Before Jaswant Singh & Sant Parkash, JJ.

M/s KRISHNA INDUSTRIES—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.29604 of 2017

May 28, 2020

(A) ***Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, S.8—Haryana Municipal Corporation Act, 1994, S.349— Haryana Development and Regulation of Urban Areas Act, 1975—S.83—Change of land use by Municipal Corporation/Director General Urban Local Bodies Haryana—Held, jurisdiction and competence in relation to "urban planning including town planning" and "regulation of land-use and construction of buildings" in the municipal areas exclusively vested with Municipal Corporations—Thus, established that Municipal Corporation/ Director General Urban Local Bodies Haryana under Act, 1994 have power and authority to grant change of land use in respect of sites in Licensed Colonies developed under 1975 Act/approved under 1963 Act and stand transferred to Municipal Corporation.***

Held, that it thus, stands established that the Municipal Corporation / Director General Urban Local Bodies Haryana, as the case may be, under the aegis of Haryana Municipal Corporation Act 1994 have the power and authority to grant the change of land use in respect of the sites in the Licensed Colonies developed under the 1975 Act, approved under the 1963 Act and which stand transferred to Municipal Corporation.

(Para 17)

(B) ***Punjab Scheduled Roads and Controlled Areas— Restriction of Unregulated Development Act, 1963, S.8—Haryana Municipal Corporation Act, 1994, S.349 —Haryana Development and Regulation of Urban Areas Act, 1975—S.83—Power of Municipal Corporation/Director General Urban Local Bodies Haryana — Held, Municipal Corporation/Director General Urban Local Bodies Haryana has role, function and power to administer 'controlled areas declared under 1963 Act and over period of time are included within municipal limits of Municipal Corporation.***

Held, that the Director Urban Local Bodies Haryana by exercising powers under Section 398 of 1994 Act provided Policy instructions for the conversion of the residential plots for commercial use and regularization of such illegal conversions in Schemes including the Town Planning Schemes falling within the Municipal Limits. All these factors lead to the conclusion that the Municipal Corporation / Director General Urban Local Bodies Haryana have the role, function and power to administer under the 1994 Act, the 'controlled areas' declared under the 1963 Act and over period of time are included within the municipal limits of the Municipal Corporation concerned.

(Para 18)

Kanwal Goyal, Advocate , *for the Petitioner.*

Samarth Sagar, Addl. A.G., Haryana.

Amrita Nagpal, Advocate for Lokesh Sinhal, Advocate for respondent nos.2 & 3-Municipal Corporation Faridabad.

JASWANT SINGH, J.

(1) The Petitioner- M/s Krishna Industries, a Proprietorship Firm through its Proprietor cum Owner Smt Krishna Garg has filed the instant writ petition, being aggrieved against the impugned orders dated 18.11.2017 (**P-13**), 14.12.2017 (**P-16**) and order dated 07.08.2018 (**P-16/B**), whereby the application (**P-12**) of petitioner for change of land use of Plot No. 68/1 DLF-1 has been rejected and further, Respondents No 2 and 3 (Municipal Corporation, Faridabad) have ordered removal of construction made on the site, being illegal.

FACTS:

(2) Admitted facts of the case, relevant for adjudication of the dispute involved in the instant case are that the Petitioner is the owner of Plot No. 681/1, Industrial Area, DLF-1, Faridabad (Haryana), which is surrounded by Industries on all sides. The Site Plan of the entire Industrial Area was admittedly sanctioned on vide Drawing No. 11.09.1973 (referred to in **P-16** Pg 93), whereby the property in question was earmarked as Community Hall. Vide a registered conveyance deed bearing Vasika No. 5473 dated 29.06.2006 (**P-1**), the site in question measuring about 1 acre with covered area of 2750 sq ft., was purchased by petitioner and as per the conditions of conveyance, the property was required to be put to use as a Community Hall. The revised building plan of the above said plot was approved by Architect of DTP vide office Memo No.5882 dated 16.09.2008. Uptill 2014, the

property was put to use as a Community Hall by petitioner, but without generating income from the said site as there was no utility of the said Community Hall in the entire area developed as Industrial Area.

(3) The case of the petitioner is that the Site in question was not put to the use as a Community Hall and over a period of time had outlived the usage as a Community Hall, The Petitioner, applied for and was granted no objection for the usage of the Plot as an industrial unit from DLF Industries Association on 25.04.2012 and same was re-iterated on 18.07.2017 (**P-2 Colly**). It was mentioned in the no objection letter that the Plot in question has never been used for the purpose earmarked in the approved layout Plan which is admittedly of the year 1973. The Petitioner applied for sanctioning of revised Building Plans and pursuant to the construction based on the revised building Plans, the Occupation Certificate was granted to the Petitioner by the Senior Town Planner cum Chairman Building Committee, Faridabad, on 31.10.2014 (**P-3**). The petitioner applied for the allotment of the Plot Number to the Industrial Plot of the Petitioner in the Office of the Joint Commissioner Faridabad Municipal Commissioner vide letter dated 30.09.2014 and according the nomenclature / numbering as Plot No. 68/1 to the Industrial Unit of the petitioner was granted on 12.11.2014 (**P-4**) for the purpose of House Tax, Fire Tax, Water Tax and Sewer Tax etc. The Plot in question is charged with the Commercial House Tax from the Municipal Corporation Faridabad. The Petitioner was also granted a License under Section 330 of the Haryana Municipal Corporation Act 1994 (hereinafter referred to as "**1994 Act"**) and the letter dated 15.12.2016 (**P-5**) was issued by the Zonal and Taxation Officer Municipal Corporation Faridabad that the unit if has been given License under Section 330 till the year 2016-17 and is charged House Tax as per industrial Unit. In December 2015 (**P-6**), the tenants of the petitioner - M/s Jiva Designs Pvt. Ltd was also issued the Registration and License to work as a 'Factory' under the Factories Act 1948 by Chief Inspector of Factories, Haryana. M/s Jiva Design Pvt Ltd. was also issued the "Exemption from Getting NOC / Consent to operate from the Board' vide the letter dated 26.03.2015 (**P-7**) by the Regional Office Faridabad, Haryana State Pollution Control Board. Furthermore, the Haryana State Pollution Control Board Haryana also granted the "consent to operate" to M/s Jiva Designs Pvt. Ltd., the tenant of the Petitioner by the letter dated 05.07.2016 (P-8) for the period, 01.10.2016 to 30.09.2017, for discharge of effluent under Section 25/26 of the Water (Prevention and Control of Pollution) Act 1974.

It is contended by the Petitioner that from Annexure P-4 to P-8, it is evident that various Departments, including Municipal Corporation, Faridabad, had issued no objection for using the premises as an Industrial Unit, even a licence to employ upto 950 workers was also granted. Thereafter, the Unit was running and was fully operational, until one activist moved complaints to various departments stating that the site in question cannot be put to any other use, except as a Community Center/Hall. Thus, some of the permissions were withdrawn and therefore, petitioner moved application dated NIL, received by the office of Municipal Commissioner, Faridabad on 27.06.2017 vide Diary No. 5977 for permission to Change the Land Use of site in question.

(4) The application dated 27.06.2017 (**P-12**) submitted by the petitioner for the change of the land use and for getting the site plan passed regarding the Community Centre on Plot No. 68/1 DLF Industrial Area Sector 31 Faridabad, was declined vide the impugned Order No. MCF/SAO/2017/181 dated 18.11.2017 (P-13) passed by the Respondent No 3-Joint Commissioner, Municipal Corporation, Faridabad. The petitioner was put to notice regarding the illegal construction and was directed not to use the Plot except as mentioned in the Layout Plan of the Town and Country Planning Department for public amenities / Community Centre.

In pursuance of the impugned notice dated 18.11.2017 (P-13), the Respondent No. 3 Joint Commissioner Municipal Corporation Faridabad exercising the Powers of the Commissioner passed the impugned Speaking Order dated 14.12.2017 (**P-16**), whereby petitioner was directed to remove the violations / discontinue the industrial activities within 7 days from the receipt of Order failing which the Municipal Corporation Faridabad will remove the illegal activities / violations.

(5) In the background of the aforestated facts and being aggrieved against the said orders, the petitioner filed the instant Writ Petition. However, during the pendency of the writ petition, Respondent No. 1-State (Urban Local Bodies Department) through Chief Town Planner filed a short reply by way of affidavit. In the said reply, a communication dated 18.06.2018 (P-16/A) was placed on record alongwith order/ communication dated 07.08.2018 (P-16/B). In the said Orders dated 18.06.2018 (P-16A) the matter was referred to the Director General Urban Local Bodies Department Haryana being the Competent Authority under Section 349(2) of the Haryana Municipal

Corporation Act 1994 for the grant / refusal regarding the change of land use permissions for the sites falling within the limits of Municipal Corporation.

In the impugned Order dated 07.08.2016 (P-16B), issued by the office of the Director-General, Urban Local Bodies, Haryana, it was held that the petitioner had "*illegally converted the plot into industrial use. The change of land use permission cannot be allowed over such plots of licensed colonies*".

The petitioner vide the Civil Misc Application 16731 of 2018 placed on record the documents (Annexure P-17 to P-21) regarding the regularization of QRG Hospital which was taken on record by the Order dated 01.11.2018 to support the case of the petitioner that in similar circumstances, the Respondent Authorities have regularized the case of QRG Hospital constructed on the site allotted specifically to Vivekanand Ashram for the establishment of Harijan Residential School and Social Development Centre upon the deposit of the regularization fee. It has been contended by the Petitioner that similar power has not been exercised in the case of the Petitioner.

(6) The Petitioner in view of the subsequent event i.e passing of order dated 07.08.2018 (P-16/B), moved an application (Civil Misc 12216 of 2019) under Order VI Rule 17 for amending the Writ Petition, which was allowed vide order dated 15.10.2019.

In response to the amended Writ Petition, two separate replies have been filed by respondents. In the written statement filed by Respondent No. 1-State through Principal Secretary Urban Local Bodies Department Haryana, the Order dated 07.08.2018 (P-16/B) was endorsed and protected. Regarding the regularization of QRG Hospital, it is averred that the Plot / Building in question is part of the Licensed Colony and the Department of Urban Local Bodies Haryana is not the competent authority for the regularization of such plot / building and further contended that however, the Municipal Corporation is competent to take action on illegal construction or misuse of Plot / Building if such Licensed Colony is transferred to the said Municipal Corporation implying that in respect of the change of land use / regularization of the changed land use, the competent Authority is the Director Town and Country Planning under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act 1963 (hereinafter referred to as "**1963 Act**") / Haryana Development and Regulation of Urban Areas Act 1975 (hereinafter referred to as "**1975 Act"**).

In the reply filed jointly on behalf of the Respondents No. 2 Commissioner Municipal Corporation Faridabad and Respondent No. 3 Joint Commissioner Municipal Corporation Faridabad, it has been contended that plot in question is earmarked for Public Amenities / Community Centre in the sanctioned layout plan. It is contended that the Director, Urban Local Bodies Haryana, is competent to refuse or accept an application for change of land use and further that the action taken by them is correct as per law.

ARGUMENTS:

(7) By referring to the aforesaid facts, Ld. Counsel for the petitioner has submitted that sole ground mentioned in the impugned orders passed by Municipal Corporation Faridabad and Director General, Urban Local Bodies, Haryana, is that the site in question in the layout Plan of DLF Industrial Area sanctioned vide drawing No. 483 dated 11.09.1973 has been earmarked for a Public Amenity / Community Centre and therefore the site in question cannot be converted into an Industrial Unit. Thus, the application for change of land use cannot be accepted and further, the constructions done by petitioner on the basis of revised Building Plans are illegal and use as industrial purpose are illegal and liable to be removed. According to submissions made by the Ld. counsel for the petitioner, the said findings are perverse and liable to be set aside because

(a) As per Section 8 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, which is *pari-materia* to Sections 349 of Haryana Municipal Corporation Act, 1994, there are no parameters laid down by the legislature on the basis of which, CLU application can be rejected or accepted. Once that is so, then the discretion has to be exercised judiciously by the authority concerned. However, the impugned orders lack such application of mind.

(b) The Impugned orders have been passed by authorities in light of Section 3-B of Haryana Development and Regulation of Urban Areas Act, 1975, as per which there is a bar on permitting erection or re-erection of a building, which has been earmarked for a particular usage in a licensed colony. However, the authorities have ignored Section 23 of the 1975 Act, which enables the Government to exempt any building from rigors of Section 3-B of the Act, 1975 in case where there is undue hardship or

circumstances exist which render it expedient to do so. Circumstances of instant case show that not only it is expedient but there is undue hardship caused to petitioner as well.

(c) The Plot / property in question is situated in DLF Industrial Area, Faridabad, which is surrounded by Industries on all sites. As per the impugned order dated 14.12.2017 (P-16), it is categorically mentioned that the layout of the DLF Industrial Area was sanctioned on **11.09.1973** and the present site was earmarked as Public Amenity / Community Centre. Since the approval of the Layout in the year 1973, there has been no change in it despite the present site losing its practical usage as a Community Center and has infact never been used as such. This is seen from NOC given by Industrial Association (**P-2 Colly**), as per which the building is in shambles and has lost its value as far as its usage as a community hall in concerned. Thus, by converting the site into an industrial unit, by taking the applicable charges, will not cause loss to the State / Municipal Corporation Faridabad whereas the petitioner is set to be more prejudiced in case Change of Land Use is not permitted, as he has taken a loan to the tune of more than Rs. 6 Crore for construction of the building, an industrial unit which had generated employment was running and adding to the revenues for the State / Municipal Corporation Faridabad.

(d) The counsel for the petitioner referred to the case of conversion of a site wherein in similar circumstances, while exercising the power of exemption, the HUDA had permitted a private hospital namely QRG Hospital to change the land use of a site earmarked for Harijan Residential School and Social Development Center to a private hospital alongwith shops vide letter dated 16.08.2016 (**P-15**).

(e) Similarly, Town and Country Planning Department, which is responsible for formulating policies for "controlled areas", has previously permitted industrial units within the controlled areas to be regularized by invoking the exemption clauses provided under the Act, 1963 vide its policy dated 02.03.2010. Thus, in case Town and Country

Planning Department is taking such decisions by invoking exemption clauses under the 1963 Act, respondents ought to have invoked its power under the 1994 Act by taking guidance from Section 23 of the 1975 Act for granting petitioner such exemption / conversion of the land use.

(f) An additional ground was raised by the Counsel for the petitioner that in the given facts, change of land use as 'industrial' was permitted for the entire area of DLF Industrial Area and it was only in the Layout Plan that the Developer / Colonizer has shown the site in question as Community Hall in and around the industrial plots. The present Building which is a Community Hall is to be converted as a 'factory'. The appropriate Authorities under the Factories Act, Pollution Laws etc. had already granted the permission to the Building in question to be run as a Factory as all requirements and parameters regarding the same already stood fulfilled. The permission for conversion of the Building falling within the municipal area of the Municipal Corporation is within the domain of powers of the Commissioner of the Municipal Corporation under the provisions of Section 249 and 265 of the 1994 Act which the authority has failed to exercise.

(8) On the other hand, Ld. Counsel for Respondent No. 1 – State has argued that the order passed by the Director General Urban Local Bodies Haryana which is the competent authority under the 1994 Act is perfectly valid as no change of land use can been permitted in respect of a Licensed Colony which is developed after approvals through the Town and Country Planning Department. It is further argued that the parity that has been sought by petitioner by referring to the case of QRG Hospital, is without basis as the said exemption was granted by HUDA and not by Department of Urban and Local Bodies.

The Ld. Counsel for Respondents No. 2 and 3 has also argued on the same lines by defending the orders passed by them and has submitted that no case for allowing the application for change of land use can be allowed.

(9) We have heard Ld. Counsel for the parties at length and have scrutinized the record with their able assistance.

(10) Based on the pleadings before this Court and the rival contentions of the parties, the following broad questions arise for

determination in the present Writ Petition:

(i) Whether the Municipal Corporation / Director General Urban Local Bodies Haryana under the aegis of Haryana Municipal Corporation Act 1994 have the power and authority to grant the change of land use in respect of the sites in the Licensed Colonies developed under the 1975 Act / approved under the 1963 Act and stand transferred to Municipal Corporation?

(ii) Whether the Municipal Corporation / Director General Urban Local Bodies Haryana have the role, function and power to administer the 'controlled areas' declared under the 1963 Act and over period of time are included within the municipal limits of the Municipal Corporation?

(iii) Whether the petitioner is entitled to the permission of change of land use of the 'Community Hall' to 'Industrial Use' in the peculiar facts of the present case and the reasoning of the impugned order in denying the permission of change of land use can be sustained in the eyes of law?

(iv) Relief

(11) Before we embark upon to decide the controversy involved, it would be useful to reproduce some of the relevant statutory provisions that are involved in the instant matter and are relevant towards the questions to be determined.

STATUTORY PROVISIONS AND ITS ANALYSIS:

11(a). **Haryana Municipal Corporation Act 1994 ("1994 Act")** Since admittedly, the site in question is within the Municipal Limits of Faridabad Township, therefore relevant provisions of the Haryana Municipal Corporation Act 1994 are taken up for consideration in respect of the issue in controversy.

The 1994 Act was enacted for the creation of the Municipal Corporations in certain municipal areas of the State of Haryana. **Section 2 (30)** of the 1994 Act defines the '***municipal area'*** as:

(30) "Municipal area" means the territorial area of the Corporation declared under section 3 of this Act;

Section 2 (31) defines a 'municipality' as an institution of

self- government constituted under **Section 2-A** of the Haryana Municipal Act, 1973, which may be a Municipal Committee or a Municipal Council or a Municipal Corporation.

Section 3 of the 1994 Act deals with the declaration of the Municipal Area of the Corporation and Sub Section **(4) of Section 3** provides that all rules, regulations, notifications, bye- laws, orders, directions and powers issued or conferred and all taxes imposed under this Act will be applicable on the area included in the Municipal limits. Section 3 is reproduced as under:

3. DECLARATION OF MUNICIPAL AREA AS CORPORATION

(1) From the 31st day of May, 1994, the Municipal Corporation of Faridabad shall be deemed to have been declared as such for the Municipal Area specified in the First Schedule appended to this Act.

(2) The Government may, from time to time, by notification in the Official Gazette, declare any municipality including area comprising rural area or a part thereof, ifany, to be a Corporation known as "the Municipal Corporation of

--(Name of Corporation)."

Provided that no municipality including area, comprising rural area or a part thereof, if any, shall be so declared to be a Corporation unless the population thereof [is three lacs or more].

(3) The Government may, from time to time, after consultation with the Corporation, by notification in the Official Gazette, alter the limits of the Municipal are of the Corporation declared under sub-section (1) and (2) so as to include therein or exclude therefrom such areas as may be specified in the notification.

(4) When the limits of the Municipal area are altered, so as to include therein any area, except as the Government may otherwise by notification, direct, all rules, regulations, notifications, bye-laws, orders, directions and powers issued or conferred and all taxes

> **imposed under this Act; and in force in the Municipal area shall apply to such area.**
>
> (5) When a local area is excluded from the Corporation under sub-section (3) -
>
> (a) this Act, and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply thereto; and
>
> (b) the Government shall after consulting the Corporation, frame a scheme determining what portion of the balance of the Corporation fund and other property vesting in the municipal Corporation shall vest in the Government and in what manner the liabilities of the Corporation shall be apportioned between the Corporation and the Government, and, on the scheme, being notified, the property and liabilities shall vest and be apportioned accordingly.

Under **Chapter-III, "Functions of the Corporation" Section 41** of the 1994 Act deals with the General Powers of Corporation and provides that the municipal administration of the ***municipal area*** vests with the Corporation. **Section 41** of the 1994 Act is reproduced as under:

> **41.** (1) Subject to the provisions of this Act and the rules, regulations and bye-laws made thereunder, **the municipal administration of the Municipal area shall vest in the Corporation**.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1) it shall be the duty of the Corporation to consider all periodical statements of the receipts and disbursement and all progress reports and pass such resolution thereon as it deems fit.
>
> **Section 42** of the 1994 Act, deals with the functions of Corporation to be entrusted to it by the Government and therein it includes the **Urban planning including town planning**, **Regulations of land-used construction of buildings etc as its major functions.**

Further, **Chapter XIV** of the 1994 Act, provides for the provisions and procedures towards the erection – re-erection of the Buildings of changing the use of the existing buildings in the municipal Area. Chapter XIV deals with the "Building Regulations". **Section 249**

deals with the definitions and specifies the expression, "**to erect buildings"** and provides as under:

> **249.** In this Chapter, unless the context otherwise, requires, the expression "to erect buildings" means-
>
> (a) **to erect a new building on any site whether previously built upon or not;**
>
> (b) to re-erect
>
> (i) in any building of which more than one-half of the cubical contents above the level of the plinth have been pulled down burnt or destroyed; or
>
> ii) any building of which more than one-half of the superficial area of the external walls above the level of the plinth has been pulled down; or
>
> iii) any frame building of which more than half of the number of the posts of beams in the external walls have been pulled down;
>
> (c) to convert into a dwelling house any building or any part of a building not originally constructed for human habitation or, if originally so constructed, subsequently appropriated for any other purpose;
>
> (d) to covert into more than one dwelling house a building originally constructed as one dwelling house only;
>
> (e) to convert into a place of religious worship or into sacred building any place or building not originally constructed for such purpose;
>
> (f) to roof or cover an open space between walls or building to the extent of the structure which is formed by the roofing or covering of such space;
>
> (g) to convert two or more tenements in a building into greater or lesser number;
>
> (h) **to convert into a stall, shop, warehouse or godown, stable, factory or grange any building not originally constructed for use as such or which was not so used before the change;**
>
> (i) to convert a building which when originally constructed was legally exempt from the operations of any

building regulations contained in this Act or in any bye-laws made there under or in any other law, into a building which, had it been originally erected in its converted form, would have been subject to such building regulations;

(j) to convert into or use as a dwelling house any building which has been discontinued as or appropriated for any purpose other than a dwelling house.

Regarding the change of land use within the area falling in the Municipal Limits is also provided under Chapter XIV, the relevant provision is laid under **Section 265** of the 1994 Act as under:

265. (1) No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission-

(a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and of the bye-laws made there under;

(b) **change or allow the change of the use of any land or building;**

(c) **convert or allow the conversion of one kind of tenement into another kind.**

(2) If it appears to the Commissioner at any time that any building is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighborhood of such building, the Commissioner may, by order in writing, require the owner or occupier of such building to demolish, secure or repair such building or do one or more of such things within such period as may be specified in the order, as to prevent all cause of danger there from.

(3) The Commissioner may also, if he thinks fit, require such owner or occupier by the order made under sub-section (2) either forthwith or before proceeding to demolish, secure or repair the building to set up a proper and sufficient board or fence for the protection of passers-

by and other persons, with a convenient platform and hand rail wherever practicable to serve as a foot way for passengers outside of such board or fence.

(4) If it appears to the Commissioner that danger from a building which is in ruinous condition or likely to fall is imminent, he may, before making the order aforesaid, fence off, demolish, secure or repair the said building or take such steps as may be necessary to prevent the danger.

(5) If the owner or occupier of the building does not comply with the order within the period specified therein, the Commissioner shall take such steps in relation to the building as to prevent all cause of danger there from.

(6) All expenses incurred by the Commissioner in relation to any building under this section shall be recoverable from the owner or occupier thereof as an arrear of tax under this Act.

Further **Chapter XX** deals with the "Declaration and Publication of Plans of Controlled Area". The Commissioner under **Section 346** of the Haryana Municipal Corporation Act 1994, is empowered to declare with the prior approval of the Government, the whole or any part of the area **within the Corporation** to be a 'controlled area' with the proviso that the said area has not already been declared as 'controlled area' under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

Further, **Sections 348, 349 and 365 of Haryana Municipal Corporation Act, 1994** are necessary to be reproduced:

"**348. PROHIBITION ON USE OF LAND IN CONTROLLED AREA**

(1)No land within the controlled area shall, **except with the permission of the Commissioner be used for purposes, other than those for which it was used on the date of publication of the Notification under sub-section (1) of Section 346** and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick-filled or for quarrying stone, bajri, kanker or manufacturing of surkhi or for crushing stone or for other similar extraction or ancillary operations

except under and in accordance with the conditions of a Licence to be obtained from the Commissioner on payment of such fees and under such conditions as may be prescribed.

(2)The licence so granted shall be valid for one year may be renewed annually on payment of such fees as may be prescribed.

349. APPLICATION OF PERMISSION OR LICENCE AND THE GRANT OR REFUSAL THEREOF.

(1) Every person desiring to obtain the permission or licence referred to in Sections 347 and 348 shall make an application in writing to the Commissioner in such form and containing such information in respect of the land, building, excavation or means of access to a road to which the application relates as may be prescribed

(2) On receipt of such application the Commissioner, after making such enquiry as he may consider 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 licence; provided that the order of refusal shall not be passes

unless the applicant has been afforded an opportunity of being heard.

(3) If, at the expiration of a period of three months after an application under sub-section (1) has been made to the Commissioner, no order in writing has been passed by the Commissioner the permission shall be deemed to have been granted without the imposition of any conditions but subject to the restrictions and conditions signified in the plans published in the Official Gazette under section 346.

(4) The Commissioner shall maintain such registers as may be prescribed with sufficient particulars of all such cases in which permission or licence 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 extract therefrom."

Under **Section 398** of the 1994 Act, the Government is empowered to issue any directions to the to the Corporation or the Commissioner for carrying out the purposes of the 1994 Act including directions with regard to the various uses to which any land within the Corporation may be put.

398. DIRECTIONS BY GOVERNMENT

(1) If, whether on receipt of any information or report obtained under section 396 or section 397 or otherwise, the Government is of opinion, -

(a) that any duty imposed on the Corporation or any of its authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner; or

(b) that adequate financial provision has not been made for the performance of any such duty, it may direct the Corporation or the Commissioner, within such period as it thinks fit, to make arrangements to its satisfaction for the proper performance of duty, or, as the case may be, to make financial provisions to its satisfaction for the performance of the duty and the Corporation or the Commissioner concerned shall comply with such direction:

Provided that, unless in the opinion of the Government the immediate execution of such order is necessary, it shall, before making any direction under this section, give the Corporation or the Commissioner an opportunity of showing cause why such direction should not be made.

(2) In addition to the directions issued under sub-section (1), the Government may also issue directions to the Corporation or the Commissioner for carrying out the purposes of this Act and in particular with regard to-

(i) various uses to which any land within the Corporation may be put;

(ii) repaymentof debts and discharging of obligations;

(iii) collection of taxes;

(iv) observance of rules and bye-laws;

(v) adoption of development measures and measures for promotion of public safety, health, convenience and welfare;

(vi) sanitation and cleanliness;

(vii) establishment and maintenance of fire-brigade.

From the conjoint reading of the aforestated provisions, it is evident that the Haryana Municipal Corporation Act 1994 is a self contained code and provides for the provisions regarding the administration of the 'municipal area' which vests with the Corporation and provides for the powers, functions, procedures regarding the permission of the erection / re-erection of the Buildings and the use of the premises, the offences and the penalties as also the procedure dealing with such offences, the appeals thereto etc.. There is nothing being brought to the notice of the Court that the 'controlled areas' so declared under the 1963 Act which stand included in the municipal limits are excluded from the administration and jurisdiction of the Municipal Corporation while to the contrary there is a specific provision as under Sub Section (4) of Section 3 of 1994 Act that all rules, regulations, notifications, bye-laws, orders, directions and powers issued or conferred and all taxes imposed under the 1994 Act will be applicable on the area of the Municipal Corporation (including 'controlled area' under 1963 Act, so included/added in municipal limits of the Municipal Corporation). The Government under **Section 398 Sub Section (2) Clause- i**, is also empowered to issue any directions to the Municipal Corporation / Commissioner for carrying out the purposes of the act including the use in which the land under the corporation is to be put.

11 (b). Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 ("1963 Act")

With the aforestated perusal of some of the provisions of the 1994 Act which are relevant to the present controversy, it is undisputed that Haryana Municipal Corporation Act, 1994 came into existence much later than the sanctioning of Layout Plan of the concerned DLF Industrial Area in the year 1973. Such sanctioning of the Layout Plan vide the drawing dated 11.09.1973 has been mentioned by the Respondents themselves in their Speaking Order dated 14.12.2017 (**P-16**).

Under the 1963 Act, **Section 4** empowers the government to declare any area outside the limits of municipal town or any other area which in opinion of the Government has potential for building activities, industrial, commercial, institutional, recreational estates / activities as a 'controlled area' for the purpose of 1963 Act. **Section 7, 7A and 8 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963** (i.e. "1963 Act")**,** which was applicable at the relevant time (in year 1973 when the Layout Plan of DLF Industrial Area was sanctioned) for the division of area into plots and license towards the development in planned manner, are also necessary to be reproduced, which are as under:

"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.]

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

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.

Section 7-A was inserted in the 1963 Act by way of Haryana Act No. 16 of 1996 dated 13.12.1996 and provides as under :

7-A **Power of relaxation**.-

The Government may, in public interest, relax any restrictions or conditions in so far as they relate to land use prescribed in the controlled area in exceptional circumstances.

The said power of relaxation has been inserted immediately after the provisions of Section 7 & 8 of the 1963 Act which provides for the prohibition of use in the controlled area and permission for the change of the land use as also the other provisions of the 1963 Act.

In the present case, the DLF industrial Area, where the plot (site) in question is located was a controlled area under the 1963 Act and the necessary layout Plan for the development of the industrial plots was undisputedly granted by way permissions under Section 7 / 8 of the 1963 Act by way of the drawing dated 11.09.1973. In that layout Plan, the plot in question is stated to have been shown as a community hall though admittedly never used as such and had no utility corresponding to such usage (**P-2 Colly refers**). It is also an admitted fact that the development in the DLF Industrial Area was completed and the same stands transferred to the Municipal Corporation Faridabad and falls within the Municipal Area.

11(c).Haryana Development and Regulation of Urban Areas Act 1975 ("1975 Act")

The Haryana Development and Regulation of Urban Areas Act 1975 was enacted on 30.01.1975 with the object to prevent ill planned / haphazard constructions and which provided for the development of a 'Colony' in controlled area by the grant of "License" to develop and laid the various regulations and conditions for the development of the Colony by way of all round development by private colonizers and laying of the development of colonies adhering to the approved layout plans as per the parameters of the designs, norms and specifications set for such

development in private hands. **Section 3B and 23 of Haryana Development and Regulation of urban Areas Act, 1975** (hereinafter referred to as "1975 Act") are also being reproduced, which have been referred by Ld. Counsel for petitioner. Same reads as under:

"**3B Erection or re-erection of buildings in a licensed colony:—** No person shall erect or re-erect buildings in a Colony save in accordance with approved plans and subject to such restrictions and conditions as are contained in the license or as may be specified by the Government or the Director.

23.**Power to exempt.—**

If the government is of the opinion that the operation of any of the provisions of this Act causes **undue hardship** or **circumstances exist which render it expedient so to do**, it may, subject to such terms and conditions as it may impose, by a general or special order, exempt any class of persons or areas from all or any of the provisions of this Act."

It remains the undisputed fact that the Layout Plan of the DLF Industrial Area was sanctioned on 11.09.1973 when even the Haryana Development and Regulation of Urban Area Act 1975 was not enacted by that time and thus the permission towards the laying out of the colony of Industrial Plots by way of Layout Plan was sanctioned under the 1963 Act.

Under Section 3 of the 1975 Act, the provision in respect of the grant of License to develop a Colony is provided and in that under Clause (a) (iii) of Sub Section (3) of Section 3 it provides as under:

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public parks 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** ;

The Local Authority is defined under **Section 2 (j)** of the 1975 Act and provides as under:

(j) **"local authority", means** a Municipal Committee or

municipal Council or **Municipal Corporation**;

We have come across another provision under the 1975 Act, Section 18 which provides for the "Savings" from the provisions of the 1975 Act and is provides as under:

> 18. **Nothing in this Act shall affect the power of** the Government, Improvement Trusts, Housing Board, Haryana, **any local authority** or other authority constituted under any law for the time being in force by the State Government for carrying out 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.

As per the "*Savings*" clause provided under Section 18 of the 1975 Act, the power of the Local Authority is not affected by the provisions of the 1975 Act if the Municipal Corporation wants to develop any land, impose any restrictions upon the use of such land etc. within its municipal area including the Licensed Colonies / areas falling within the Municipal Areas and transferred to the Municipal Corporation.

(12) The reading of the aforestated provisions of the 1994 Act, 1963 Act and the 1975 Act read in conjunction with and independent of each other lay down that the Municipal Corporation is given an area (i.e. the Municipal Area) of jurisdiction and the Municipal Corporation within that area exercises all jurisdiction in respect of the administration of that area concerning the construction, **use of land**, etc. The Municipal Corporation also has a power to declare area within its jurisdiction as Controlled areas and control the use of land by its Planning Scheme. The controlled areas declared under the 1963 are also included in the municipal limits and in respect of the developed areas so transferred to the Municipal Corporation, the said Corporation and the Authorities under the 1994 Act, exercises complete authority on such areas including the power to sanction / approve construction – erection / re-erection of land as also the change of land use (**Section 249 & 265** of 1994 Act). Such power of the authorities under the 1994 Act is also saved qua the licensed colonies by virtue of **Section 18 of the 1975 Act**.

Further, a conjoint reading of Sections 348 and 349 of the 1994 Act, on one hand and those of Section 7 and 8 of the 1963 Act, would make it abundantly clear that the provisions for grant / refusal of change of land use are the same. Both these Acts (1963 and 1994 Act) bar change of land usage until and unless same are permitted by Competent Authority. However, these Acts operate in different domains. The provisions of 1994 Act are confined to sites within the Municipal Limits of a township i.e. within the jurisdiction of the Municipal Corporation, whereas the provisions of 1963 Act, are applicable to areas outside the municipal limits or any other area, declared as "controlled area" or "scheduled roads", so as to control ill-planned & haphazard development. Evidently, in both the Acts there are no parameters which have been laid down as to under what circumstances, an application for Change of Land use can be accepted or rejected by the authority. However, 1963 Act provides for Section 7A, which permits the Government to relax any of the provisions pertaining to change of land use prescribed in controlled area in exception circumstances. The said power of relaxation is missing in the 1994 Act.

(13) But, it is seen that the Competent Authority's power under 1994 Act to declare a controlled area under the 1994 Act, is restricted by the provision of 1963 Act, as is enshrined under Section 346 of the 1994 Act. Section 346 of the 1994 Act empowers the Commissioner with prior approval of the Government may notify any area in the Corporation to be a controlled area under 1994 Act provided the same has not been earlier declared as a controlled area under the 1963 Act and so because upon declaration of the Area as Controlled Area under 1963 Act there would be some planning already regarding this area by way of development plan and the development pursuant thereto would have taken place. It is under Section 7 of the 1963 Act that the permission for the change of the land use is granted and once the change of land use is granted then by virtue thereof, the license to develop the Colony is granted under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975, which was promulgated to regulate the use of land in order to prevent ill-planned and haphazard urbanization in or around towns in State of Haryana. However, on the specific query by the Court, it was informed by the Counsel for the petitioner without any opposition from the respondents that before the enactment of the 1975 Act, the permissions for the development of the Colony, its layout and other approvals were granted under the 1963 Act and the Punjab Scheduled Roads and Controlled

Areas Restriction of Unregulated Development Rules, 1965 made thereunder. During the process of permissions for the development of a Colony, the layout Plan of the Colony is also approved which also provides for certain public utility services and certain amenities. As per Section 3B of the Act (which was inserted vide amendment dated 03.04.2003), no erection or re-erection of buildings are permitted in a Licensed Colony save as otherwise provided in approved plans (the Plans which also provide for certain amenities and utility services to be provided in the Colony. However, considering that there is an absolute bar, the legislature, in its wisdom, had empowered (Section 23 of 1975 Act refers) the Government to permit relaxation of any provisions of the 1975 Act, in case it causes:

a) undue hardship; or

b) changed circumstances

Thus, either of two situations must arise for the Government to permit a class of persons or areas to be exempted from the provisions of this Act. The counsel for the parties are *ad idem* during the course of arguments that that the Community Centre is a general amenity and do not come under the public utility / essential service as some of the amenities are public utility like the post office, dispensary, police station etc.

It has also been submitted by the Counsel for the petitioner that the composite norms for the community sites to be provided in a Colony were Circulated vide D.T.C.P. Haryana vide Endst No.20028 Dated 24.11.1988 as available on the official website of the Town and Country Planning Haryana. It is the unopposed argument of the Petitioner that before 24.11.1988, there were no norms for the providing of the community sites in a colony and the same were provided for in the Layout of Colony as per the discretion of the colonizer and **were not sacrosanct**. It is only after 24.11.1988, the composite norms for the providing of the community sites were made mandatory and were based on the parameters of the density norms. Thus the mandatory parameters regarding community sites are not applicable in respect of the DLF industrial Area (where the plot in question is located) regarding which the layout plan was sanctioned on 11.09.1973 apart from being guided by the provisions like Section 23 of the 1975 Act.

(14) Hence, before declining or accepting an application for change of land use, it is incumbent upon the designated authority i.e.

the Director General Urban Local Body under the 1994 Act to consider the case from all these angles as well, especially when the property / site is situated within the Municipal Limits of a township after its completion and the entire taxes like the House tax and the other municipal taxes are collected by the Municipal Corporation. It goes without saying that class of persons also includes a single person.

(15) The additional argument raised by the counsel for the petitioner is also valid that going by the scheme of the 1963 Act, 1975 Act or even in respect of the provisions of the 1994 Act and powers therein towards the declaration of the controlled area and the permission to use the land / Building therein, the permission for use (including the change of land use as in present case as industrial use) is given in respect of the entire area applied for the permission of such use. It is the developer / Colonizer / Licensee who gives a layout Plan wherein he submits adherence to the requirements of the norms and specifications regarding the plots (as in present case the industrial plots) open areas, roads, parks etc. At the relevant time while giving the layout Plan of the DLF Industrial Area and giving the open areas, roads etc., in the year 1973, the colonizer based on his own discretion left the site / plot for Community Hall**,** which may have utility in that general area**,** granted change of use as 'industrial' though was not legally bound for such laying of community hall in year 1973 as the composite norms for the Community Buildings came in the year 1988. As is the general practice and the legal requirement, the entire area in which development is planned to be carried out and the permission is sought for the specific use (viz. industrial use in present case), the entire area is granted such permission and conversion charge for the entire area is charged. The change of use is granted for the entire Colony / area for which permission for such use is applied for and is granted by calculating the entire area for the payment of conversion charges payable for the permissible and applied change of land use. In the present case also, the change of land use as Industrial use, is granted for the entire DLF Industrial Area falling in Sector 31 Faridabad. What is legally required to be granted in the present case is not to change the land use of the site / plot on which the Community Hall was sanctioned but the permission to convert the redundant amenity and community hall which has outlived its utility to be used as a 'factory' in the approved Industrial area where the land is permitted way back in 1973 as industrial use. The permission to convert the building of the Community Hall that has not been proved of any use and in last over 40 years never been utilized gainfully to be now converted into

and allowed to be used as a 'factory' is the issue that is involved in the present case and such conversion lies within the ambit and scope of the powers of the Commissioner Municipal Corporation Faridabad by virtue of Section 265 (1) (b) & (c) read with Section 249 (h) of the 1994 Act.

(16) There is also one very important and pertinent aspect in relation to the Haryana Municipal Corporation Act 1994, namely, the Constitution (Seventy-Fourth Amendment) Act, 1992, whereby Part IX-A, *inter-alia*, including Article 243W of the Constitution of India as also the Twelfth Schedule were inserted w.e.f. 01.06.1993, after receiving the assent of the President of India on 20.04.1993. The provisions of Article 243 W and the relevant portion of Twelfth Schedule reads as under:

> "**Article 243W Powers, authority and responsibilities of Municipalities, etc.**
>
> Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow
>
> (a)the Municipalities with **such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities**, subject to such conditions as may be specified therein, with respect to
>
> (i) the preparation of plans for economic development and social justice;
>
> (ii)the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> (b)the Committees **with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."**
>
> **"TWELFTH SCHEDULE**
>
> (Article 243W)
>
> 1. **Urban planning including town planning.**
>
> 2. **Regulation of land-use and construction of buildings**.

3. to 18

The Constitution (Seventy Forth Amendment) Act, 1992 has introduced a new part namely, **Part IXA in the Constitution**, which deals with the issues relating to municipalities and the aforementioned provisions of Article 243-W and the Twelfth Schedule were inserted as part of the Constitution of India. In order to provide time to allow changes to be made in the then existing laws which were inconsistent with the provisions of the Constitution (74th Amendment) Act, a transition period of one year was provided for the State Municipal Laws to be brought in conformity with the provisions of the Constitution (Seventy Four Amendment) Act 1992. It was after the Constitution (Seventy – Fourth) Amendment Act, 1992 and to bring the Municipal Law for larger urban areas in Haryana in consonance with the 74th Amendment Act 1992, that the Haryana Municipal Corporation Act 1994 was enacted on 31.05.1994. The definition of 'Municipality' by virtue of Section 2 (31) of the "1994 Act" is an institution of self governance and includes a Municipal Corporation. This 74th Amendment Act 1992 gave the constitutional status to the Municipalities in India and aimed at the revitalizing and strengthening the urban governments so that they can function effectively as units of local government. The Twelfth Schedule contains the powers, authority and responsibilities of Municipalities wherein relevant to the issue in controversy, the Urban planning including town planning and the regulation of land-use and construction of buildings is added at Serial No. 1 & 2. The power and authority of regulation of land use and construction of buildings provided in the "1994 Act" has to be read in the background as Constitutional provisions being enacted and incorporated in the State Municipal Law.

FINDINGS ON PRESENT CASE:

(17) From the interpretation and analysis of the statutory provisions of the relevant Statutes, the questions for determination are taken up and dealt with as under:

Question No. (i)

Whether the Municipal Corporation / Director General Urban Local Bodies Haryana under the aegis of Haryana Municipal Corporation Act 1994 have the power and authority to grant the change of land use in respect of the sites in the Licensed Colonies developed under the 1975 Act / approved under the 1963 Act and stand transferred to

Municipal Corporation?

From the aforementioned statutory provisions under the 1963 Act, 1973 Act and the 1994 Act, the first question for determination is answered in the affirmative. In this regard reference is taken from the provisions of Section 3 wherein the Municipal Corporation is constituted under the Haryana Municipal Corporation Act 1994 and the administration of the 'municipal area' vests with the Corporation and provides for the powers, functions, procedures regarding the permission of the erection / re- erection of the Buildings and the use of the premises. Sub Section (4) of Section 3 of 1994 Act that all rules, regulations, notifications, bye-laws, orders, directions and powers issued or conferred and all taxes imposed under the 1994 Act will be applicable on the area included in the Municipal limits. There is no distinction created under the 1994 Act in respect of the areas which are declared 'controlled areas' under the 1963 Act and later are included within the municipal limits of the Municipal Corporation under the 1994 Act regarding the administration of such areas outside the scope and ambit of the provisions of the 1994 Act.

In regard to the construction and the change of land use, Chapter XIV of the 1994 Act deals with the "Building Regulations" and also encompasses with the scope of the words "to erect buildings" as defined under Section 249 of 1994 Act, to include the conversion of a building which was never used as a factory and is converted into a factory as in a present case. Such change / Conversion will thus be read as and dealt with as a case of erecting of a building. Further under Section 265 of 1994 Act in same Chapter XIV dealing with Building Regulations, the Commissioner is empowered to permit any person to change or allow the change of the use of the land / Building. The bare perusal of the ambit and scope of the powers of the Commissioner Municipal Corporation by virtue of Section 265 (1) (b) & (c) read with Section 249 (h) of the 1994 Act would reveal that the Commissioner Municipal Corporation is empowered to grant the change of land use as also the conversion of the use of a particular building from use as a factory and for erecting the Building for use as a factory as in the present case.

Still further such directions regarding the use to which the land / Building in the Corporation can be put can also be issued under Section 398 of 1994 Act by the Government to the Municipal Corporation / Commissioner. Furthermore, Section 18 of the 1975 saves the power of the Government or local authority (includes

Municipal Corporation) for carrying out development of urban area, to develop land or impose restrictions upon the use and development of any area under 1994 Act.

The aforesaid view based on the analysis of relevant statutory provisions of 1994 Act, have the backing of the constitutional provisions as inserted w.e.f. 01.06.1993, as detailed in Para 16 hereinabove, whereby the jurisdiction and competence in relation to "urban planning including town planning" and "regulation of land-use and construction of buildings" in the municipal areas has been exclusively vested with, *inter-alia*, the Municipal Corporations.

It thus, stands established that the Municipal Corporation / Director General Urban Local Bodies Haryana, as the case may be, under the aegis of Haryana Municipal Corporation Act 1994 have the power and authority to grant the change of land use in respect of the sites in the Licensed Colonies developed under the 1975 Act / approved under the 1963 Act and which stand transferred to Municipal Corporation.

(18) **Question No. (ii)**

> Whether the Municipal Corporation / Director General Urban Local Bodies Haryana have the role, function and power to administer the 'controlled areas' declared under the 1963 Act and over period of time are included within the municipallimits of the Municipal Corporation?

The Municipal Corporation is given an area (i.e. the Municipal Area) of jurisdiction and the Municipal Corporation within that area exercises all jurisdiction in respect of the administration of that area concerning the construction, use of land, etc. The Municipal Corporation also has a power to declare area within its jurisdiction as Controlled areas and control the use of land by a Planning Scheme. The controlled areas declared under the 1963 are also included in the municipal limits and in respect of the developed areas so transferred to the Municipal Corporation, the said Corporation and the Authorities under the 1994 Act, exercises complete authority on such areas including the power to sanction / approve construction – erection / re- erection of land as also the change of land use. Section 3 (4) of the 1994 Act provides that all rules, regulations, notifications, bye-laws, orders, directions and powers issued or conferred and all taxes imposed under the 1994 Act will be applicable on the area included in the Municipal limits. Such power of the authorities under the 1994 Act is also saved by virtue of Section 18

of the 1975 Act. There is nothing contrary to the aforestated legal / statutory position shown by the respondents by way of any amendment / notification by the Government contrary to the aforesaid established legal position. Rather in this regard, the counsel for the petitioner has relied upon and referred to a Circular issued by the Directorate Urban Local Bodies, Haryana, issued vide Memo No. DULB/CTP/ATP-3/2016/2306 dated 06.04.2016, of which we take judicial notice, wherein the Director Urban Local Bodies Haryana by exercising powers under Section 398 of 1994 Act provided Policy instructions for the conversion of the residential plots for commercial use and regularization of such illegal conversions in Schemes including the Town Planning Schemes falling within the Municipal Limits. All these factors lead to the conclusion that the Municipal Corporation / Director General Urban Local Bodies Haryana have the role, function and power to administer under the 1994 Act, the 'controlled areas' declared under the 1963 Act and over period of time are included within the municipal limits of the Municipal Corporation concerned.

(19) **Question No. (iii)**

> Whether the petitioner is entitled to the permission of change of land use of the Community Hall to industrial use in the peculiar facts of the present case and the reasoning of the impugned order in denying the permission of change of land use can be sustained in the eyes of law?

(19.1) Coming to the facts of the present case, when an application for change of land use was submitted by petitioner, Respondent No. 3 rejected the same vide order dated 18.11.2017 **(P-13)** by observing the following:

> "After consideration of your application by this office it has been found that though the building plan of the said plot was passed vide No. 5882 dated 16.09.2008 and occupation certificate was issued vide Letter No. STP/FBC/OC/2014/5629 dated 31.10.2014 but the conveyance deed bearing No 5474 dated 29.06.2008 registered by Sub-Registrar Faridabad attached by you along with your application dated 27.06.2017 shows that the Town and Country Planning Department shows **layout plan for the said plot for public amenities / Community centre whereas in your application you have projected this plot as your self owned for change of land use.**

> Therefore, the Municipal Corporation has taken a decision that neither your application of change of land use can be allowed nor any building plan for industrial purpose can be sanctioned.
>
> Xxxxxxxxxxx "

(**emphasis supplied**)

It seems, subsequently Respondent No. 3 realized that as per the scheme of the Act, 1994 it is the Director General, Urban Local Bodies to pass an order, the application was forwarded to him by Commissioner, Municipal Corporation vide letter dated 18.06.2018 (P-16-A) and also intimating him that application has already been rejected by Municipal Corporation. The very consideration by the Municipal Corporation and the rejection of the permission of Change of Land Use by the impugned Order dated 18.11.2017 (P-13) in the present case by the Joint Commissioner Municipal Corporation Faridabad (Respondent No. 3) while simultaneously conceding in the Order dated 18.06.2018 (P-16A) that the competence in this regard for grant of change of land use is only lying with the Director General Urban Local Bodies and as such the consideration, observations and rejection of the case at the Municipal Corporation Faridabad level is concededly erroneous and unlawful.

Further, the consideration by the Municipal Corporation that the property is a Public Amenity and has been shown as a self owned Property also seems to be erroneous because there is nothing shown by the Respondents that some of the public amenities like the school, crèche, dispensary, community centre etc. cannot be owned by the Colonizer or the third party and allotted as such with the specific usage as a public amenity.

(19.2) Taking cognizance of the said application, Assistant Town Planner (acting on behalf of Director General, Urban Local Bodies, Haryana) passed impugned order dated 07.08.2018 **(P-16B)**, whose relevant Paragraph No. 2 is reproduced as under:

> "It is intimated that the subject cited plot is earmarked for community facility in the licensed colony for which the license was granted by the T&CP Department. **Moreover, the building plans in respect of the above said community site were approved by the said Department but the applicant has illegally converted the plot into industrial use. The change of land use permission**

> **cannot be allowed over such plots of licensed colonies.** It is requested to inform the applicant accordingly and take action the illegal construction **"**

(**Emphasis supplied**)

A perusal of the said order shows that application for Change of Land Use was declined without considering the fact that the plot in question falls in the municipal limits and the Colony has been completed way back and is under the scope and powers of the Director General Urban Local Bodies, Haryana. It is also a conceded fact that the layout plan of the said Industrial Colony in question was approved on 11.09.1973 much ahead of the enactment of the 1975 Act on 30.01.1975. Any of the powers so required towards regularization, relaxation and composition are to be dealt with by the Authority under the 1994 Act only in respect of the land / building falling within the Municipal Limits of the Municipal Corporation Faridabad in respect of Industrial Plots in DLF Industrial Area of which the layout Plan sanctioned in 1973 has been executed and transferred to Municipal Corporation Faridabad. Even in the short reply filed on behalf of the Respondent No. 1, a bald statement is made in Para 4 of the Preliminary Submissions that department of Urban Local Bodies Haryana is not the competent authority for regularization of plot in a licensed Colony but the Municipal Corporation is competent to take action on the illegal construction or misuse of the Plot / Building in the Licensed Colony which stands transferred to the Corporation. The said statement does not hold ground when read in consonance with the provisions of the 1994 Act wherein *pari-materia* provisions regarding development / Planning, building regulations and approvals has been given to the Authority (Director or the Commissioner, as the case may be) under the 1994 Act within the Municipal Limits. The question regarding the competency to grant the change of land use under the 1994 Act and the power and Role of the Municipal Corporation / Director ULB has already been answered in the Question No. (i) and (ii) above.

As a natural corollary, the licensed Colony upon transfer to the Corporation merges with the municipal area and is administered by the Municipal Corporation wherein the Commissioner will have complete authority to administer the properties (land and Building) under the 1994 Act. Once it is a conceded fact that the Colony in question stands transferred to the Municipal Corporation and in the present case the Municipal Corporation Faridabad is exercising all its control and

regulatory authority under the 1994 Act then even the permission for the change of land use as and where applicable will be dealt with as if such permission is within the scope and domain of Section 348, 265 of the 1994 Act. The exercise of power for taking cognizance for misuser is provided under the 1994 Act and the said Act also has to be the source of power for the permission to use or the change of user. Under Section 249 of the 1994 Act, the expression "to erect buildings" is wide and covers the cases of conversion or change from one use to another. The Authorities under the 1994 Act cannot pick and chose the power and exercise it in parts holding that they have power to proceed for misuse in a transferred licensed Colony but **do not** have the power to grant change of land use under the same 1994 Act in respect of the transferred Licensed Colony. To the contrary, if the notice for misuse is given under Section 8 of the 1963 Act and issued by the Commissioner exercising power under the 1994 Act then there is no justification for not exercising the same power for the change of user in the peculiar facts and circumstances in the present case. Such interpretation and action / omission pursuant thereto on the part of the Respondents is illegal and unsustainable in eyes of law and is liable to be set aside / declared illegal.

(19.3) The Competent Authority while exercising its power to grant change of land use has for its guidance and reliance the relaxation clauses that exist under the 1975 Act. Section 23 of the 1975 Act, lays down the parameters for the consideration of such relaxation. In the instant case, the matter was required to be considered by the Competent Authority (Commissioner for conversion and / or the Director for the Change of land use under the 1994 Act, as the case may be) by taking into account the facts of the case. Unfortunately, while filing reply, this aspect has been totally ignored by the State / Respondents by simplicitor endorsing the view taken by the Authorities in impugned orders without application of mind while filing reply to the un-amended writ petition and even when it again filed reply to the amended writ petition as well.

(19.4) We also do not find any consideration of the matter in relation to the fact that *firstly*, the change of land use for the entire DLF Industrial Area was granted way back in year 1973. *Secondly*, that the present community hall is not a sacrosanct parameter to be included in the layout Plan in year 1973 with an obligation / condition for passing the Layout Plan or the change of lands use permission but was a discretionary inclusion as the composite norms were prescribed only in

the year 1988. *Thirdly*, said building / site has never been used as a Community hall and not gainfully put to use as such. *Fourthly*, the building on the plot in question was granted the permission to be run as a 'factory' **(i.e. the industrial use)** by the authorities under the Factories Act, the Pollution Control Authorities, Building Bye Laws etc.. *Fifthly*, the petitioner's case is for the permission to convert the 'community hall' as 'factory' **i.e. the industrial use** in the Industrial Area, granted permission to change the land to industrial use in the year 1973. Seen from both angles towards the required conversion or even for the change of the land use, all parameters for such an action on part of the authorities were met out in the present case.

(19.5) In such circumstances, we do not see any reason to remand the matter back and direct the Competent Authority to consider the case of petitioner for the change of the land use / conversion of the 'community hall' as a 'factory' i.e. the industrial use in the peculiar facts and circumstances by considering the various aspects in the preceding para 18.4, as the Competent Authority, Commissioner / Director under the 1994 Act, as the case may be, has already considered the impugned action / view to be valid and therefore, it would be an 'empty formality' or "futile attempt" to relegate the petitioner to another round of litigation as the matter would be going virtually from "Caesar to Caesar's wife". In support of our view, we refer to the judgment passed by Hon'ble Supreme Court in ***Dhampur Sugar Mills Ltd*** versus ***State of UP and other***[1]

(19.6) Coming to the merits of the case and deciding the issue involved, we find that not only both the ingredients of Section 23 of Act, 1975 are meted out in favor of the petitioner, but equity is also heavily tilted on its side. It is a classic example where the power to exempt was required to be exercised by considering the unfortunate situation of petitioner.

Admittedly, the site in question was earmarked as a Community Centre in the Site Plan which was approved on 11.09.1973 i.e. over 47 years ago when the controversy erupted. It is also not in dispute that the petitioner had tried to run a Community Hall on the site for nearly 6 years, but was unsuccessful in his endeavor and there is nothing brought on record by the respondents that previously a community centre **ever** functioned on this site. Furthermore, the said community site was not in pursuance / compliance of the composite norms issued

[1] 2007(8) SCC 338.

vide Memo dated 24.11.1988 as required for Licensing under the 1975 Act and that too in respect of any public utility. It is further clear that petitioner is seeking permission to run an industrial unit in an industrial area and not in any other designated area / residential area. Thus, there is no chance that there would be chaos caused by permitting such change of land use.

The respondents have infact, not delved into the bar in law based and founded upon the legal provisions under the 1975 Act, 1963 Act or the 1994 Act against the grant of change of the land use in the present case. Further, the site in the year 1973 was earmarked for the benefit of adjoining industries in the area. However, a perusal of the no objection given by the Association of Industries working in the said Industrial Area would show that they are more than willing to permit another industrial unit to be set up in the area i.e the disputed site. For ready reference, the relevant portion of the said no objection dated 18.07.2017 (**P-2 Colly**) is reproduce as under:

> "In continuation of DLF Industries Association NOC dated 25.04.2012 regarding Public amenities/ Community Center site in DLF Industrial Estate Phase-I Faridabad it is further stated that the building constructed on the above said plot has never used for the purpose it has been earmarked for the last more than 10 years. Due to non utilization of above building for the purpose earmarked in the approved layout plan, the upkeep and maintenance of this building, it has become an abandoned building. In fact this situation has arisen due to the reason that the industrialists operating in this area convene their meetings in some Hotels and the social welfare meetings by the workers are being held in the premises already provided in individual industries. In order words the building constructed on the plot under reference is not a necessity of the area therefore, the Govt. should take a decision for its other use as deem fit. In case the Govt. take a decision to convert the land used for this plot into industrial use then our Association will have no objection to such decision."

Thus, it is seen that not only the building constructed thereupon is "abandoned", the site has outlived its utility. Hence, the most affected persons, who can be either petitioner's competitors or aggrieved by change of land use, are requesting the Government to permit change of land use.

It may also be seen that the present site has been demarcated as a general Amenity and not as any site for public utility service which may have a different consideration in the entire set of facts. Furthermore, there is no dispute regarding the fact that there was / is no necessity felt in respect of such amenity in the last over 40 years and the effort of the Petitioner itself to gainfully operate the site as a Community Hall failed and proved to be **unviable**. The DLF Industrial Association which is the representative body of the Industrial Units operating in the area have given their no objection justifying the action to be taken in favour of allowing the change of land use.

(19.7) Consequently, it is evident that "circumstances exist which render it expedient" to exempt the site in question from operation of Section 3B of the Act, 1975, in respect of the site of a licensed Colony but transferred to the Municipal Corporation and is being levied the taxes, cess and fees under the 1994 Act, and with passage of time, the site which was earlier supposedly relevant has been rendered useless for petitioner, the other occupants of the area as well as for State.

Not only this, if the matter is seen from the angle of undue hardship, it is apparent that petitioner is bound to fail in his business endaveours till the time the site is put to use as a Community Hall, considering the past. It is also not denied that petitioner had spent more than Rs. 6 Crore on the construction and operation of the building / site as an industrial site, after getting the site plans approved from Respondent No 2 (M.C Faridabad). Not only that but upon due considerations, there were all permissions in place to even run the Plot in question as a factory under the Factories Act 1948, generating employment for almost a thousand employees working there, adding to the economy of the State and the 'consent to operate' issued by the Haryana Pollution Control Board. Although, it is an admitted position that the Site Plan was wrongly approved, however, we are required to balance the equities, as on the basis of NOC, Occupation Certificate, and other No-objections issued by various department, an industry was set up by petitioner, which was running until passing of the impugned orders. Thus, the case also falls within the domain of "undue hardship" as mentioned in Section 23 of the Act, 1975.

(19.8) Another factor that persuades us to incline towards petitioner is the fact that an instrumentality of the State i.e. HUDA has also permitted similar change of land use by invoking same provisions in the case of QRG Private Hospital. Although an argument has been

raised that HUDA is separate and independent body, therefore no parity can be drawn, but we are of the view that State cannot be permitted to take such divergent stands regarding its functionalities performing similar functions in similar circumstances. If HUDA is empowered to consider the cases for change of land use by applying a pragmatic approach then it is not understandable as to why the Department of the State / other instrumentalities of the State cannot apply the same principles. That apart, a perusal of Statement of Objects and Reasons of Haryana Development Authority Act, 1977 (hereinafter referred as "HUDA Act") alongwith Sections 3(2), 62, 81, 82 and 83 of the HUDA Act gives us a clear understanding. As per Section 62 of the HUDA Act, State Government has the power to notify a Local Development Authority for the purpose of managing an estate within the Local Municipal Limits of a township. After the site plans are approved and colony/sector has been developed, the procedure and circumstances when change of land use can be permitted are mentioned in Section 81 and 82 of the HUDA Act. A perusal of said sections leave no manner of doubt that the designated authority exercises similar power envisaged under corresponding sections of 1963 and 1994 Acts. However, the power given to designated authority is again subject to checks and balances as mentioned in **Section 83 of the HUDA Act, 1977** which reads as under:

> "**83. Applicability of Haryana Act 8 of 1975.** - The Haryana Development and Regulations of Urban Areas Act, 1975, shall continue to be applicable in the local development area which shall be deemed to be the urban area as defined in clause (o) of Section 2 of the said Act and the powers under the said Act shall continue to be exercised by the Director, Town and Country Planning, Haryana."

No such saving is provided under the 1994 Act and once the Licensed Colony is transferred to the Municipal Corporation then all aspects of the transferred Colony are to be exercised under the 1994 Act.

In these facts and circumstances, we are of the view that the case of petitioner lies on a better footing than that of QRG Hospital, where HUDA had permitted change of land use of a site earmarked for residential school and other activities for children of Harijan Society into a Private Hospital with Shops as a commercial venture.

(19.9) One another aspect of the instant case, which has been rightly shown by petitioner, is the issuance of policies by the Town and

Country Planning department from time to time under the provisions of 1963 Act, whereby a class of persons are permitted change of land use. Once such Policy relied upon by petitioner is the policy dated 02.03.2010, whereby all the illegal industries set up by persons uptill the date of policy were permitted to get their units regularized on the conditions mentioned therein within a period of three months. The operative part of the policy dated 02.03.2010 is reproduced as under:

> "The Government has been receiving the representations from various industrial associations regarding regularization of the Industrial Units which have come up within the controlled areas over the years although, these have been constructed without taking any permissions under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 from the competent authority. In number of cases, the Department has initiatedthe proceedings including criminal proceedings in accordance with the provisions of the ibid Act.
>
> 2. The Government has examined this issue and it is of the opinion that removal of these un-authorizedly constructed industrial buildings **will not only adversely affect the livelihood of the owners and its employees/ workers but will also have serious negative impact on the industrial economy of the State.** Therefore, the Government has decided to provide an opportunity to these industrial units existing within the controlled areas in the State to seek regularization. Xxxx"
>
> (**emphasis supplied**)

Thus, if instrumentality of the State (HUDA) and the Department of Town and Country Planning of the State are granting benefits, then we see no reason why the respondent Authorities under the Municipal Corporation and / or the Department of Urban Local Bodies could not exercise their powers in favor of petitioner.

(20) Hence, in view of the attending facts and circumstances of the instant case and the findings in regard to the Question No. (i), (ii), and (iii), we are of the view that the impugned orders passed by the authorities are without application of mind and therefore liable to be quashed.

(21) **Relief.**

Consequently, orders dated 18.11.2017 (P-13), 14.12.2017 (P-16) and order dated 07.08.2018 (P-16/B), are hereby set aside and application dated 27.06.2017 (P-12) in view of the aforementioned detailed observations is allowed. Respondents are directed to complete the remaining formalities, if any, qua issuance of change of land use / conversion of Building Certificate, as envisaged under the Statute/Rules, within a period of *four months* from the receipt of the certified order of the copy of the instant judgment, on acceptance of usual fees charged by them after adjusting the fee, if any already paid. It is further directed that the reasons mentioned in the order dated 14.12.2017 (P-16) for declaring the construction illegal are also set aside, as the construction was declared illegal in view of the fact that site was yet to be earmarked as an Industrial Plot .

Allowed in the aforesaid terms.

It is clarified that if the aforestated directions are not complied within the stipulated time then the Competent Authority, the Commissioner Municipal Corporation Faridabad or the Director Urban Local Bodies, Haryana, as the case may be, shall be personally liable for the loss of business to the Petitioner in terms of the damages towards the non functioning of the Factory on the said plot and also liable for the loss of revenue to the State / Municipal Corporation, **apart** from being liable to be hauled up for the contempt of the Court.

Ritambra Rishi