A MUNICIPAL CORPORATION CHANDIGARH AND ORS. ETC.

v.

M/S SHANTIKUNJ INVESTMENT PVT. LTD.

FEBRUARY 28, 2006

B [B.N. AGRAWAL AND A.K. MATHUR, JJ.]

Chandigarh Lease—Hold of Sites and Buildings Act, 1973; Sections 2(b), 7, 8 and 8-A—Chandigarh Lease—Hold of Sites and Buildings Rules, 1973; Rules 3(2), 11, 12 and 13—Indian Contract Act, 1872; Section 87—
C *Specific Relief Act, 1963; Section 2(a)—Transfer of Property Act, 1882; Sections 105 and 108—Allotment of plots by State to allottees on payment of initial premium with a condition to pay remaining amount in instalments—Allottees refused to pay instalment amounts contending that the State has not provided amenities under the Act—State initiated steps to levy interest, penalty and*
D *resumption of plots for non-payment of instalments and ground rent—Writ Petitions by allottees before High Court—High Court holding contrary views in different Writ Petitions—Whether provision of basic amenities by the State is a condition precedent to demand payment of instalment amount and ground rent from the allottees—Held, provision of basic amenities is not a condition precedent for payment of instalment amounts and ground rent under the Act*
E *and Rules and under the terms and conditions of auction and lease—Allottees are bound to pay instalment amounts being part of the contract—Matters remitted back to High Court for fresh disposal on the facts of each case.*

Allottees were allotted residential and commercial sites on lease by State on payment of premium. As per the terms and conditions of the
F **lease, the remaining amount would be required to be paid by the allottees to the State in instalments. The State demanded payment of interest and penalty from the allottees for non-payment or short/delayed payment of instalments and ground rent. The allottees filed Writ Petitions before High Court challenging the arbitrary demand of payment and resumption**
G **and forfeiture of allotment of the sites by the State contending that the State cannot demand the payment on the ground that basic amenities for use and occupation of the sites have not been provided by the State. One Division Bench of the High Court allowed the writ petitions of the allottees holding that provision of basic amenities is a condition precedent to the**

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payment of instalment and ground rent. Another Division Bench of the High Court held a contrary view holding that provision of basic amenities is not a condition precedent. Hence the appeals by the State and the allottees.

The allottees contended that the word 'amenities' under section 2(b) of the Chandigarh Lease-Hold of Sites and Buildings Act, 1973 should be given an extended meaning; that Rule 12(2) of the Chandigarh Lease-Hold of Sites and Buildings Rules, 1973 should be interpreted to mean that the State should provide basic amenities within the agreed period of payment of instalments by the allottees; that the expression 'enjoy' under Rule 3(2) of the Rules would become redundant if all the amenities provided under section 2(b) of the Act were not provided first by the State; that the State has failed to perform its promise under section 67 of the Indian Contract Act, 1872; that under Section 2(a) of the Specific Relief Act, 1963, when a property is leased out, it presupposes that the amenities should be provided on payment of premium; that under sections 105 and 108 of the Transfer of Property Act, 1882, the rights and liabilities of lessor and lessee are co-terminus; and that the provisions of a Statute should be interpreted in such a manner that it advances the cause of the public.

The State contended that the 'amenities' under section 2(b) of the Act, 1973 cannot be given an extended meaning; that providing amenities was never a condition precedent and the necessary amenities had already been provided; and that it is not running away from the legal obligation in providing remaining amenities.

Disposing of the appeals, the Court

HELD: 1.1. On a plain reading of the definition "amenity" under section 2(b) of the Chandigarh Lease-Hold of Sites and Buildings Act, 1973 read with Rules 11(2) and 12 of the relevant Rules, it cannot be construed to mean that the allottees can contend that they are not under any obligation to pay instalment, interest and penalty, if any, under the Act and the Rules since all the amenities were not provided by the State. It cannot be accepted to lay down a sweeping proposition that if all the facilities or amenities are not provided, then the allottees need not have to pay the lease amount, interest and penalty. [783-G-H; 784-A-B]

1.2. The word 'enjoy' stated in the definition of "premium" under Rule 3(2) of the Rules does not mean that the allottees cannot enjoy the

A immovable property without the amenities being provided. It means that the allottees have a right to use the immovable property which has been leased out to them on payment of premium. This is only the price to enjoy the property. Otherwise, walking over to the property will mean a trespass. This is only a permissive possession. Promise by the State that the basic amenities will be provided in due course of time cannot be
B made a condition precedent. This has never been a condition of the auction or of the lease. An allottee is under an obligation to pay the amount as per the condition of lease and he cannot get out of it on the ground that the basic amenities have not been provided for enjoying the allotted land. This construction is not borne out from the scheme of the Act and the
C Rules. The term 'amenity' in the context of real estate is to mean the facilities as provided under Section 2(b) of the Act but it can never be treated to mean that this is a condition precedent. It is for the better use of the allotted piece of land but that does not mean that it should be provided first as a condition precedent. It is a statutory obligation of the State to provide amenities but not a condition precedent.
D [784-C-E; F-G; 785-A-B; D-H]

Sector-6, *Bahadurgarh Plot Holders' Association (Regd.) and Ors.* v. *State of Haryana and Anr.*, [1996] 1 SCC 485, relied on.

Kumari Shrilekha Vidyarthi and Ors. v. *State of U.P. and Ors.*, [1991]
E 1 SCC 212; *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai and Anr.*, [2004] 3 SCC 214; *Commissioner of Income Tax* v. *Sun Engineering Works (P) Ltd.*, [1992] 4 SCC 363; *Divisional Controller, KSRTC* v. *Mahadeva Shetty and Anr.*, [2003] 8 SCC 266; [2004] 6 SCC 186; *K.P. Varghese* v. *Income Tax Officer, Ernakulam and Anr.*, [1981] 4 SCC 173; *State of Haryana*
F *and Ors.* v. *Bhajan Lal and Ors.*, [1992] Supp. 1 SCC 335; *C.B. Gautam* v. *Union of India*, [1993] 1 SCC 78; *Megh Singh* v. *State of Punjab*, [2003] 8 SCC 666; *Collector of Central Excise, Calcutta* v. *Alnoori Tobacco Products and Anr.*, [2004] 6 SCC 186, referred to.

Advanced Law Lexicon (3rd Edition, 2005); Webster's Dictionary
G referred to.

1.3. Section 67 of the Indian Contract Act, 1872 has no application as there was no specific promise on the part of the State that providing of the amenities shall be a condition precedent. Section 2(a) of the Specific Relief Act, 1963 also has no application as there was not an obligation on
H the part of the State to provide the amenities before handing over of the

possession of the allotted plots. Therefore, there is no question of any obligation being enforceable by any *mandamus* as there is no such obligation as per the terms and conditions of the lease or by the Act or the Rules. Similarly sections 105 and 108 of the Transfer of Property Act, 1882 also have no application as there is no condition in the lease deed or any obligation of the lessor in the lease deed that they will not charge interest on the instalments before providing the amenities.

[787-C-G]

1.4. A statute should be interpreted in the manner which advance the cause of the public. But when the issue comes where there is a statutory obligation, then certainly this Court will not hesitate to do so. But in the absence of such obligation, it is not correct to lay down that this was a condition precedent and allow the allottees to waive their obligation to pay the instalments with interest. [788-A-B]

1.5. The appeals are remitted back to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then the High Court may grant the allottees some proportionate relief in the matter of payment of penalty under Rule 12(3) and delay in payment of equated instalment or ground rent or part thereof under Rule 12(3A) of the Rules only. Payment of instalment is a part of the contract and therefore the allottees are under obligation to pay the same. Payment of penalty and penal interest shall depend on facts of each case which has to be examined by the High Court. [790-G; 791-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1342 of 2006.

From the Judgment and Final Order dated 2.2.2001 of the Punjab and Haryana High Court in C.W.P. No. 959/1999.

WITH

Civil Appeal Nos. 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359 and 1360 of 2006.

A. Sharan, ASG, Amicus Curiae (N.P.), Ranjit Kumar, M.L. Varma, Ms. Kamini Jaiswal, Ms. Shomila Bakshi, Ms. Sunita Diwedi, Ms. Rani, S.K. Jain, Vikas Jain, M.C. Dhingra, Ms. Naresh Bakshi, Pradeep Misra, Neeraj Kumar Jain, Aditya Kumar Chaudhary, Bharat Singh, Sanjay Singh, U.S. Prasad, Nidhesh Gupta, Ms. Nidhi Gupta, Vinod Shukla, Ms. S. Janani, A.P.

A Bhandari, S.C. Patel, Ms. Meera Mathur, Maninder Singh, Ms. Pratibha M. Singh, Sunil Fernandes, Saurabh Mishra, Satya Mitra, Daljit Singh Ahluwalia, Ms. Neelam Kalsi, Vimal Chandra S. Dave, P.N. Puri, A.K. Aggarwal, Sudershan Goel, B.S. Bedi, Dinesh Verma, J.P. Tripathi, A.P. Mohanty, K.V. Mohan, K. Datta and R.K. Choudhary for the appearing parties.

B The Judgment of the Court was delivered by

A. K. MATHUR, J. Leave granted.

All these petitions involve common question of law, therefore, these are taken up together for disposal by the common judgment.

C In all these petitions, there are two class of petitions, one filed by the private parties/individuals against the Division Bench judgment of the Punjab & Haryana High Court whereby the Division Bench has not given any relief following its judgment passed in CWP No.13695 of 2001 dated 18.2,2002 [*M/s. D.L.G. Builders Private Limited* v. *The Advisor to the Administrator,* D *Chandigarh Administration & Ors.,*]. The relevant portion of that judgment reads as under:

> "In our considered view, the allottee is bound to pay the premium and other charges in accordance with the conditions of allotment. If E the judgment of *M/s. Shanti Kunj Investments Pvt. Ltd. (supra)* is read as laying down a proposition that the allottee is not obliged to pay the balance of premium even after raising construction of the building and occupying it on the pretext that beautification of the site has not been done or land-scaping has not been provided or payment of the tiles has not been done, extremely anomalous consequences F would follow inasmuch as, the allottee would construct building and utilize the same by renting out or otherwise and hereby reap huge benefits, but would not pay a single penny towards balance of premium and ground rent etc. Therefore, while examining the complaint of the allottee about the lack of amenities, what the Court is required to G consider is whether the basic amenities, electricity, approach road, sewerage and drainage have been provided in the area so as to facilitate construction of the building within the specified time. If such amenities have been provided, the Court will not interdict in the matter and facilitate withholding of the balance of premium, ground rent etc. Rather, it would insist that all the dues of public money are paid by H the allottee in accordance with the relevant rules/ regulations and

conditions of allotment." A

Another class of cases in which the Municipal Corporation of Chandigarh and the Chandigarh Administration have filed the special leave petitions against the order passed by the Division Bench of the Punjab & Haryana High Court against the judgment dated 2.2.2002 passed in M/s. Shantikunj Investment Pvt. Ltd. and batch. Relevant portion of the judgment reads as B under :

> "They having failed to provide the basic amenities, the order of resumption and forfeiture cannot be sustained. The impugned orders are, consequently set aside. The respondents are directed to provide the amenities in accordance with law. The needful shall be done C within three months. No interest shall be chargeable from the petitioners if they make the entire outstanding amount within three months from the date of the provision of the amenities."

It would not be proper to refer to all individual cases because various D orders have been passed by the High Court from time to time but largely, the cases have been divided into two class of cases i.e. one governed by M/s. Shantikunj Investment Pvt. Ltd. and the other governed by M/s. D.L.G. Builders Private Limited. We are only deciding the question in principle and leaving the rest to be decided by the High Court.

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In all these petitions, the common question is whether grant of the amenities is a condition precedent or not. All the plots in question were allotted by the Chandigarh Administration as well as the Municipal Corporation of Chandigarh on certain terms and conditions of the sale of residential and commercial sites & buildings by auction on lease for 99 years and certain terms and conditions were laid down therein. But the challenge in these F various petitions filed before the Punjab & Haryana High Court was that the basic amenities were not provided and, therefore, the Chandigarh Administration and the Municipal Corporation of Chandigarh were not entitled to charge interest @ 18% or 10%, as the case may be, on the installment as well as non-payment of installment and non-payment of the ground rents. G Likewise, they cannot charge the penalty for delayed payment at the rate of 10% and at the rate of 24% interest on the amount falling short of equated instalment or part thereof and likewise on the ground rents.

So far as the Division Bench of Punjab & Haryana High Court in the case of *Shanti Kunj Investment* (supra) held that providing of amenities is a H

A condition precedent to the payment of the interest and penalty. As against this, two Division Bench in the case of *G.S. Khurana* v. *Chandigarh* Administration by order dated 18.2.2002 and in the case of *DLG Builders Pvt. Ltd.* v. *The Advisor to the Chandigarh* Administration have taken a different view in the matter. In Shanti Kunj, the Division Bench held that grant of amenities is a condition precedent whereas, in the case of DLG B Builders and G.S. Khurana, it took a contrary view to the effect that it is not a condition precedent. This apparent contrary view has given rise to all the litigation before this Court. In order to resolve the inconsistent view of the two Division Bench, we shall deal with the issue involved in the matter in a great detail hereinafter.

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In order to appreciate the controversy involved in the matter, we may refer to few bare facts in the case of *Municipal Corporation, Chandigarh & Ors.* v. *M/s. Shanti Kunj Investment Pvt. Ltd.* in SLP(Civil) No. 12794/2001. Seven petitioners in the aforesaid petition were the allottees of different commercial sites. The grievance was that the Chandigarh Administration has D failed to provide basic amenities/facilities for use and occupation of the sites sold to them. It is alleged that they are guilty of mal-administration. They have arbitrarily charged the ground rent, interest and penal interest and they are resorting to the resumption of the sites for non-payment thereof. Therefore, all these petitioners filed joint petitions in the High Court for redressal of E their grievances.

On February 12, 1989 the Chandigarh Administration auctioned a godown site No. 290, Sector 26, Chandigarh. The petitioner, along with two brothers gave a bid for a premium of Rs. 22,10,000/-. It was accepted and they deposited 25% of the bid money, viz. Rs. 5,52,500/-. The letter of F allotment was issued on March 16, 1989. The site was given for 99 years on lease-hold basis. As per the terms of allotment, the petitioner had to pay the amount along with interest @ 7% in three equal yearly installments of Rs. 6,31,590/-. This payment had to commence from the date of auction. Besides that, the allottee had also to pay an annual ground rent @ 55,250/- for the first 33 years. The petitioner commenced the construction, but he found that G there were high voltage electric wires passing over the site. The sewerage system had not been laid on the site. There were a large number of *Jhuggies* adjacent to the place. The petitioner submitted representation to the Estate Officer with a request to remove the unauthorized *Jhuggies* and to take necessary steps for providing the amenities. But no amenities such as roads, H water supply, landscaping etc. were provided. It was alleged that since the

petitioner had paid the entire premium as provided under the Act and Rules, therefore, no interest or ground rent can be charged till all the amenities, as required under the Act and Rules, are provided. Hence, with this grievance, the petitioner approached the High Court. The High Court examined all the provisions and came to the conclusion that Chandigarh Administration cannot charge interest @ 18%. Though, initially the interest was charged as 7%, but ultimately by notification it was increased to 10%. It was held by the Division Bench that there was no notification for charging the interest @ 18% and it was conceded before us that so far as this part of the order is concerned, the Administration does not challenge and the petitioner will be charged @ 10%.

The other aspect was also examined by the Division Bench and they gave an extended meaning to the definition as provided under Section 2(b) 'amenities' of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the 'Act'). As against this, another Division Bench in the case of *DLG Builders* (supra) took a contrary view and held that no extended meaning of 'amenities' as defined in Section 2(b) of the Act can be given that providing of facilities is a condition precedent for charging of the interest.

In order to appreciate the whole controversy involved in these cases, it will be useful to refer to the necessary provisions of the Act and Rules bearing on the subject. The allotment of the site in question was given under the Act and the Rules framed thereunder known as 'Chandigarh Lease-Hold of Sites and Buildings Rules, 1973. These provisions are applicable to both sets of cases i.e. allotment of commercial sites as well as residential, made by the Chandigarh Administration and Chandigarh Municipal Corporation. Section 2 of the Act deals with definition. Section 2(b) defines 'amenity' as under:

> "2(b). *'amenity'* includes roads, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh."

Section 2(f) defines 'erect a building' which reads as under:

> "2(f). *'erect a building'* has the same meaning as 'erect or re-erect any building' in the Punjab Municipal Act, 1911 (Punjab Act III of 1911)."

Section 2(i) defines *'prescribed'* which means prescribed by rules made

A under this Act.

Section 2(j) defines *'site'* which means any land which is transferred by the Central Government under Section 3.

Section 2(k) defines 'transferee', which reads as under:

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"2(k). *'transferee'* means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns."

C Section 5 of the Act provides a bar to erection of buildings in contravention of buildings rules.

Section 6 lays down power to require proper maintenance of site or building which reads as under:

D "6. *Power to require proper maintenance of site or building.* If it appears to the Chief Administrator that the condition or use of any site or building is prejudicially affecting the proper planning of, or the amenities in, any part of Chandigarh or the interest of the general public there, he may serve on the transferee or occupier of that site or building a notice requiring him to take such steps and within such E period as may be specified in the notice and thereafter to maintain it in such a manner as may be specified therein."

Section 7 provides for Levy of fee or tax for amenities which reads as under:

F "7. *Levy of fee or tax for amenities.* (1) For the purposes of providing maintaining or continuing any amenity at Chandigarh the [Central Government] may levy such fees or taxes as it may consider necessary which shall be in addition to any fee or tax for the time being leviable under any other law in respect of any site or building on the transferee or occupier thereof."

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Section 8 provides for imposition of penalty and mode of recovery of arrears. Section 8-A provides for resumption and forfeiture for breach of conditions of transfer which reads as under:

"8-A. *Resumption and forfeiture for breach of conditions of transfer.* H (1) If any transferee has failed to pay the consideration money or any

instalment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale or the site or building, or both should not be made.

(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale."

The relevant rules which have been framed in exercise of this Act under power conferred by Sections 3 and 22 by the Act of 1952 are known as 'Chandigarh Lease-Hold of Sites and Buildings Rules, 1973' (hereinafter referred to as the 'Rules').

Rule 3(2) defines *'premium'* which reads as under:

"3(2). 'Premium' means the price paid or promised for the transfer of a right to enjoy immovable property under these rules"

Some of the relevant Rules are quoted as under:

"4. The Chandigarh Administration may demise sites and buildings at Chandigarh on lease for 99 years. Such leases may be given by allotment or by auction in accordance with these rules.

5. For the purpose of proper planning and development and for the implementation of any scheme framed by the Chandigarh Administration, the Chief Administrator may reserve sites/buildings for groups of individuals or for persons practicing any profession or carrying on any occupation, trade or business, or for the implementation of any scheme framed by the Chandigarh Administration.

A 6. *Commencement and period of lease.* The lease shall commence from the date of allotment or auction as the case may be, and shall be for a period of 99 years. After the expiry of said period of 99 years the lease may be renewed for such further period and on such terms and conditions as the Government may decide.

B 8. *Lease by allotment, Procedure for.* (1) In case of allotment of site of building the intending lessee shall make an application to the Estate Officer in Form 'A'.

(2) No application under sub-rule (1) shall be valid unless it is accompanied by 10 per cent of the premium as earnest money in the C prescribed mode of payment.

(3) When 10 per cent of the premium has been so tendered the Estate Officer shall, subject to such directions as may be issued by the Chief Administration in this behalf, allot a site of the size applied for or a building of which particulars are given in the application and shall D intimate, by registered post the number, sector, approximate area, premium and the rent of the site or building allotted to the applicant.

(4) The applicant shall, unless he refuses to accept the allotment within 30 days of the date of the receipt of the allotment order, deposit within that period and in the prescribed mode of payment, E further 15 per cent of the premium. The remaining 75 per cent of the premium shall be paid as provided in rule 12.

(5) If the applicant refuses to accept the allotment within said period of 30 days, he will be entitled to the refund of the amount paid by him. The refusal shall be communicated to the Estate Officer by a F registered letter (acknowledgement due). The refund shall be made by means of a cheque payable at the State Bank of India at Chandigarh and the applicant shall bear the collection charges for the same.

(6) If the applicant fails to communicate his refusal to accept the allotment within 30 days and also fails to deposit 15 per cent of the G premium under sub-rule (4) the Estate Officer may forfeit the whole or part of the earnest money.

9. *Lease by auction, Procedure for.*—In case of auction at least 25 per cent of the bid accepted by the Auctioning Officer shall be paid on the spot by the intending lessee in the prescribed mode of payment H

in accordance with Rule 12. A

Provided that the Estate Officer may, in his absolute discretion, allow the successful bidder to deposit in the prescribed mode or payment not less than 10 per cent of the bid on the condition that the difference between the amount deposited and 25 per cent of the bid shall be deposited in the same manner within 30 days of auction. B

10. *Delivery of Possession.* Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with rule 8 or rule 9 as the case may be.

Provided that no ground rent payable under rule 13 and interest C on the instalments of premium payable under sub-rule (2) of the Rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier.

11. *Premium.* (1) In case of allotment, the premium shall be such D amount as may be determined by Chandigarh Administration.

(2) In case of auction, the premium shall be the bid accepted by the Estate Officer, as a result of bidding in open auction.

12. *Payment of premium and consequences of non-payment or late* E *payment.* (1) In addition to payment of 25 per cent premium under rule 8 or 9 as the case may be, the remaining 75 per cent premium may be paid in lump sum within 30 days from the date of allotment/ auction without any interest.

(2) If payment is not made in accordance with sub-rule (1) of this F rule, the balance of the 75 per cent premium shall be paid in three annual equated instalments or more as the Chief Administrator may in exceptional circumstances of a case fix within prior approval of the Chief Commissioner along with interest at the rate of 10 per cent per annum or at such higher rate of interest as may be fixed by the Chief Administrator by a notification in the official Gazette before G the commencement of the lease. The first instalment shall become payable after one year from the date of allotment/auction.

Provided that in the case of allotment of site or building of Small Scale Industries as defined by Chandigarh Administration from time to time in the Industrial area, the balance of the 75 per cent of the H

premium may be paid in ten annual equated instalments or such other number of annual equated instalments as may from time to time be fixed by the Chief Administrator along with interest at the rate of 10 per cent per annum or such higher rate of interest as may be fixed by the Chief Administrator by a notification before the commencement of the lease.

(3) In case any instalment is not paid by the lessee by the date on which it is payable, a notice may be served on the lessee calling upon him to pay the instalment within a period of 3 months together with a penalty which may extend upto 10 per cent of the amount due. If the payment is not made within the said period, the Estate Officer may cancel the lease and or forfeit the whole or any part of the money if paid in respect thereof which, in no case, shall exceed 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the lease:

Provided that forfeiture will not be made in addition to penalty.

Provided further that no order of cancellation or forfeiture shall be made without giving the lessee reasonable opportunity of being heard. If the order of cancellation is for non-payment of penalty, the lessee may show cause why the penalty should not have been levied.

(3-A) In case any equated instalment or ground rent or part thereof is not paid by the lessee by the date on which it became payable he shall be liable to pay in respect of that instalment or ground rent or part thereof as the case may be, interest calculated at the rate of twenty four per cent per annum from the date on which the instalment or ground rent became payable till such date it is actually paid.

(4) Each instalment shall be remitted to the Estate Officer by the prescribed mode of payment. Every such remittance shall be accompanied by a letter showing full particulars of the site or building to which the payment pertains or a statement giving reference to the number and date of the allotment referred to in rule 8. In the absence of these particulars, the amount remitted shall be deemed to have been received only on the date when the remitter supplies correct and complete information.

13. *Rent and consequences of non-payment.* In addition to the premium, whether in respect of site or building, the lessee shall

pay rent as under:-

(i) Annual rent shall be 2-1/2 per cent of the premium for the first 33 years which may be enhanced by the Chandigarh Administration to 3-3/4 per cent of the premium for the next 33 years and to 5 per cent of the premium for the remaining period of the lease.

(ii) Rent shall be payable annually on the due date without any demand from the Estate Officer.

Provided that the Estate Officer may for good and sufficient reasons extend the time for payment of rent upto six months on the whole on further payment of 6 per cent per annum interest from the due date upto the date of actual payment.

(iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100 per cent of the amount due which may be imposed and recovered in the manner laid down in section 8 of the Capital of Punjab (Development and Regulation) Act, 1952, as amended by Act No. 17 of 1973.

14. *Execution of lease deed.* (1) After payment of 25 per cent premium the lessee shall execute a lease deed in Form B, B-I, B-II, or C, as the case may be, in such manner as may be directed by the Estate Officer within six months of the date of allotment/auction or within such further period as the Estate Officer may, for good and sufficient reasons, allow.

(2) If the lessee fails to execute a lease deed in accordance with sub-rule (1) of this rule, the State Officer may cancel the lease and forfeit a sum up to 25 per cent of the premium.

Provided that before taking action under sub-rule (2) of this rule, the Estate Officer shall afford a reasonable opportunity to the lessee of being heard."

In this background of the Act and the Rules, the question before us is whether the grant of amenities is a condition precedent or not. Learned counsel for the respondents contended that Rule 12(2) of the Rules should be interpreted in the sense that when staggering instalment has been paid, then the allottee is required to deposit the balance 75 per cent of the premium in three annual equated instalments and the first instalment falling due after one

A year from the date of allotment, it should be construed that the authorities were supposed to provide all the necessary amenities in the meantime. In that connection, learned counsel has submitted that it was legitimate expectation of the allottee that within one year all the basic amenities shall be provided. It was further submitted by learned counsel that Rule 12(2) of the Rules should be interpreted to mean that there is implied covenant that the authorities B will provide all the amenities within one year. In this connection, learned counsel referred to a decision of this Court in the case of *Kumari Shrilekha Vidyarthi and Ors.* v. *State of U.P. & Ors.*, reported in [1991] 1 SCC 212 and in the case of *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai & Anr.*, reported in [2004] 3 SCC 214. It was also contended that the authorities C should not charge compound interest. It was also contended that the word "amenities" should be given extended meaning and "amenities" as defined in Section 2(b) read with Rule 11, that the amenities should be provided first otherwise the expression " enjoy" appearing in Rule 3(2) will be redundant. In this connection, learned counsel has referred to Section 67 of the Indian Contract Act, 1872 that promisee has failed to perform its promise and further D submitted that by virtue of Section 2(a) of the Specific Relief Act, 1963; when the property had been leased out it presupposes that the amenities should be provided when the premium is paid. In this connection, learned counsel for the respondents has invited our attention to Sections 105 and 108 of the Transfer of Property Act, 1882 with specific reference to rights and E liabilities of lessor and lessee. It was contended that both should be co-terminus. In this connection, the following decisions of this Court were cited by learned counsel.

1. [1992] 4 SCC 363 [*Commissioner of Income Tax* v. *Sun Engineering Works (P) Ltd*]

F 2. [2003] 7 SCC 197 [*Divisional Controller, KSRTC* v. *Mahadeva Shetty & Anr.*,]

3. [2003] 8 SCC 666 [*Megh Singh* v. *State of Punjab*]

4. [2004] 6 SCC 186 [*Collector of Central Excise, Calcutta* v. G *Alnoori Tobacco Products & Anr.*,]

It was also contended that the statute should be interpreted in the manner which advanced the cause of the public. In this connection, the following decisions of this Court were cited by learned counsel for the respondents.

H 1. [1981] 4 SCC 173 [*K.P.Varghese* v. *Income Tax Officer,*

Ernakulam & Anr.,] A

2. [1992] Supp. 1 SCC 335 [*State of Haryana & Ors.* v. *Bhajan Lal & Ors.,*]

3. [1993] 1 SCC 78 [*C.B. Gautam* v. *Union of India & Ors.,*]

As against this learned counsel appearing for the appellant submitted B that in fact the expression, "amenities" cannot be given extended meaning and the consistent case of the Administration was that necessary amenities had already been provided and in some of the plots, the buildings had been constructed. In some cases, the premises had been let out. Therefore, it was the case of the appellant throughout before the High Court as well as before this Court that providing amenities was never a condition precedent and C whatever necessary facilities/ amenities which were required in the matter had already been provided. Learned counsel for the Chandigarh Administration and for the Municipal Corporation submitted that the Corporation/ Administration are not running away from their legal obligation to provide necessary facilities, which have already been provided and whatever remains D to be provided, shall be provided. It was contended that tar road could not be constructed because on most of the places construction was in progress and the construction materials were lying on the road. Therefore, it was not possible to proceed with the construction of tar road. However, the Administration is under obligation to provide necessary facilities as per the provisions of the Act and the Rules. It was also submitted that in the case of E M/s.DLG Builders, the High Court has already dismissed large number of writ petitions holding that providing of amenities is not a condition precedent. In this connection, learned counsel for the appellant-Administration has invited our attention to a decision of this Court in the case of *Sector-6, Bahadurgarh Plot Holders' Association (Regd.) & Ors.* v. *State of Haryana & Anr.,* reported F in [1996] 1 SCC 485 wherein a three Judge Bench of this Court in no uncertain terms has held that providing of the amenities is not a condition precedent. Therefore, it was contended by learned counsel for the appellant-Administration that it cannot be constructed to be a condition precedent in the matter.

G

We have bestowed our best of the attention to the provisions of the Act and the Rules. On a plain reading of the definition "amenities" read with Rule 11(2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not H

A under any obligation to pay the instalment, interest and penalty, if any, as provided under the Act and the Rules. It is not possible to accept a sweeping proposition that if all the facilities or amenities are not provided, then the allottees/ lessees can take upon themselves not to pay the lease amount, interest and penalty would be going too far. It has never been the condition precedent. It is true that in order to fully enjoy the allotment, proper linkage B is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter. "Amenity" has been defined under Section 2(b) of the Act which includes roads, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh. That is a statutory obligation but it is C not a condition precedent as contended by learned counsel for the respondents. It is true the word, "enjoy" appearing in the definition of the word "premium" in Rule 3(2) of the Rules, means the price paid or promised for the transfer of a right to enjoy immovable property under the Rules. It was very seriously contended before us that the word, enjoy immovable property necessarily means that the Administration should provide all the basic amenities as D appearing under Section 2(b) of the Act for enjoying that allotment. The expression "premium" appearing in the present context does not mean that the allottees/ lessees cannot enjoy the immovable property without those amenities being provided. The word "enjoy" here in the present context means that the allottees have a right to use the immovable property which has E been leased out to them on payment of premium i.e. the price. This is only the price to enjoy that allotted/leased property. Otherwise, walking over to that property will mean to trespass. This is only a permissive possession. Since the allottees had paid the price or promised to pay after the transfer of the right to enjoy the immovable property, this cannot be construed that the property cannot be enjoyed without providing the basic amenities. It is the F common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made, as is where is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. This has never G been a condition of the auction or of the lease. As per the terms of allotment upon payment of the 25 per cent, possession will be handed over and rest of the 75 per cent of the leased amount to be paid in a staggered manner i.e. in three annual equated instalments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount he can do so. In that case, he will not be required to pay any interest. But if a H party wants to make payment within a period of three years then he is under

the obligation to pay 10 per cent interest on the amount of instalment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not entitled to pay the interest. This construction is not borne out from the scheme of the Act and the Rules. It is true that the Administration has an obligation but it is not a condition precedent in the present case. "Amenity" has been interpreted in the Advanced Law Lexicon (3rd Edition, 2005 at page 237) as follows:

> "IN REAL PROPERTY LAW, such circumstances, in regard to situation, view, location, access to a water course, or the like, as enhance the pleasantness or desirability of the property for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs. Extras or intangible items often associated with property. They may be tangible. Often amenities in a condominium include swimming pools, landscaping, and tennis court."

Therefore, the term amenity in the context of real estate is to mean the facilities as provided under Section 2(b) of the Act but it can never be treated to mean that this is a condition precedent. It is for the better use of the allotted piece of land but that does not mean that it should be provided first as a condition precedent in the matter in the present case. Learned counsel invited our attention to the expression, " enjoy" as per the Webster's Dictionary, which means as follows:

> " to have, possess, and use with satisfaction; to have, hold, or occupy, as a good or profitable thing, or as something desirable; as, we enjoy many privileges."

It is true that once allotment of the land has been made in favour of the allottee, he can take possession of the property and use the same in accordance with the Rules. That does not mean that all the facilities should be provided first for so called enjoyment of the property this was not the condition of auction. Party knew the location & condition prevailing thereon. The interpretation given by the Division Bench of the High Court of Punjab & Haryana and contended before us cannot be accepted as a settled proposition of law. In the present case, as per the Act and the Rules it is never a condition precedent of the auction or as per the lease that all the facilities like, road, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping shall be a condition precedent. Nowhere in the conditions of

A lease or in the auction it is provided that this will be done first though it had been contended by the Administration that the basic amenities have already been provided. Be that as it may, in the present context it cannot be construed that it is a condition precedent. In this connection, our attention was drawn to a decision of this Court in the case of Sector-6, *Bahadurgarh Plot Holders' Association (Regd.) & Ors.* v. *State of Haryana & Ors.*, reported in [1996] B 1 SCC 485, which has an important bearing. In this case, the Punjab Urban Estates (Sales of Sites) Rules, 1965, Punjab Urban Estates (Development and Regulation) Act, 1964 and Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978, came up for consideration and in that context, a three Judge Bench of this Court categorically held as follows:

C

> "To decide the aforesaid submission of Shri Bhandare we would really be required to find out as to whether the offer was of developed plots or undeveloped plots. As the offer had stated that modern amenities noted above " will be provided", it cannot be held that till the amenities as mentioned have become fully functional, the offer is D incomplete. It is for this reason that the fact that full development has not yet taken place, even if that be the position as contended by Shri Bhandare, cannot be a ground to hold that interest has not become payable. It is true that the applicants were given to understand that the amenities noted above would become available (and within reasonable time), the fact that the same did not become available to E the desired extent could not be a ground not to accept delivery of possession. From the order of the High Court which we have quoted above, we find that the offer of possession of the undeveloped plot was not accepted by the counsel of the appellant. That order being of 17-10-1980, we are of the view that interest did become payable F from that date. The fact that the plot has not yet been fully developed, as is the case of the appellant, has, therefore, no significance insofar as charging of interest is concerned. We are not in a position to accept the submission of Shri Bhandare that equity would not demand charging of interest, even though the plots are yet to be fully developed. When parties enter into contract, they are to abide by the terms and G conditions of the same, unless the same be inequitable. In the present case, question of equity does not really arise inasmuch as the condition relating to interest is founded on a statutory rule, vires of which has not been challenged. The provision in a cognate rule cannot alter the consequence which has to follow from the rule which holds the field. H In the present case, it being the Punjab Rules under which the allotment

was made, we are not in a position to agree with Shri Bhandare, despite his forceful submissions, that the appellants may not be asked to pay interest, despite their having been no offer of delivery of possession of fully developed plots." A

Similar is the position here also though the Rules are not almost identical but somewhat similar. In the present case, the effort of learned counsel to interpret this provision to mean that the amenity was sine qua non is far from correct. The forceful efforts made by learned counsel does not persuade us to take the view, in the present auction notice and the general terms and conditions of the lease that providing of all the amenities as appearing in Section 2(b) of the Act was a condition precedent. In this connection, learned counsel referred to necessary provisions of Section 67 of the Indian Contract Act, 1872. Section 67 of the Act provides that if any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby. This provision has no application in the present case. There was no specific promise on the part of the Administration that providing of facilities shall be condition precedent. Therefore, Section 67 of the Indian Contract Act, 1872 has no application in the present case. Learned counsel for the respondents referred to Section 2(a) of the Specific Relief Act, 1963. Section 2(a) of the Specific Relief Act, 1963 says that obligation includes every duty enforceable by law. As we have already noted that this was not the obligation on the part of the Administration that they will necessary provide the amenities before handing over of the possession of the allotted plots. Therefore, there is no question of obligation being enforceable by any mandamus as there is no such obligation as per the terms and conditions of the lease or by the Act or the Rules. Similarly, our attention was drawn to Sections 105 and 108 of the Transfer of Property Act, 1882. Section 105 of the Act defines lease and Section 108 lays down the rights and liabilities of lessor and lessee. We asked learned counsel for the parties to tell us which is the obligation of the lessor in the lease deed which says that they will not charge interest on the instalments before providing the amenities. There is neither any condition in the lease nor any obligation under the auction. If the parties have given their bids and with their eyes wide open they have to blame themselves. It cannot be enforced by any mandamus as there is no obligation contained in the lease deed or in the auction notice. It is true that according to the provisions of the Act, the Administration is under the obligation to provide the amenities but there is no such condition precedent for that matter. In this connection, our attention was also invited that the B C D E F G H

A provisions of the Act should be interpreted in a manner which advances the cause of the public. There is no two opinion in the matter that the statute should be interpreted in the manner which advance the cause of the public. But when the issue comes where there is any statutory obligation then certainly this Court will not hesitate to do so. But in the absence of such, to lay down that this was a condition precedent and allow the allottees to waive their B obligation to pay the instalments with interest, that is not correct. In the case of *K.P. Varghese* (supra), under the Income-tax Act, 1961, Their Lordships have considered the matter and have held that Circular issued under Section 119 of the Act by the Central Board of Direct Taxes explaining the scope and object of a provision, is binding because it gives contemporanea exposition C and hence the provision must be construed in accordance with the terms of the circulars. Thus, the rule of construction by reference to contemporanea exposition is a well-established rule of interpretation of statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This is not the case here.

D

In the case of *State of Haryana & Ors.* v. *Bhajan Lal & Ors.*, reported in [1992] Supp. 1 SCC 335, the question of invoking inherent power under Section 482 of the Code of Criminal Procedure came up for consideration before this Court. This case is also of no help for the respondents in any manner. In the case of *C.B. Gautam* v. *Union of India & Ors.*, Reported in E [1993] 1 SCC 78, the provisions of Section 269-UD (1) came up for interpretation before this Court and this Court held that the provision does not give any unfettered discretion to appropriate authority for pre-emptive purchase of the property which was agreed to be sold by assessee on a consideration significantly lower than the fair market value and they further F considered one of the methods for interpretation of the statute i.e. reading down provision if necessary. This also does not help the respondent in any manner as there is no need of reading down the provisions in any manner, as provisions are very clear.

It was next contended by learned counsel for the respondents that the G decision rendered in the case of Sector-6, *Bahadurgarh Plot Holders' Association (Regd.)* (supra) should be read in the context in which it has been given & should not be read as laying down a universal proposition. In this connection a reference was made to the decision of this Court in the case of *Commissioner of Income Tax* v. *Sun Engineering Works (P) Ltd.* Reported in H [1992] 4 SCC 363. In that case, this Court observed as follows :

> " It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Supreme Court."

This is not the case here. We have considered the matter independent of the facts of the case Sector-6 *Bahadurgarh Plot Holders' Association (Regd.)* (Supra) and we have come to the conclusion that the amenities cannot be made a condition precedent. In the case of Sector-6, *Bahadurgarh Plot Holders' Association (Regd.)* (supra) similar argument was raised that the allottee could refuse to take possession of the plot and deny payment of interest because the plot had not been developed. Similar provision appears in the present case i.e. the balance of the 75 per cent premium may be paid in three annual equated instalments along with interest without condition of providing amenities in advance.

Similarly, in the case of Divisional Controller, *KSRTC* v. *Mahadeva Shetty & Anr.*, reported in [2003] 7 SCC 197, this Court observed as follows:

> "The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently."

Therefore the decision in the case of Sector-6, *Bahadurgarh Plot Holders' Association (Regd.)* (supra) fully applies in the case as the situation is analogous.

Learned counsel further invited our attention to a decision of this Court in the case of *Megh Singh* v. *State of Punjab* reported in [2003] 8 SCC 666. This was a case under the Narcotic Drugs and Psychotropic Substances Act, 1985. In that context, their Lordships held as follows:

> "Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case."

It is true that in criminal matters even one single significant detail may alter the decision. But that is not the case here.

A reference was made to a decision of this Court in the case of *Collector of Central Excise, Calcutta* v. *Alnoori Tobacco Products & Anr.*, reported in [2004] 6 SCC 186. In this case, it was held that observations in judgments

A should be read in the context in which it is stated and the same should not be construed as statutes. There is no doubt about this proposition of law. Therefore, this decision also does not advance the case of the respondents. In the case of *Kumari Shrilekha Vidyarthi & Ors.* v. *State of U.P. & Ors.*, Reported in [1991] 1 SCC 212, their Lordships propounded the theory of legitimate. expectation. Legitimate expectation does not mean illegitimate flight of fancy. B Legitimate expectation means that what has been held out in the terms and conditions of the auction and the lease deed. Legitimate expectation and the provisions of the Act cannot be read together to mean that the terms of the auction and the lease deed should be ignored.

C Learned counsel invited our attention to a decision of this Court in the case of *Jamshed Hormusji Wadia* v. *Board of Trustees, Port of Mumbai & Anr.*, reported in [2004] 3 SCC 214. This was a case where the question was whether the Board of Trustees, Port of Mumbai is a State within the meaning of Article 12 of the Constitution or not. Their Lordships have observed that the instrumentality of the State cannot act in an arbitrary or capricious manner. D All the State action must be for public good for which it exists. This does not mean that public can take up on itself to ignore to abide by condition of auction & refuse to pay State its dues.

In this background, we are of the opinion that the interpretation of the Act and the Rules given by the Division Bench of the Punjab & Haryana High E Court in the impugned judgment (M/s Shanti Kunj Investment Pvt. Ltd.) cannot be sustained. It has been contended by the counsel for the Chandigarh Administration that all necessary facilities have been provided and some of the allottees have already constructed their buildings and have rented out the same and some allottees have applied for construction of Hotels also. It is not F possible for us to examine all these facts individually. Some of the sectors have been fully developed and some sectors have been less developed. Therefore, it is not possible to work out that in one case it has been fully developed and in the other case it is still not developed. However, in some cases full payment has been made, in some cases two instalments have been made. Therefore, all these disputed facts have to be adequately dealt with by G the High Court. We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street H lighting have not been provided, then in that case, the High Court may grant

the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where Kutcha road, drainage, sewerage, drinking water facilities have been provided, no relief shall be granted but in case, any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and delay in payment of equated instalment or ground rent or part thereof under Rule (12(3A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will be the open on the part of the allottees to deny payment of interest and penalty. So far as payment of instalment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty & penal interest is concerned, that shall depend on facts of each case to be examined by the High Court. The High Court shall examine each individual case and consider grant of the proportionate relief.

SLP(Civil) No. 22517/2002. No allotment was made and no payment was deposited except the initial payment of 10%. Therefore, this petition is misconceived and the same is accordingly dismissed.

In S.L.P.(c) No.23738 of 2002, the lease has been cancelled. Therefore, whether such cancellation was legal or otherwise, the High Court will examine the same in the light of the above observations. In S.L.P.(c) No.23941 of 2002, in fact the possession of the plot had been given on 17.1.2000. The allottee had a grievance that there was a mango tree on his plot which was to be removed. The High Court may decide as to what extent the relief should be granted.

In S.L.P.(c) No.14289 of 2003, S.L.P.(c) No.2948 of 2003 and S.L.P.(c) Nos.13640-13641 of 2004, the grievance of the writ petitioners was that sewerage line was passing through the allottees' building. Therefore, possession could not be handed over and the same was handed over only after removal of that sewerage line from the allotted plot. This aspect may also be examined by the High Court.

This Court also called for a report by appointing a Commission. The report of the Commissioner has been placed on record. The High Court while deciding the question of facilities provided may look into the aforesaid report.

As a result of our above discussion, the order dated 2.2.2001 passed by

A the Division Bench of the High Court of Punjab & Haryana in C.W.P. No.959 of 1999 [*M/s.Shanti Kunj Investment (Pvt) Ltd.* v. *U.T.Administration Chandigarh & Ors.*,] which has been followed in C.W.P. 960 & 5874 of 1999 and C.W.P. No. 5009 of 1998 is set aside and orders dated 10.5.2001, 13.11.2000 & 13.9.2001 passed in C.W.P. No. 5561 of 2000, W.P.No. 19356 of 1998 & C.W.P. No. 10233 of 2000 are also set aside. Consequently, the B appeals arising out of S.L.P.(c) Nos. 12794, 12987, 12935& 13449 of 2001; S.L.P.(c) No. 12995 of 2002,S.L.P.(c) No.16503 of 2001 and S.L.P.(c) No.18911 of 2002 are allowed and the cases are remitted back to the High Court for deciding each case on its own merit. Rest of the cases excepting S.L.P.(c) No.22517 of 2002 i.e. appeals arising out of S.L.P.(c) Nos. 22515, C 18978, 18353, 23941, 23737 & 23738 of 2002; S.L.P.(c) Nos. 14289, 2948, 3601, 9178& 5748 of 2003 and S.L.P.(c) Nos.13640-13641 of 2004 are accordingly disposed of and are also remitted back to the High Court for being decided in the light of the observations made above. No costs.

B.S. Appeals disposed of.