/system integrating (IT/ITES) and testing in accordance with CLU permission granted and building plans and occupation certificate given by competent authority”.

(18) This brings us to the orders impugned in this writ petition. The Directorate of Urban Local Bodies, Haryana, by the impugned order dated 01.04.2016 informed the Commissioner, Municipal Corporation that the petitioner’s request regarding the amendment in the activities duly mentioned in the CLU permission from ‘Research and Development Centre’ into ‘Corporate Offices’ was rejected on the ground that it was not in conformity with the proposal of the final development plan of GMUC-2031 as the land in question falls in Public and Semi Public Use zone wherein setting up of the corporate office is not a permissible activity and that the permission for a licence under section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 is granted for setting up of corporate office in residential/commercial zones whereas the site in question namely Sector-75 is located in public and semi public zone. The proposal was, therefore, not in conformity with the provisions of the 1975 Act. Lastly, it was stated that there is a huge difference in fee/charges between a commercial licence and institutional CLU.

(19) On 30.05.2016 the petitioner filed an appeal against the above order which was dismissed by the impugned order dated 19.05.2017.

(20) The relevant provisions of law are as under:-

THE PUNJAB SCHEDULED ROADS AND CONTROLLED AREAS RESTRICTIONS OF UNREGULATED DEVELOPMENT ACT, 1963.

5. Publications of plans etc. in controlled area-

The Director shall, not later than [one year] 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.

(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:-

(c) the development of any site into a town ship or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

Section 6. Erection or re-erection of buildings etc. in controlled areas.—

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:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purposes subservient to agriculture;

[Provided further that nothing in this section shall apply to a building constructed along the extension of the scheduled road located in the limit of the local authority and which was in existence immediately before the commencement of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development (Haryana Amendment) Ordinance, 2009, on payment of such fee, as may be prescribed.]

Section 7. Prohibition on use of land in controlled areas

(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.

Provided that any fee or charges leviable, if not paid within the specified period, shall be recoverable as arrears of land revenue.]

[(IA) Local authorities, firms and undertakings of Government, colonisers and persons exempted from obtaining a licence under the Haryana Development and Regulations or Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under section 8 of this Act.]

(2) The renewal of such licences may be made 4 [after three years] on payment of such fees as may be prescribed

Section 8. Application for permission etc. and the grant or refusal thereof. –

(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 application relates as may be prescribed.

(2) On receipt of such application the Director, after making such enquiry as he considers necessary, shall by order in writing either:-

(a) grant the permission or licence subject to such conditions if any, as may be specified in the order, or

(b) refuse to grant such permission or license.

(3) The Director shall not refuse permission to the erection or re-erection of a building which was in existence in a controlled area on the date on which the notification under sub-section (1) of Section 4 was published, nor shall he impose any condition in respect of such erection or re-erection unless he is satisfied, after affording to the

applicant an opportunity of being heard, that there is a probability that the building will be used for a purpose, or is designed in a manner, other than that for which it was used or designed on the date on which the said notification was published.

(4) If, at the expiration of period of three months after an application under sub-section (1) has been made to the Director, no order in writing has been passed by the Director, the permission shall, without prejudice to the restrictions and conditions signified in the plans published in the official Gazette under sub-section (7) of Section 5, be deemed to have been given without the imposition of any conditions:-

[Provided that such time limit of three months shall not be applicable to the cases where directions have been issued by the Government under Section 11 of the Act and require approval of the Government accordingly.]

Provided further that where an application is made for change of land use for industrial purpose and orders are to be passed by the Director, the time limit for granting permission shall be two months.]

(5) The Director shall maintain such register as may be prescribed with sufficient particulars of all such cases in which permission or license is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.

(B) PUNJAB SECHEDUED ROADS AND CONTROLLED AREAS RESTRICTION OF UN-REGULATED DEVELOPMENT RULES, 1965.

Rule 26D: Conditions required to be fulfilled by the applicant- The applicant shall-

to (d) xx xx xx xx

(e) undertake not to sell the said land or portion thereof unless the said land has been put to use permitted by the Director and to use the said land only for the purposes permitted by the Director;

Rule 38. Definitions: In this Chapter unless the context otherwise requires:-

(i) to (x) xx xx xx xx

(xi) “class of building” shall mean a building in one of the following four categories:-

(a) residential building;

(b) commercial building;

(c) warehouse and industrial building; and

(d) public building;

(xii) “commercial building” shall mean a building used or constructed or adapted to be used wholly or partially for shops, offices, banks or other similar purposes but shall not include industries and motor garages:

Rule 49: Proportion of the site which may be covered with buildings:-

The proportions up to which a site may be covered with building including ancillary buildings, shall be in accordance with the plot categories given in following slabs, remaining portion being left open in the form of open space around the buildings or courtyard.

The maximum permissible coverage on ground including ancillary and residential zone and the maximum permissible coverage on the first floor are stipulated in respect of residential, and institution and other public buildings. The permissible coverage is stipulated slabwise. For instance in the case of institution and other public buildings, the maximum permissible coverage upto the first 10000 sq. meters is 33 ½ per cent of the area of the plot and above 10000 sq. meters the maximum permissible coverage area is 25 per cent of the area of the plot. The floor area ratio, setbacks and other such particulars are also stipulated depending use of the plot, namely, residential, industrial, institutional and other public buildings.”

(21) There are two approaches to this matter. The first is to construe the provisions of the above enactments and to interpret category “600 Public and Semi Public Use” mentioned in the

development plan. The second which was strongly adopted on behalf of the petitioner is to consider the manner in which the authorities themselves construed the same and the effect thereof upon the interpretation of category- “600 Public and Semi Public Use”.

(22) We will first consider the provisions of law and construe the meaning and ambit of the category- “Public and Semi Public Use” in the development plan.

(23) As we noted earlier, the petitioner made an application dated 12.02.2011 inter-alia on the basis of the ‘Project Report, R & D Institutional Project, Innovative Techno park Private Limited’. The project report clearly emphasized the petitioner’s proposal to set up research and development activities for corporate and other institutional usage. It emphasized the importance of research and development in the present scenario “when the patents regime is coming to an end. An era when designing of content innovation can only make a nation not only compete but survive in the fast changing business environment.” The project report stated that it is in this direction that the petitioner proposed undertaking activities at the site. The project report throughout refers to the intention to set up the R&D institutional project in various disciplines. The research and development was contemplated in existing fields as well such as in the field of telecom, software, automation etc. The project report also emphasized that these research and development activities would be part of an institutional project.

(24) The emphasis on research and development institutional project was obviously to bring the project within the ambit of the category “600 Public and Semi Public Use” in the development plan. The application for permission to change the existing use of land from agricultural activities to developing the land for the purpose of building for research and development centre ‘institution’ was obviously made on this basis.

(25) Section 5 of the 1963 Act requires the Director inter- alia to prepare the plans signifying the nature of restrictions and conditions proposed to be made applicable to the controlled area. Sub section (2)(c) stipulates that the plans may provide for the development of any site into a township or a colony and the restrictions and conditions subject to which such development may be undertaken or carried out. Section 6 requires the erection of the building etc. to be in accordance with the plans and the restrictions and conditions referred to in section-5 and with the previous permission of the Director. Under section 7 the land within the controlled area cannot be used for the purposes other

than those for which it was used on the date of the publication of the notification under section 4(1) except with the permission of the Director and on payment of conversion charges prescribed by the government.

(26) Section 8 provides for the manner in which the permissions referred to in sections 3, 6 and 7 are to be made and that on receipt of applications, the Director considers the application and either permits it or rejects it.

(27) Rule 26(d) of the 1965 Rules requires an applicant to undertake not to sell the land or portion thereof unless it has been put to the use permitted by the Director and to use the land only for the purposes permitted by the Director.

(28) Rule 49 stipulates the proportions of the site which may be covered with buildings. The proportions vary depending on the nature of the buildings such as residential, industrial, institutional and other public buildings. We will refer to Sections 18 and 24 of the 1975 Act later.

(29) Pursuant to the application, the petitioner was granted CLU from agricultural to the said use. The provisions of the 1963 Act and the 1965 Rules make it abundantly clear that there cannot be any change in use contrary to the development plan. The petitioner admits that the change in land use granted by the authorities can only be in conformity with the development plan. In other words the change in user in respect of a portion of the controlled area must be in accordance with the nature of use stipulated for that portion in the development plan. For instance the change in land use cannot be from one category to the other. In the present case, therefore, the Director cannot grant a CLU permitting construction for commercial purposes in sectors other than those earmarked for such purposes. Thus, if we come to the conclusion that corporate offices fall within the category "200-commercial", the Director would not be entitled to permit the use of the same in the sector earmarked for the category "600 Public and Semi Public Use".

(30) As is evident from the correspondence referred to earlier, the petitioner intends leasing a part of its property for the use thereof as a corporate office. The question is whether a corporate office falls within the category-'commercial' or the category "Public and Semi Public Use" as per the development plan.

(31) The petitioner has obtained the CLU for the category

“Public and Semi Public Use” not under the category ‘commercial’. If we come to the conclusion that corporate offices fall within the category ‘commercial’, the impugned order rejecting the permission to lease the property for the use thereof as a corporate office must be upheld.

(32) We will now construe the ambit of the category “Public and Semi Public Use”, which we set out earlier. Every entry therein except entry 650 ends with the word ‘institutions’. Entry-650 is the defence land which in any event is not relevant in the present matter. It is important, therefore, in the first instance to understand the term ‘institutions’.

(33) In *Kamaraji Venkata Krishna Rao versus Sub Collector, Ongole and another*¹, the Supreme Court considered whether a tank can be an object of charity and when a dedication is made in favour of a tank, the same is considered as a charitable institution. The case involved the Andhra Inams (Abolition and Conversion into Tyotwari) Act, 1956. The Supreme Court held:-

“5. Mr. Narsaraju, learned counsel for the appellants contended that even if we come to the conclusion that the Inam was granted for a charitable purpose, the object of the charity being a tank, the same cannot be considered as a charitable institution. According to him a tank cannot be considered as an institution. In support of that contention of his he relied on the dictionary meaning of the term “institution”. According to the dictionary meaning the term “institution” means “a body or organisation of an association brought into being for the purpose of achieving some object”. *Oxford Dictionary* defines an “institution” as “an establishment organisation or association, instituted for the promotion of some object especially one of public or general utility, religious, charitable, educational, etc.”. Other Dictionaries define the same word as “organised society established either by law or the authority of individuals, for promoting any object, public or social”. In *Minister of National Revenue versus Trusts and Guarantee Co. Ltd.* [IR (1957) Mys 291] the Privy Council observed:

“It is by no means easy to give a definition of the word ‘institution’ that will cover every use of it. Its meaning must

¹ (1969) 1 SCR 624

always depend upon the context in which it is found.”

6. In *Masjid Shahid Ganj versus Shiromani Gurdwara Prabandhak Committee, Amritsar* [ILR (1890) 14 Bom 1 at p.9] the Privy Council considered a “Madrasah” as an institution though it doubted whether the same can be considered as a “juristic personality”. This is what the Privy Council observed:

“A gift can be *made to a madrasah in like manner* as to a masjid. The right of suit by the mutwali or other manager or by any person entitled to a benefit (whether individually or as a member of the public or merely in common with certain other persons) seems hitherto to have been found sufficient for the purpose of maintaining Mohomedan endowments. At best the institution is but a *caput mortuum*, and some human agency is always required to take delivery of property and to apply it to the intended purposes. Their Lordships, with all respect to the High Court of Lahore, must not be taken as deciding that a ‘juristic personality’ may be extended for any purpose to Muslim institutions generally or to mosques in particular. On this general question they reserve their opinion.”

We may at this stage state that the Act has not defined either the expression “charitable institution” or even “institution”. Therefore, we have to find out the meaning of that term with reference to the context in which it is found. We must remember that the expression “charitable institution” is used in a statute which abolishes inams. The inam in question must undoubtedly have been granted by a Hindu. Most of the inams abolished by the Act were those granted by Hindu Kings in the past. According to Hindu conceptions a tank has always been considered as an object of charity.(emphasis supplied).”

(34) The word ‘institution’ in the development plan must, therefore, be interpreted in the context in which it is used. The caption to the category is “600 Public and Semi Public Use”. The use must, therefore, have an element of public use. It may be semi- public and thereby also semi private but not wholly private. The entries in the development plan under the public and semi public use category

indicate use of the nature specified therein for the public in general and for a public purpose.

(35) Each of the institutions referred to under this category would undoubtedly have offices. These offices, however, would be part of the institutions and to facilitate the working of the institutions. Such offices are an integral part of the institutions and not independent of them. The offices may themselves belong to an institution. The construction of buildings for the purpose of leasing them to corporates or to any person for the use as a corporate office without any connection or concern with such an institution is not contemplated under this category. If a property is leased for the use as an office by an institution it may well be a different matter. The use in that event would be in conformity with the user stipulated in the development plan. Such an office which is an integral part of the lessor's project would form an integral part of the lessee's main use in conformity with the public and semi public use.

(36) Whatever be the ambit of the term of 'institution' in the context in which it is used in the development plan, it does not include stand alone corporate offices. On the basis of the petitioner's application for change in land use, the grant thereof, the draft development plan and final development plan and the provisions of law referred to earlier, the impugned orders must be upheld. For the use of premises, merely as corporate offices, unconnected with the use contemplated in the CLU and contrary to the user stipulated in the development plan, cannot be permitted. Accordingly, the lease in such circumstances also cannot be permitted.

(37) This brings us to the other important aspect of the matter. The petitioner contends that the correspondence addressed by the official respondents referred to earlier and the respondent's conduct establishes that the authorities themselves considered the use of premises as corporate offices to be in conformity with the category "public and semi public use" in the development plan.

(38) It was further submitted on behalf of the petitioner that the manner in which the highest authority interpreted the plan is an important and relevant factor. The petitioner contended that the Planning Authority was the Director General, Town & Country Planning till 2006 and he was also the Chief Administrator of HUDA. The petitioner then relied upon the fact that the permission was granted to HUDA in identical circumstances prior to the year 2006.

(39) The pleadings in this regard are important. In grounds (O) to (S) in paragraph-45 of the petition, the averments are as follows: Interchangeability of subclasses was permitted to the land owners where the seller was the HUDA. The same interchangeability cannot be denied to land owners who are not purchasers from HUDA. The respondents are estopped from taking a contrary stand qua the parties who have not purchased the land from HUDA. The rejection of the petitioner's application is, therefore, discriminatory. The development by HUDA or the private licence holders is the same because even a private licensee has to develop the land in accordance with the terms and conditions of the approved lay out zoning plan and other provisions of law. Merely because some area has been developed by the HUDA the user cannot be defined separately. There is no separate development plan in respect of properties owned or dealt with by the HUDA.

(40) Paragraph-14 of the affidavit in reply is with reference to paragraph-45 of the writ petition which contains the aforesaid grounds (O) to (S). There is no denial of what is stated in paragraph-45. The only averment is that the impugned order was passed after following the facts and the provisions of law as mentioned in the preliminary submissions.

(41) In this regard Mr. Mittal firstly relied upon the brochure issued by HUDA in or about the year 2000 inviting applications for the purchase of free hold institutional plots in Sectors 32 and 44, Gurgaon. Sectors 32 and 44 fall under the "600 public and semi-public use" category. The brochure does not deal with any other sectors in Gurgaon. The brochure states "it really is a marvellous opportunity to have your own corporate headquarters in a highly progressive area.....". It further states that Gurgaon offers the best facilities for companies, boards, corporations or institutions to locate their Head/Corporate Offices and that Sectors 32 and 44 provide an ideal setting for establishing corporate offices, institutions. The terms and conditions of the brochure are prefaced by the following:-

"TERMS AND CONDITIONS

ELIGIBILITY

The following are eligible to apply for institutional plots:-

A) Govt. Organisations: State and Centre Government Departments, Boards and Corporations and Public Sector Undertakings of the State and Central Government;

B) Non Government/Private Companies/Organizations;
PERMISSIBLE USES

Only following uses shall be permitted in the buildings to be constructed in the institutional plots.

1. Corporate Offices,
2. Research and Development Centres
3. Staff Education and Training Centres
4. Offices of Professional Groups/Associations/Societies not engaged in Commercial/Manufacturing activities.
5. Other institutional uses.

10% of the floor area of the buildings can be used for a purpose ancillary to any of the above uses with the approval of Chief Administrator. (emphasis supplied).”

(42) The brochure does give an indication that corporate offices are permitted in Sectors 32 and 34 which are reserved under the master plan for public and semi public use.

(43) The Chief Town Planner, Haryana Local Bodies Department, Haryana, filed an affidavit on behalf of respondent No.2-Principal Secretary, Urban Local Bodies Department, Haryana. In paragraph-6 it is stated that the Appellate Authority directed respondent No.2 to provide detailed comments on the petitioner’s representation and accordingly respondent No.2 by an office memo dated 27.09.2016 requested the Chief Administrator, HUDA, to provide detailed comments on the representation. The Chief Administrator, HUDA, by an office memo dated 13.12.2016 stated that the institutional plots in Sectors 32 and 44 were floated on 20.10.2000 and the permissible uses were mentioned in the brochure. We have already referred to the eligibility condition in the brochure which includes corporate offices and Research and Development Centres. The affidavit further states that the Chief Administrator, HUDA, informed respondent No.2 that the above uses have been permitted as per the HUDA policy dated 04.10.2001 and that HUDA offered free hold plots in Sectors 32 and 44, Gurgaon in the years 1999 and 2000. It is, however, contended that HUDA being a government agency was exempted under section 24 of the 1963 Act.

(44) An affidavit dated 19.12.2017 was also filed by one Jitender Sihag, Chief Town Planner, Haryana, Department of Town and Country Planning, Haryana, on behalf of respondent Nos.1 and 3. Paragraph-11 of the affidavit deals with the said letter/circular dated 09.01.2014 issued by HUDA. Paragraph-11 of the affidavit reads as under:-

“11. That the petitioner has referred to the Memo dated 09.01.2014 issued by HUDA whereby corporate offices have also been permitted on institutional plots. In view of the provisions cited in the para 9 & 10 above an individual cannot be equated with HUDA as it can carry out development in controlled area as well as urban area and can impose restrictions as per the provisions cited. The development undertaken by HUDA are not contrary to the provisions of Urban Areas Act as well as Controlled Areas Act.”

(45) It is not necessary to analyse the correspondence that ensued between the petitioner on the one hand and the authorities on the other. The correspondence was between the petitioner and the municipal authorities as well as the town planning authorities. Each of the letters undoubtedly refers to corporate offices being permissible users under category- “600 Public and Semi Public Use. The letters did not stipulate that only HUDA and other government agencies are entitled to use the lands in Sectors 32, 44 and 75, Gurgaon, which fall under the “600 Public and Semi Public Use” category for corporate offices. It is true that the letter dated 09.01.2014 issued by the Chief Administrator, HUDA, clarified that the institutional plots which have been allotted by HUDA would be permitted to be used *inter-alia* for corporate offices. The petitioner, however, by its letter dated 04.06.2015 sought a clarification as to whether the same usage would also apply to all institutional properties allotted/converted in the institutional sectors. The Estate Officer by his reply dated 09.06.2015 stated that the letter dated 09.01.2014 “is also applicable to all the institutional sectors of Gurgaon”. The facility was, therefore, not only for HUDA. As we will shortly demonstrate, this in any event was not even permissible. The Municipal Commissioner by the letter dated 22.09.2015 in response to the petitioner’s request for permission to lease his property stated that the permission had been granted on the conditions mentioned in the CLU. The letter further stated “besides this, clarification issued by CA, HUDA, vide memo No.A-1(UB)-2014/889 dated 09.01.2014 as follows, are also in force.....”.

(46) A conjoint reading of the above letters conveys an impression that usage of the institutional plots for corporate offices was permissible on all institutional plots including those dealt with by private parties such as the petitioner. This was reiterated by the letters dated 04.11.2015 and 10.03.2016 addressed by respondent No.4-Municipal Corporation, Gurgaon. The letter dated 04.11.2015 in fact once again stated that apart from the usage mentioned in the CLU, all other usages specified as per HUDA memo dated 09.01.2014 may be allowed as per the policy decision of the Urban Local Bodies.

(47) Faced with this, the respondents' contended that the restrictions in the development plan and the provisions of law do not apply to the instrumentalities of the State including HUDA, which is wholly owned, controlled and managed by the Government of Haryana. This submission was sought to be supported firstly on the basis of Sections 18 and 24 of the Haryana Development and Regulation of Urban Areas Act, 1975 which read as under:-

“Section 18: [Nothing in this Act shall affect the power of the Government, Improvement Trusts, Housing Board, Haryana, [any local authority or another authority constituted under any law for the time being in force by the State Government for carrying out the development of urban area.] to develop land or impose restrictions upon the use and development of any area under any other law for the time being in force, [but such power except the power exercisable by the Government, shall be exercised on payment of such sum as may be decided by the Government from time to time.]

Section 24. Power to make rules:-

(1) The Government may, by notification in the official gazette, subject to the condition of previous publication, make rules for carrying out the purposes of this Act and may give them prospective or retrospective effect.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) fee, form and manner of making an application for obtaining licence under sub-section (1) of section 3;

- (b) form of licence and agreement under sub-section (3) of section 3;
- (c) fee for grant or renewal of licence under sub-section (4) of section 3;
- (d) form of registers to be maintained under section 4;
- (e) form of accounts to be maintained under sub-section (2) of section 5;
- (f) manner of getting the accounts audited under sub-section (2) of section 6;
- (g) manner in which preference is to be given to the plot-holders under sub-section (3) of section 8;
- (h) form and manner of making application under sub-section (2) of section 9;
- [(i) any other matter in connection with preparation, submission and approval of plans.]

(2A) In particular and without prejudice to the generality of the foregoing power and the matters specifically provided for in this Act, the Government may, by notification in the official Gazette, make rules for efficient administration of the Board. Such Rules may provide for all or any of the following matters, namely:-

- (i) Prescribing the procedure to be adopted for project identification, prioritization, public hearing, finalization of scope, funding and structuring of infrastructure projects, conducting feasibility analysis, public bidding of the project, concessionaire selection, negotiation of contract, formation of Special Purpose Vehicles, execution of concession agreement, implementation and completion of project as well as its monitoring maintenance and impact assessment i.e. covering the complete spectrum of project cycle;
- (ii) Prescribing the procedure for project implementation including determination of tariff, assignments of assets, assessing feasibility, and viability of finalized infrastructure projects, termination of concession agreement etc. for successful implementation of project and its termination in case of violation of provisions of agreement;

(iii) Prescribing the form and manner in which finance, accounts and audit of the Board of maintained, conducted and submitted along with the form and manner in which the annual report of the Board of prepared and placed and returns are submitted;

(iv) Prescribing the form and manner of furnishing returns, statements and other particulars as may be decided;

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session.”]

(48) The submission is not well founded. The provisions of law, that we have referred to, apply equally to HUDA as they apply to others. The opening words of section 18 “Nothing in this Act shall affect the power of the Government etc.” (*emphasis supplied*) themselves indicate that it is the provision of the 1975 Act that do not affect the rights of the Government etc. stipulated in Section 18. The section does not make inapplicable to the Government etc. the provisions of other Acts with regard to the provisions stipulated in section 18. The instrumentalities of the State including the HUDA are not excluded from the purview of these provisions. Section 18 only permits the entities mentioned therein to develop the land or to impose restrictions upon use and development of any area under any other law. Section 18 does not curb the power of the authorities mentioned therein to impose the restrictions upon the use and development of any area. Section 18 also provides that nothing contained in the 1975 Act affects the power of the authorities mentioned therein to develop the land. The provision for the preparation of the development plan and the user of the land are stipulated under the 1963 Act and not under the 1975 Act. It follows, therefore, that Section 18 does not entitle the authorities to develop the land contrary to the users stipulated in the development plan.

(49) Section 24 of the 1975 Act contains the rule making power of the government. We do not find anything in this section that excludes the Government and the entities mentioned in section 18 from the purview of the 1963 Act.

(50) The reliance upon Section 24 of the 1963 Act is also not well founded. Section 24 of the 1963 Act reads as under:-

“24. Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to

impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.”

(51) The section merely provides that nothing in the Act would affect the power of the Government or any other authority to acquire land or to impose restrictions upon the use and development of land in the controlled area under any other law for the time being in force etc. This is an additional power conferred upon the Government or any other authority to impose restrictions upon the use and development of the land comprised in the controlled area under any other law for the time being in force. It does not even remotely confer a power upon the Government or any other authority to use the land comprised in the controlled area in any manner that they desire including contrary to the provisions of the master plan.

(52) Before going further, we must note the statement on behalf of the respondents that it is not necessary for a party to apply for change of land user if the new user falls within the same category of use stipulated in the development plan. In other words if the existing use of the land and a different use of the land both fall within the category of public and semi public use, it would not be necessary to obtain the permission for change of land use. We do not express any view in this regard.

(53) Although in the correspondence the authorities have given the impression that the institutional plots can be used for purposes of putting up corporate offices, we are not inclined to accept their stand while interpreting the category: “600 Public and Semi Public Use”. We will presume that by relying upon the respondents’ conduct and representation it is the doctrine of *contemporanea expositio* that was actually sought to be invoked although not in so many words and not supported by any authority. We are not at all sure of the circumstances in and of the reasons for which the authorities took the aforesaid stand over the years. If it was merely for the purpose of enabling the HUDA to use the land by permitting its purchasers to put up corporate offices, we would be reluctant to invoke the doctrine of *contemporanea expositio* in favour of the petitioner. There is nothing to indicate that a conscious decision was taken to consider the ambit of the reservation.

(54) We were informed that HUDA has about 5008 acres of land in Sectors 32 and 44 at Gurgaon of which only 333 acres have been

developed so far. Considering the view that we have taken regarding the ambit of the reservation in the master plan, we do not think it proper to permit a non-conforming user to continue for the balance land of about 4700 acres (about 94%) in Sectors 32 and 44 and further the land in Sector 75. That would be in violation of the master plan. This would also have a cascading effect on other similar reservation.

(55) The petitioner and its proposed lessees have in this matter throughout proceeded in an open, fair and transparent manner. They have gone out of their way to ensure that they do not do anything illegal. This is apparent from the number and the nature of clarifications sought from time to time. Their conduct in this matter is commendable. Despite the same we regret our inability to pass any orders in their favour. The sanctity of a development plan must be maintained.

(56) If the respondents for any reason wish to alter the master plan, they can always do so in accordance with law.

(57) In the circumstances, the petition is dismissed.

Shubreet Kaur