

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : East Punjab Holdings (Consolidation and Prevention of
Fragmentation) Act 1948 (Holdings Act)

W.P.(C) 7687/2004

Date of Judgment: December 5, 2008

DY. COMMISSIONER (SOUTH WEST) KAPASHERA Petitioner

Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhry, Advocates with
Mr. Satish Verma, LDC.

versus

RAMESH KUMARI and ORS.

Respondents

Through Mr. Sanjay Jain, Senior Advocate
with Mr. Pankaj Vivek, Advocate for R-1.
Mr. Mukul Rohtagi, Senior Advocate and
Mr. Sandeep Sethi, Senior Advocate with
Mr. Lakshay Sawhney, Advocate for R-5.
Mr. Shalabh Singhal, Advocate for Vipin
Vohra. Mr. Rajender Aggarwal, Advocate
for AB Towers.

2. W.P.(C) 2193/2006

GALLANT HOTELS AND ESTATES P. LTD. Petitioner

Through Mr. Pankaj Vivek, Advocate.

versus

STATE and ORS.

Respondents

Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhry, Advocates.

3. W.P.(C) 2194/2006

HITESH BHARDWAJ

Petitioner

Through Mr. Pankaj Vivek, Advocate.

versus

STATE and ORS.

Respondents
Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhury, Advocates.

4. W.P.(C) 2219/2006

DEEPAK BHARDWAJ

Petitioner
Through Mr. Pankaj Vivek, Advocate.

versus

STATE and ORS.

Respondents
Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhury, Advocates.

5. W.P.(C) 2263/2006

DEEPAK RESORTS and HOTELS PVT. LTD. Petitioner

Through Mr. Pankaj Vivek, Advocate.

versus

STATE and ORS.

Respondents
Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhury, Advocates.

6. W.P.(C) 3770/2006

HITESH BHARDWAJ

Petitioner
Through Mr. Pankaj Vivek, Advocate.

versus

GOVT. OF NCT OF DELHI and ORS. Respondents

Through Ms. Avnish Ahlawat and
Ms. Latika Chaudhury, Advocates.

7. CONT. CASE (CIVIL) No. 307 of 1997

RAMESH KUMARI

PETITIONER

Through Mr. Sanjay Jain, Senior Advocate
with Mr. N.S. Vasisht and
Mr. Pankaj Vivek, Advocates

versus

MANOJ KUMAR and ORS.

RESPONDENTS

Through Ms. Avnish Ahlawat with
Ms.Latika and Ms. Simran, Advocates for
Respondents 1,2,4 and 6.

8. CONT. CASE (CIVIL) No. 353 of 1997

M/S BRB CONSTRUCTIONS PVT. LTD. PETITIONER

Through Mr. Pankaj Vivek, Advocate

versus

MANOJ KUMAR and ORS.

RESPONDENTS

Through Ms. Avnish Ahlawat with
Ms.Latika and Ms. Simran, Advocates

Dr. S. Muralidhar, J.

1. The subject matter of all these petitions is land to an extent of over 40 bighas in Village Kapashera, New Delhi belonging to the Deputy Commissioner (South-West) (DC), Government of National Territory of Delhi (GNCTD). The DC is the petitioner in the first mentioned writ petition W.P. (C) No. 7687 of 2004 Accordingly, all these petitions, including the two contempt petitions are being disposed of by this common judgment. Relevant Facts

2. On 17th April 1986 a notification was issued under Section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 (Holdings Act) by the competent authority commencing the process of consolidation of land in the Village Kapashera in New Delhi. Pursuant to the said notification dated 17th April 1986 the Consolidation Officer (CO) published a draft scheme under Section 19 of the Holdings Act on 19th December 1986. After considering the objections the scheme was confirmed by the Settlement Officer (Consolidation) on 24th July 1987. Thereafter repartition under

Section 21 (1) of the Holdings Act was announced by a Resolution No. 14 dated 13th/20th July 1988.

3. It is stated that land to an extent of over 40 bighas in village Kapashera stood recorded in the name of the DC since 1924 and has been in the possession of the DC since then. On 6th December 1991 the consolidation scheme which had been announced in 1986 was amended in terms of Section 36 of the Holdings Act. The occasion for this was that some of the right holders had placed a demand for allotment of plots on the eastern side of the village and at the time of finalisation of the scheme they had not been allotted plots. The CO published the amended scheme and stipulated that objections thereto would not be entertained after the stipulated period of thirty days. The main features of the amended scheme announced on 6th December 1991 were that the land belonging to the Gram Sabha (Grazing Land) which was earlier valued at 12 annas + 8 annas would now be valued on the basis of 16 annas. The total area of such land was measuring 145 bighas, 4 biswas. Inter alia in clause 8 of the scheme it was stated as under: 8. In this village the holding in the name of D.C. Delhi is located at 3 different places and under Section 21 (1) the same had been retained at 3 places. Attempt would be made to consolidate the same at one place as far as possible without lowering the value of the land.

4. It is stated that on 12th March 1995 a letter was written to the DC by one Shri H.S. Yadav on behalf of the Gramin Uthan Avum Jain Kalyan Samiti, Kapashera in which it was stated that approximately 7 to 8 acres of land which was with the DC could be made available for construction of a sports stadium. It was pointed out that the consolidation of land in the village is under final process of completion and that some alternative suitable site should be identified by the authorities. Another letter was written on 28th April 1995 to the DC by the then Development and Education Minister, Delhi Government Shri Saheb Singh that in Village Kapashera during consolidation, a land should be reserved for a sports ground so that the young children in the area could be given training to participate in sports competitions.

5. It appears that the CO on 3rd November 1995 issued a public notice by way of beat of drums proposing that in terms of Clause 8 of the amended scheme attempts will be made to consolidate the area of the DC, Delhi as per scheme and the value will not be lowered down. It was also stated that since the land belonging to the DC was at two places and was divided into small partitions there was apprehension that there may be unauthorized encroachment thereon and therefore the said area could not be effectively used. A reference was made to the demand by the villagers as well as the then Development and Education Minister that the land should be made available for a playground of the children. It was directed that the public notice should be announced by beat of drums in the village and notice should also be pasted at the public place of the village as well as at Shiv Mandir.

6. On 17th November 1995 Smt. Ramesh Kumari made an offer to provide a consolidated piece of land at one place in lieu of the DCs lands and that she could also urge her adjoining farmers to exchange their land for the DCs land. On 1st December

1995 the CO passed an order withdrawing 40 bighas 4 biswas of land from the DC and allotting the DC the land in certain other Khasra Nos. which were low lying and which could not be put to use without incurring heavy expenditure just for leveling. The land withdrawn from the DC was allotted to four haqdars/Bhumidars viz., Smt. Ramesh Kumari, Shri. C.L. Jain, Sheo Narain, Shri.Virender Khosla and the Gram Sabha. In particular, Smt. Ramesh Kumari was allotted 27 bighas and 5 biswas of DCs land in exchange for the land surrendered by her. Corresponding entries were made in the Karyawahi Register mentioning the withdrawal and allotment of land as indicated hereinabove.

7. On 11th December 1995 permission under Section 30 of the Holdings Act was granted to Smt. Ramesh Kumari to sell the land allotted to her. Consequently Smt. Ramesh Kumari executed a sale deeds on 13th and 15th December 1995 in favour of the other respondents in respect of the lands allotted to her. Numerous other sales took place thereafter in a short span of time as will be referred to later.

8. That on 11th January 1996, a further order was passed by the CO stating that the earlier order dated 1st December 1995 whereby the DCs land was exchanged with the land belonging to the respondents herein was conditional upon the Bhumidar/Haqdar taking possession of their respective lands within thirty days from the said date of order. It was stated that as per the report of Haqdar Patwari, Kapashera dated 10th January 1996 the said land had not was not levelled till then and no efforts were made by the Haqdars in that regard.

9. It is stated that on 15th December 1995 some of the purchasers applied for recording mutation of their names in the revenue record. When this was not done, Suit No. 189 of 1996 (M/s. RGC Credits Pvt. Ltd. v. Hutment Land Developers Pvt. Limited) and Suit No. 190 of 1996 (Tricolour Hotels Limited v. A.K. Ganguly, Director Sampark Credits and Leasing Pvt. Limited) were filed in this Court. On 23rd January 1996 the learned Single Judge of this Court ordered status quo to be maintained in respect of the lands mentioned in the suit.

10. M/s. Tricolour Hotels Limited also filed Writ Petition No. 1055 of 1996 in this Court. On 13th March 1996 the Court directed notice to issue to the respondents and the case was adjourned to 18th July 1996. The case was thereafter adjourned to 12th September 1996 and 16th January 1997. Till that time no counter affidavit had been filed.

11. It is stated that on 15th January 1997 the respondents i.e. purchasers came to know some foundation stone of a Government Office was to be laid on the land in question. They claim to have sent telegrams to the Lt. Governor on 16th January 1997 in this behalf. Simultaneously Tricolour Hotels Limited filed WP (Civil) 186 of 1997 and Sampark Credits and Leasing Limited filed WP (Civil) 187 of 1997. It is stated that in both these cases then the CEO Shri G.C. Sharma filed a counter affidavit pointing out that land in question belonged to the DC. It was disclosed in the counter affidavit that the order dated 1st December 1995 had been made without any notice to the DC and that subsequently on a representation of an MLA Shri Sat Prakash Rana requesting that the

land belonged to the DC should be made available for being utilized as a playground, an order dated 18th July 1996 had been passed by the CO reversing the order dated 1st December 1995. In effect the land taken from the DC by the order dated 1st December 1995 was restored to him. After recording this fact, the learned Single Judge of this Court on 24th January 1997 dismissed the aforementioned writ petition as withdrawn with liberty to the petitioners to pursue alternative remedies as against the order dated 18th July 1996 passed by the CO.

12. Smt. Ramesh Kumari then filed a revision petition before the Financial Commissioner (FC) under Section 42 of the Holdings Act challenging the COs order dated 18th July 1996. By an order dated 28th January 1997 the learned Financial Commissioner (FC) directed notice on the revision petition. By an order dated 7th February 1997 the FC stayed the order dated 18th July 1996 and issued notice to the DC for 11th March 1997. Thereafter by an order dated 25th March 1997 the FC set aside the order passed by the CO on the ground that the CO had no power to review his earlier order dated 1st December 1995. Further the DC (Delhi) was permitted to separately initiate disciplinary proceedings against the concerned CO and furnish his findings within a period of three months.

13. Meanwhile, on 19th March 1997, the DC filed a revision petition No. 96 of 1997 before the FC against the COs order dated 1st December 1995. By an order dated 11th April 1997 the FC passed an interim order staying the COs order dated 1st December 1995 till the next date of hearing i.e. 9th May 1997. On 10th September 1997 the interim order was directed to continue.

14. Aggrieved by the interim order 11th April 1997 passed by the FC, Writ Petition (C) No. 3292 of 1997 was filed by Smt. Ramesh Kumari in this Court which an order was passed on 4th August 1997 by the learned Single Judge staying dispossession in the meanwhile while issuing notice in the petition returnable on 10th September 1997. Against the same interim order dated 11th April 1997, B.R.B. Constructions Pvt. Ltd., which had purchased 7 bighas and 3 biswas of land from Tricolor Hotels Ltd. by sale deeds dated 24th January 1996, filed Writ Petition (C) No. 2392 of 1997 in this Court. In the said writ petition an interim order was passed on 13th June 1997 direction that there would be a stay of dispossession of the petitioner till the next date. The stay was continued on 8th July 1997. It was made clear by an order dated 22nd April 1998 that the interim order passed does not come in the way of the Financial Commissioner to proceed ahead with the matter before him.

15. It has been stated in the accompanying contempt petition Contempt Case (C) No.307 of 1997 filed by Smt. Ramesh Kumari in this Court that on 9th September 1997 the officers of the DC along with the police force visited the site and thereafter they took the petitioner, her husband and the labourers to the police post, Kapashera. It is stated that after the police officers were shown a copy of the interim order, they released the petitioner and her husband. On the next date of hearing i.e. 10th September 1997 when W.P. (C) No. 3292 of 1997 case was heard by the learned Single Judge of this Court an order was passed adjourning the case to 2nd December 1997 and continuing the interim

order passed on 4th August 1997. Likewise a similar order was passed in the W.P. (C) No. 2392 of 1997 continuing the interim order dated 13th June 1997. The differing versions of what transpired on 10th September 1997 and whether any contempt was committed by the government officials as alleged by Smt. Ramesh Kumari will be considered separately later in this common judgment while dealing with the contempt petitions, one by Smt.Ramesh Kumari and the other, Contempt Case (C) No. 353 of 1997 by BRB Constructions Pvt. Ltd.

16. The revision petition No. 96 of 1997 by the DC was disposed of by the FC by the impugned order dated 27th June 2003. The FC came to the conclusion that with the disposal of the earlier revision petition by the FC on 25th March 1997 and the quashing of the order dated 18th July 1996, the original allotment made by the CO by order dated 1st December 1995 stood confirmed. Therefore, the said order could not be further revised. Accordingly, the FC upheld the preliminary objection of the respondents and clarified that the order dated 1st December 1995 was to be implemented. With the dismissal of the revision petition, the interim order dated 11th April 1997 stood vacated. Aggrieved by the order dated 27th June 2003 the DC filed Writ Petition (C) No. 7687 of 2004 in this Court. While notice was directed to issue on 14th May 2004, no interim orders were passed. The pleadings in the writ petition were thereafter completed.

17. It appears that on 11th September 2003, shortly after the dismissal of the DCs revision petition by the FC, Smt.Ramesh Kumari filed W.P. (C) No.6134 of 2003 in this Court praying for mutation of the land in her favour in terms of the COs order dated 1st December 1995. This was resisted by the DC by pointing out that the FCs order was being separately challenged in a writ petition which was pending. Recording this submission, W.P. (C) No.6134 of 2003 was disposed of by a learned Single Judge by an order dated 4th May 2004 by directing that the mutation as done in petitioners favour, will be subject to outcome of any decision as applicable on the respondents action in assailing the order of the Financial Commissioner.

18. It may be recalled that prior to the order dated 11th April 1997 by the FC, several sales of different parcels of the land in question took place at a furious pace soon after the COs order dated 1st December 1995. Hutment Land Developers Pvt. Ltd. (HLDPL) purchased land admeasuring 5 bighas and 18 biswas from Shri C.L. Jain (represented by his power of attorney Smt.Ramesh Kumari) and Shri Sheo Narain on 13th and 15th December 1995 respectively. Another piece of land admeasuring 2 bighas 8 biswas in Khasra No. 30/10 and 4 bighas and 15 biswas in Khasra No.30/11 was sold on 13th December, 1995 by Ramesh Kumari to Tricolor Hotels Ltd. (THL). On 24th January, 1996 THL sold the said land to BRB Constructions Pvt. Ltd. On 12th December 1995 3 bighas land in Khasra No.74 min was purchased by Hirtesh Bharadwaj, the son of Smt.Ramesh Kumari, from C.L.Jain. 15th December, 1995 another parcel of 9 bighas and 8 biswas of land was sold to the same Hitesh Bhardwaj. 3bighas and 10 biswas of land in Khasra No. 74 min is claimed to have been purchased by Gallant Hotels and Estates Pvt. Ltd. whose Directors are Shri Deepak Bharadwaj and his wife Smt. Ramesh Kumari. Likewise land measuring 5 bighas and 11 biswas in Khasra Nos. 44/21 min and 49/1 was purchased by Deepak Resorts and Hotels Pvt. Ltd. whose Directors are Shri Deepak

Bharadwaj and his wife Smt. Ramesh Kumari Another parcel of 7 bighas and 18 biswas of land was purchased in 1996 by Shri Deepak Bharadwaj, the husband of Smt.Ramesh Kumari.

19. The sale of land appears to have been temporarily halted during the pendency of the DCs revision petition before the FC. However, once those proceedings came to an end and no stay was granted by this Court, on the strength of the conditional order dated 4th May 2004 in favour of Smt.Ramesh Kumari in W.P. (C) No.6134 of 2003 further sales of different parcels of the land in question ensued. 13 bighas of land were sold to Sampark Credits of which Deepak Bhardwaj was Director on 15th December, 1995. 5 bighas and 6 biswas were sold to Delhi Apartments Pvt. Ltd., again a company of Hitesh Bhardwaj and Deepak Bhardwaj. They in turn sold the land on 4th September, 2006 to HLDPL the front company of the Bhardwajs. There was a sale of the shareholding of HLDPL in favour of the Salujas. On 7th October, 2004 BRB Constructions Pvt. Ltd. sold their holding to Vipin Vohra. On 20th October, 2006 HLDPL sold 29 bighas and 5 biswas of land in several Khasra Nos. to Vindo Saluja. Then we have A.B. Towers Pvt. Ltd who claim to have purchased 12 bighas 1 biswa land in Mustatil No.30 on 4th September 2006 for Rs.18 crores.

20. Some of the subsequent purchasers who bought the land lis pendens have filed separate writ petitions seeking varied reliefs. Some of them have been impleaded as respondents in DCs writ petition. The point made is more or less the same. It is stated the despite order of the FC directing the CO to consider the request of the purchasers for mutation, the shortage of land was not made good. It is stated that the respondents have sought to explain this with reference to the order dated 4th May 2004 passed by this Court in WP (Civil) 6134 of 2003 in favour of Smt. Ramesh Kumari. In is urged in all these petitions that they should be dealt with separately. WP (C) 2193 of 2006 by Gallant Hotels Pvt. Limited seeks a direction for allotment of land comprised Khasra Nos. 74 min (3- 10) situated in Kapashera in its favour. WP(C) 2194 of 2006 by Hitesh Bhardwaj seeks a direction for allotment of the land measuring of 9 bighas 8 biswas and to record the petitioner as owner. WP(C) 2219 of 2006 by Deepak Bhardwaj seeking a direction for allotment of the land total measuring of 7 bighas 18 biswas and to record the petitioner as owner. WP(Civil) No 2263 of 2006 filed by M/s. Deepak Hotels and Resorts Pvt. Limited seeks a direction for allotment of the land total measuring of 5 bighas 11 biswas and to record the petitioner as owner. WP (Civil) No. 3770 of 2007 filed by Hitesh Bhardwaj seeks a direction to make good deficiency of 1 bighas 14 biswas and record the petitioner as owner of 3 bighas land.

21. Pursuant to the information provided by Smt. Ramesh Kumari, the subsequent transferees have all been impleaded as party respondents in DCs writ petition W.P.(C No. 7687 of 2004 and some of them have also made submissions. The hearings of these petitions, along with the contempt petitions, was spread over several days. It involved recording of evidence in the contempt petition as well. Submissions of Counsel

22. The submissions of Ms. Avnish Ahlawat, learned counsel appearing for the DC are as under: (a) Under Rule 6 (c) of the Rules, the owner of a land is to be allotted a land

where he owns the biggest plot. The CO instead of actually bringing the three chunks of the DCs land lying at different locations to be placed where the biggest of the pieces was located, gave away the entire holding in exchange to the land mafia in violation of the Holdings Act and Rules. The land abutted the main pathway and therefore was extremely valuable. The land given in exchange was having no connecting road. Therefore per se the exchange was unfavourable to the DC and has tremendous value for the property dealers. (b) The fact that the DCs land was bartered away illegally by the CO to property dealers is clear from the fact that Smt. Ramesh Kumari and her family members, within a fortnight of the COs order dated 1st December, 1995 obtained a No Objection Certificate (NOC) on 13th December, 1995 from the Notification Branch/ADM/CO for sale in favour of HLDPL and in respect of a sale made by her to her son Hitesh Bhardwaj. (c) The DC was kept totally in dark about the order dated 1st December, 1995. Even the subsequent order dated 18th July, 1996 was without notice to the DC. Even the NOC issued for the sales was without the knowledge of the DC. The use of powers by the CO was therefore malafide and per se illegal. (d) The order of the FC passed on 27th June, 2003 failed to consider that no possession was in fact handed over by the DC in terms of the Section 23 of the Holdings Act and in the circumstances the CO had no authority to pass the order dated 1st December, 1995. The order was much after the proceedings under Section 21 had concluded. There was no power under the Holdings Act to pass such an order. The passing of the said order was an instance of fraud on powers. (e) Since the COs order dated 1st December, 1995 was entirely without jurisdiction, the learned FC could not have afforded to put a seal of approval on the said order only because the earlier order dated 25th March, 1997 had set aside the order dated 18th July 1996 passed by the CO which in turn reversed the order dated 1st December 1995. (f) In addition, Ms. Ahlawat submitted that during the consolidation proceedings those who were the recorded owners as on the cut off date will alone be entitled to be given land in exchange as part of the consolidation proceedings. The respondents here were not bhumidars on the date of closure of the consolidation proceedings and they came into picture only thereafter. The scheme had already been confirmed on 19th December, 1996. The repartition proceedings took place between 13th and 20th July, 1988. The amendment on 6th December, 1991 also applied only to the recorded bhumidars. At no point of time did the DC make a request to the CO that the lands of the DC need to be consolidated. Such a move therefore could not have been initiated by the CO himself. Even if the request had been made by the villagers or a Minister, the consolidation proceedings could not have commenced without notice to the DC. She pointed out that after the objections had been finalized and the scheme stood confirmed on 7th July, 1992 (i.e. after amendment) none of the right holders made any representation or raised any objection. The proceedings had concluded somehow in May or June 1992. The entire scheme of consolidation was only for the benefit of the right holders. It was not open to the CO therefore to recognize those consolidation proceedings thereafter without even information to a right holder. (g) The facts of the case negated any plea of equity in favour of the subsequent purchasers. If the root order dated 1st December 1995 was bad in law, there was no sanctity to any of the subsequent purchases. (h) As regards, the contempt proceedings, she referred to the evidence recorded in great detail to show that no case for contempt against the officials was made out. She prayed for dismissal of the contempt petitions with exemplary costs.

23. On behalf of the respondents in the DCs writ petition, i.e. Smt.Ramesh Kumari and some of the transferees, submissions were made by Mr. Sanjay Jain, Mr. Sandeep Sethi, learned Senior Advocates and Mr. Pankaj Vivek, Mr. Shalabh Singhal and Mr. Rajinder Aggarwal, learned Advocates. Their submissions were as follows: (a) The FC had rightly set aside the COs order dated 18th July, 1996 by the order dated 25th March, 1997. There was no power under the Holdings Act for the CO to review its own order. Even though the order dated 1st December, 1995 was not specifically put in issue since it had merged with the order dated 18th July 1996, since the order dated 25th March, 1997 was passed in presence of both counsel i.e. the claimant as well as the DC, it only meant that the order dated 1st December, 1995 got revived. (b) The order dated 18th July 1996 was itself a fabricated document to somehow explain away the lapse on the part of the CO. The DC ius presumed to have been aware of the consolidation proceedings and the steps taken for exchange of the land. Such a move is envisaged even by Section 36 of the Holdings Act. Even the transfers were valid in terms of Section 30. Moreover, the karyawahi register maintained under Section 23 had recorded these transfers. The khasra girdawries would also show the transferees as being in legal possession. (c) The actual date of the filing the revision petition by the DC challenging the order dated 1st December, 1995, was in doubt. According to him the affidavit in support of the revision petition was typed on a stamp paper of 31st March, 1997 and attested on 11th April, 1997 and therefore the petition was deliberately ante dated to make it appear that it was filed on 19th March, 1997 i.e. before the order dated 25th March, 1997 was passed. Therefore the DC was guilty of suppression of facts before the FC regarding the earlier order dated 25th March, 1997. He refers to the reply filed by the CO at page 45 where it is stated that the failure to issuing notice to the DC before ordering the exchange was due to inadvertence. He pointed out that the order dated 1st December, 1995 was also not in accordance with Rules. (d) The DC had to take sanction from the Chief Secretary or the Lt. Governor to file a writ petition. There was no notification that such sanction had been obtained. It is too much to state that the DC was unaware of the amendment of the scheme. He referred to Rule 3(2)(c) of the Rules according to which notice had to be given to the CO, SO and the FC. The DC cannot possibly plead ignorance of the amendment of scheme or the public notice issued by the CO. In any event this was not the plea raised by the DC before the FC. It is further pointed out that the DC made no move from 18th March, 1996 till March 1997 to recover the land in question. Numerous transfers had taken place and that no objection certificate issued by the DCs office itself. (e) Innocent third party purchasers should not be made to suffer if all statutory clearances had indeed been granted by the officials themselves. Moreover, huge sums had been invested on the projects for building motels on the land of some of the transferees and therefore it would be inequitable to set at naught all these transactions at this stage. (f) As regards the contempt petitions, it was submitted that the evidence showed that the officials of the DCs office were in blatant disobedience of the stay order passed by this Court and had tried to overreach its orders at every stage. It was submitted that this called for punishment of the contemnors.

24. Mr. Mukul Rohtagi, learned Senior counsel appearing for Respondent No.5 HLDPL first pointed out that NOCs have been issued by both the ADM as well as the MCD for the transfer of its shares in October 2006 and February 2007. Half the land had

already been sold pursuant to the NOCs. The land allotted to the DC was no less valuable than the land which was earlier available to it. A large amount of moneys had changed hands during these transactions and therefore it would be unjust to put the clock back by declaring all these transactions illegal. He also pointed out that government officials were themselves responsible for bringing out the situation and it would be unfair to blame the subsequent purchasers who had as part of the due diligence and exercise obtained the NOC and clarified that there was no encumbrance of the property. He finally submitted that the MCD has already sanctioned the plan for building a motel and HLDPL had already spent Rs.68.06 lakhs. Of the 5 bighas and 18 biswas of its land which forms part of the disputed land, 2 bighas and 6 biswas have been taken away for widening the road and only 3 bighas and 12 biswas of land remains. Any interference at this stage would be inequitable. Reliance is placed on the decisions in *Oil and Natural Gas Commission Limited v. Sendhabhai Vastram Patel* (2005) 6 SCC 454, *P.Srinivas v. M. Radhakrishna Murti* (2004) 4 SCC 459, *Chandra Singh v. State of Rajasthan* (2003) 6 SCC 545, *Rajesh D. Darbar v. Narasing Rao Krishnaji Kulkani* (2003) 7 SCC 219, *Ram Niwas Gagar (Dead) by Lrs v. Debojyoti Das* (2002) 10 AD SC 306, *Air India Limited v. Cochin International Airport Limited* (2000) 2 SCC 617, *P.S. Sadashivswami v. State of Tamilnadu* 1975 (1) SCC 152, *Balwant Rai Chimanlal Trivedi v. M.N. Nagrashna* AIR 1960 SC 1292, *A.M. Alison and H.P. Brigg. v. B.L. Sen* AIR 1957 SC 227, *Hukum Chand v. Financial Commissioner* 111 (2004) DLT 21.

25. In the connected writ petitions it was submitted that the lands allotted in lieu of the lands surrendered were in fact of lesser extent than was due. It is urged that in view of the large number of subsequent purchasers who had parted with money and had plans sanctioned by the MCD for the construction of motels, the cancellation of the transactions would lead to chaos and inconvenience and therefore no interference was called for with the order dated 1st December, 1995 passed by the CO. Issues for determination

26. On the above submissions the following issues arise for determination in these petitions: (i) The validity of the order dated 1st December 1995. (ii) The jurisdiction of this Court to judicially review the COs order dated 1st December 1995 even if the CO could not himself review such order. (iii) The maintainability of the revision petition by the DC before the FC challenging the order dated 1st December 1995 after the order dated 25th March 1997 passed by the FC setting aside the COs order dated 18th July 1996. (iv) The validity of the subsequent transfers. (v) If the above issues are decided against the, whether any of the transferees of the DC land are entitled to equitable relief
Validity of the order dated 1st December 1995

27. The facts narrated indicate that the consolidation proceedings commenced in the instant case on 17th April 1986 with the issuance of a notice under Section 14 of the Holdings Act. In terms Rule 4 (2) of the Delhi Holdings (Consolidation and Prevention of Fragmentation) Rules 1959 (Rules) a Village Advisory Committee comprising members of the Gram Panchayat, land holders and landless villagers was constituted under the chairpersonship of the Consolidation Officer, who at the relevant time was one Shri Layak Ram Sharma. The draft scheme in terms of Section 19 was announced on 19th December 1986. After considering the objections, the scheme was confirmed on 24th

July 1987 in terms of Section 20 of the Holdings Act. A copy of the scheme as finalised has been placed on record. It shows that the procedure under the Holdings Act and the Rules were duly followed. Thereafter the repartition proceedings under Section 21 commenced. Individual landholders were provided passbooks which recorded the extent and value of the land surrendered by them. The repartition was completed between 13th and 20th July 1988. Under Section 21 (3) of the Holdings Act any person aggrieved by the order of repartition passed by the CO under Section 21 (2), can file an appeal to the Settlement Officer (Consolidation) [SO]. At this stage nobody filed any appeal. Since the DCs land, in three chunks to the extent of 40 bighas and 2 biswas was left intact there was no occasion for him to file any appeal either.

28. The amendment proceedings also appear to have taken place thereafter in accordance with Section 36 of the Holdings Act and the Rules. The counsel for the transferees have been unable to point out any provision that permits the reopening of the consolidation scheme after the notification of the amended scheme. The reference to the entries in the karyavahi register cannot confer legality on the subsequent re-opening of the scheme by the CO by his order dated 1st December 1995. What is significant is that even after the amendment the DCs holding was left untouched.

29. It was repeatedly urged on behalf of the respondents that Clause 8 of the amended scheme had permitted the consolidation of the lands of the DC. It was submitted that inasmuch as the amended scheme containing this clause was approved by the LG, it therefore carried inherent consent of the DC as it was forwarded by the DC himself. It is submitted that the DC has not challenged the scheme in any court of law, he cannot now challenge the orders passed by the CO pursuant to the said clause.

30. This submission is without merit. In the first place it requires to be noticed that clause 8 of the amended scheme is not a source of power to the CO to amend the scheme beyond what has already been amended. As regards the DCs land, it merely stated that attempt would be made to consolidate the same at one place. By no stretch of imagination can it be said that this clause actually empowers the CO to proceed to further amend the consolidation scheme and that too without notice to the DC. The admitted position is that the DC made no request whatsoever to the CO to have his lands exchanged for some other land. The perusal of the records of the case clearly indicates that this entire move to have the DC divested of his land was at the instance of none other than Respondent No.1 who on behalf of herself and other land holders offered to exchange their lands for the DCs. They had no locus to do so after the amended scheme had been notified.

31. The private respondents in DCs writ petition appear to have come into the picture only after the finalisation of the amended scheme. Admittedly all their purchases were after the order dated 1st December 1995. Learned counsel for the DC is right in her submission that under the scheme of the Holdings Act it is only the right holders who can demand participation in consolidation proceedings. They can make claims in lieu of the lands expected to be surrendered by them. In the instant case the respondents have nowhere shown how they can claim to be the original bhumidars on the date of the scheme or even the amended scheme. They clearly lack the locus now to claim that they

should be provided with lands in lieu of the lands surrendered by them. As already noticed the scheme which even in its amended form was finalized in 1991 cannot be reopened by the CO on the pretext that the consolidation is not yet complete. Clause 8 was not meant to provide an indefinite limitation for reopening of the scheme. The respondents in fact lack the locus standi to demand consolidation of the DCs land then there is no explanation at all as to the legal basis of the action of the CO in giving the DCs land to the respondents in lieu of the land surrendered by them by the order dated 1st December, 1995.

32. The scheme of the Holdings Act appears to be that under Section 21 it is possible for the repartition to take place but once the amended scheme was passed and objections were invited, the finalization of the scheme thereafter was not intended to be reopened again and again. In any event there is nothing in the Act to indicate that six years after the amended scheme is notified it can be reopened under any pretext. Otherwise it would be an endless process of consolidation which is not envisaged under the Act.

33. There are even more serious problems with the order dated 1st December 1995. At no stage was any notice issued to the DC prior to the passing of the said order by the CO. There is in fact no provision under the Holdings Act that permits such exchange after the consolidation scheme has come to an end. The presumption that the DC would not have had notice is not borne out by the record at all. Also there is absolutely no answer by the respondents in DCs writ petition to the submission made with reference to Rule 6 (c) and (d) of the Rules which read as under: (c) As far as possible only those owners shall be allotted land in any particular block who already held land therein. (d) Every owner shall, as far as possible, be allotted land in a block at the place where he holds the biggest plot.

34. The submission that the DC has in fact benefitted by the exchange is preposterous to say the least. There can be no doubt that by getting for themselves DCs land abutting the main road in exchange for land nowhere near it, the transferees have reaped a huge advantage. The furious pace of the sales soon after 1st December 1995 is testimony to the value of the land. There is little doubt that the transferees acted in concert to exploit the situation with the connivance of a pliant government official and deprive the DC of valuable land behind his back. The CO was induced to exercise a power he did not have as a result of which an order that constitutes a fraud on power came to be passed. 35. This Court is of the view that the order dated 1st December 1995 by the CO whereby he divested the DC of his land without notice to the DC in exchange for the land offered by the allottees was without any authority of law whatsoever. As the investigation by the CBI and the consequent chargesheet filed by it shows, there is sufficient material to prima facie show that the subsequent transfers of the lands so allotted soon after the order shows that this was an instance of malafide exercise of power by the CO. Apart from causing enormous loss to the government it has embroiled it in avoidable litigation for over a decade. This Court therefore quashes the order dated 1st December 1995 passed by the CO as being without the authority of law and therefore illegal. Consequently, as regards the DC land, the position that obtained prior to the passing of that order will revive. Power of this Court to judicially review the order dated 1st December 1995

36. It was not suggested by any of the counsel for the private respondents in DCs writ petition that this Court exercising jurisdiction under Article 226 cannot review the legality of the order dated 1st December 1995. The said order was entirely without any legal basis and therefore was illegal even to start with. The fact that the said order has not been interfered with by the FC will make no difference to the position since the FC is under the Holdings Act a quasi judicial authority subject to the supervisory jurisdiction of this Court and whose orders are judicially reviewable under Article 226 of the Constitution.

37. An order that is illegal to start with can be corrected at any stage by the High Court in order that the ends of justice are served. In *A.V. Papayya Sastry v. Government of A.P.* AIR 2007 SC 1546, the Supreme Court held that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such a judgment, decree or order -- by the first court or by the final court -- has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In *S.P.Chengalvaraya Naidu v. Jagannath* AIR 1994 SC 853 it was observed: The principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on false-hood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

38. Consequently, it makes no difference if the CO was not legally empowered to make the subsequent order dated 18th July 1996 which had the effect of reversing the earlier order dated 1st December 1995. The mere fact that the subsequent order dated 18th July 1996 was reversed by the FC will not automatically clothe the 1st December 1995 with legality it did not possess to start with. It may be recalled that the order dated 25th March 2007 passed by the FC was based merely on the fact that there was no statutory power in the CO to review his order. There was no occasion for the FC to examine the merits of the COs order dated 1st December 1995 at that stage. Indeed he did not. Unfortunately when the order dated 1st December 1995 was challenged before him by the DC, it was rejected by the FC on a technical ground and not on merits. Therefore, there is absolutely no bar to this Court examining the validity of the COs order dated 1st December 1995 on merits in exercise of its powers under Article 226 of the Constitution. The cases cited by the learned counsel for the transferees including ONGC Limited and Chandra Singh talk of instances where the High Court may decline to exercise its discretion to strike down a wrong order only because it would be lawful to do so. The decisions in *AM Alison* and *Hukum Chand* are to the same effect. However, the facts of the present case leave this Court in no doubt that the discretion must be exercised to strike down the order dated 1st December 1995 which, on the face of it is without

jurisdiction. The facts further show that allowing this order to stand any longer would only result in the perpetuation of an illegality which might result in further exploitation of the situation by unscrupulous elements. Maintainability of the DCs revision petition

39. At this stage it is necessary to deal with two distinct submissions of the private respondents and transferees. The first was that the COs order dated 18th July 1996 was vitiated both substantively as well as procedurally. They went so far as to suggest that it was a fabricated document. It was suggested that the proceedings were written up by the CO to show that notices were issued to Shri C.L. Jain, Ramesh Kumari, Shiv Narain and Virender Khosla but refused by them when in fact no notice was ever issued. The discrepancy in the letter of the MLA Shri Sat Prakash Rana is also made much of.

40. As far as this objection is concerned it must straightaway be pointed out that apart from their mere allegation, no factual foundation for the fabrication of any document has been laid by the respondents in DCs writ petition. In the considered view of this Court, the submissions regarding the alleged fabrication of the order dated 18th July 1996 or the proceedings leading to it do not really help the transferees. If the root order was itself bad, in law, then the mere fact that NOCs were obtained under Section 30 or that the transfers were recorded under Section 23 in the karyavahi register will not make any difference to the position. Indeed, this may not carry them very far because they have to still be able to show that the order dated 1st December 1995 as a result of which they stake claim to DCs land is in fact a validly passed order. Unfortunately, any effort, even a successful one, at showing that the subsequent order of the CO dated 18th July 1996 is bad in law, will not somehow render the earlier order dated 1st December valid. In fact this is a basic fallacy in the reasoning of the FC in the impugned order dated 27th June 2003 dismissing the DCs revision petition challenging the order dated 1st December 1995.

41. The second ground is about the filing of the second revision by the DC. It is submitted that on 25th March 1997 an order was passed by the FC setting aside the order dated 18th July 1996 passed by the CO but in the meanwhile the DC on 19th March 1997 filed another revision petition challenging the earlier order dated 1st December 1995 passed by the CO. It is stated that on the date of the filing of the revision petition, the order dated 1st December 1995 did not exist and had in fact merged with the order dated 18th July 1996 passed by the CO. Therefore, when such an order dated 1st December 1995 did not exist no revision petition challenging it could have been filed. It is explained that on 29th March 1997 during the hearing of the other revision petition by the transferees, the counsel for the DC did not inform the FC of the pendency of the DCs revision petition. It is claimed that in the circumstances, probably the revision petition of the DC was filed only on 31st March 1997 as is evident from the affidavit filed in support of the revision petition which was verified on 7th April 1997.

42. It appears to have been a matter of coincidence that the revision petition of the DC challenging the order dated 1st December, 1995 could not be considered by the FC prior to disposal of the revision petition challenging the COs subsequent order dated 18th July, 1996 at the instance of the respondents. While the record does show that the order

dated 25th March, 1997 was passed in the presence of the counsel for the DC, this cannot be interpreted to mean that the DC has waived his right to challenge the COs order dated 1st December, 1995. It is not possible to infer that since the affidavit in support of the revision petition was attested only in April 1997, the revision petition itself could not have been filed before that date. There is nothing to indicate that the date of filing was tampered to show that the petition was filed before 25th March, 1997. This Court rejects that submission outright. So also the submission regarding the DC not having obtained the formal sanction from the LG or the Chief Secretary to file the writ petition. With the order under challenge being held by this Court to be illegal, these objections do not merit consideration. In any event, these technicalities cannot come in the way of this Court exercising its jurisdiction under Article 226 to correct patent illegalities and do complete justice.

43. The fact that a petition was filed challenging the order dated 1st December 1995 on the date that the subsequent order dated 25th March, 1997 was passed indicates that as far as the DC was concerned, it did not accept the order dated 1st December, 1995. The FC was therefore not correct in rejecting the petition only on the basis that the subsequent order dated 18th July, 1996 had already been set aside by the FC by the order dated 25th March, 1997. In other words, the setting aside of the COs order dated 18th July, 1996 did not ipso facto mean that the COs earlier order dated 1st December, 1995 stood revived. Also, the FC seems to be contradicting himself in the impugned order dated 27th June 2006 where he holds the DCs revision petition to be not maintainable since it is against a non-existent order and later states that the said order dated 1st December, 1995 requires to be implemented. In the considered view of this Court the FC was not right in rejecting the DCs revision petition on the ground that it was not maintainable. In any event, notwithstanding the FCs order dated 25th March 2007, for the reasons already discussed, the order dated 1st December 1995 is not valid and the position obtaining prior to that order will revive. Subsequent transfers and equitable relief

44. The submission on behalf of the respondents is that although an illegality may have been committed by the CO in passing the order dated 1st December 1995, in view of the number of transactions that have taken place since then the present position should not be disturbed. The length of time is also advanced as another factor. Each of the transferees, including those who have filed separate petitions plead equity in view of the plans for building motels some of which have been sanctioned.

45. The nature of illegality in the present case is a grave one. The private respondents in DCs writ petition were property dealers who were eyeing valuable government land for a long time. They knew very well it was abutting the road and would fetch a higher price in the market. In connivance with the CO the entire scheme appears to have been worked out and the land of the DC was given to the unscrupulous property dealers and substituted with poor quality lands fetching a lower value and located away from the road. The transactions described in paras 18 and 19 of this judgment indicate that these were hardly innocent purchasers. They undertook a risk in entering into sales transactions even during the pendency of this litigation for over a decade. They were looking to exploit the situation where prices of land were soaring with the increased demand in and

around the NCR of Delhi. In fact it is shocking that Smt. Ramesh Kumari and her family members persisted with the sale transactions notwithstanding this litigation. None of the interim orders in her favour could have created any equity in her favour, much less in the subsequent transferees. These are not cases where the court should grant equitable relief to the transferees. As pointed out by the Supreme Court in *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu* (1999) 6 SCC 464, in the context of unauthorised constructions by builders, a discretion cannot be exercised which encourages illegality or perpetuates an illegality. judicial discretion cannot be guided by expediency.

46. The mere fact that NOCs were issued by the revenue authorities and even the DCs office cannot legalise the transfers which were tainted by the illegality of the COs order dated 1st December 1995 which as pointed out is the root document. Clearly, there cannot be any estoppel against law. The tainted transactions really cannot be washed away with the passage of time. Condoning such transactions, thereby impliedly legitimising them, would not only be contrary to law but would send a wrong signal to the land mafia which uses these tactics to grab valuable government land. Although some of the subsequent purchasers may have got their plans for motels sanctioned or obtained NOCs and invested monies, these transactions cannot be the ground for regularizing their purchases. They will have to proceed independently against their vendors to work out their remedies. Having observed that, this Court expresses its concern that the functioning of the Office of the Tehsildar and the DC leaves much to be desired. Strict action needs to be taken disciplinarily against the delinquent employees who were involved in facilitating the transfers of DCs land in the manner indicated earlier. Nevertheless this Court is not persuaded to accede to the plea of the subsequent purchasers that the transfers consequent upon and subsequent to the order dated 1st December, 1995 of the CO should not be disturbed. No case for equitable relief is made out by any of the transferees, who took a risk in entering into illegal transactions concerning the land in question despite the pendency of court proceedings.

47. The plea of the other petitioners that they have been allotted land of a lesser extent than is due to them as a consequence of consolidation, deserves rejection in so far as they trace their right to the same tainted document of 1st December 1995. These questions do not survive once it has been held that the land belonging to the DC will remain with it undisturbed. The order dated 4th May 2004 permitting conditional mutation in favour of Smt. Ramesh Kumari will not survive. No mutation can be granted now in her favour in respect of DCs land. All subsequent transfers involving any portion of the DCs land cannot legally subsist and will have to meet the same fate of ab initio illegality. The remedy to any person who may be aggrieved is to proceed in accordance with law against the transferor through whom they claim a right. If according to them, the parcels of land they have purchased are outside the lands of the DC forming subject matter of DCs petition, they will have to work out their remedies independently. The writ petitions by them are misconceived.

48. For all of the above reasons, the writ petition filed by the DC, i.e W.P. (C) No. 7687 of 2004 is allowed with costs of Rs.10,000/-. The impugned order dated 27th June, 2003 passed by the FC is hereby set aside. The order dated 1st December, 1995 passed by

the CO is hereby set aside. The DC will take immediate steps with the aid of the police to ensure that the DCs land remains fully protected and all encroachments thereon be removed permanently. All transfers of any part of the DCs land subsequent to and consequent upon the COs order dated 1st December 1995 are hereby declared illegal and the authorities including the DC will take all necessary consequential steps to give effect to the declaration. Each of the respondents [except respondent No.9 in W.P. (C) No. 7687 of 2000] will pay costs of Rs.10,000/- to the petitioner within a period of four weeks from today. Each of the remaining writ petitions is dismissed with the observations in para 47 hereinabove. Contempt Case (C) No.307 of 1997 and Contempt Case (C) No.353 of 1997

49. Next the contempt petitions filed by Smt.Ramesh Kumari and B.R.B Constructions are taken up for consideration. It will be recalled that it was the case of Smt. Ramesh Kumari that on 9th September 1997 the officers of the DC along with the police force visited the site and thereafter they took the petitioner, her husband and the labourers to the police post, Kapashera. It was stated that after the police officers were shown a copy of the interim order passed by the learned Single Judge, they released the petitioner and her husband. On the next date of hearing i.e. 10th September 1997 when W.P. (C) No. 3292 of 1997 case was heard by the learned Single Judge of this Court an order was passed adjourning the case to 2nd December 1997 and continuing the interim order passed on 4th August 1997. Likewise a similar order was passed in the W.P. (C) No. 2392 of 1997 continuing the interim order dated 13th June 1997.

50. There were further developments arising out of the incidents of 9th and 10th September 1997. Smt. Ramesh Kumari had filed criminal complaints in regard to those incidents and when no action was taken thereon by the police, she filed Writ Petition No. 108 of 1998 in this Court seeking a direction to the respondents to register a case against the Station House Officer, Police Station Kapashera. By an order dated 24th January 2002 a Division Bench of this Court dismissed the writ petition after observing that the Contempt Petition No. 307 of 1997 was already pending. It was observed that complainant had an effective alternative remedy. Aggrieved, Smt.Ramesh Kumari filed Criminal Appeal No. 1229 of 2002 in the Supreme Court. By its order dated 21st February 2006 the Supreme Court directed the Central Bureau of Investigation (CBI) to register a case and investigate of the complaint filed by the appellant on 9th September and 13th September 1997. The CBI was further directed to complete investigation within a period of three months. The Supreme Court requested this Court to expedite the disposal of the contempt petitions. In the contempt petition by Smt.Ramesh Kumari evidence by way of affidavits of the contemnors as well as the petitioners was received and they were cross-examined. However, in the companion contempt petition by BRB Constructions, the petitioner did not participate or file any affidavit. This is by itself sufficient to dismiss its petition with exemplary costs.

51. At this stage it will be useful to set out the two issues formulated by this Court in the contempt petition. Two issued formulated by this Court by its order dated 30th October 2001 as amended by the subsequent order dated 4th February 2003 read as follows : (i) Whether the petitioner was in possession of the land in question on 9th and

10th September 1997 If so, to what effect (ii) Whether the respondents have tried to dismiss the petitioner from the site on the aforesaid dates If so, to what effect

52. It is stated that the DC and its officers were present in the court room and they were apprised of the order passed by this Court by the standing counsel of the GNCTD. It is then stated that on 10th September 1997 at about 2.00 pm the respondents along with police force appeared outside the property. The petitioner apprehended the use of force and atrocities, she informed her husband and telegrams were sent to the Station House Officer, Police Station Kapeshera as well as to the Chief Justice of this Court. At about 5.00 pm the petitioner was asked by the police to open the gate and when some time was sought to call the labourers the police did not wait and broke the gate. They had entered into the property and started removing the assets.

53. According to the DC, they were always in the possession of the property in question and the status quo order passed by the High Court was wrongly interpreted by Smt. Ramesh Kumari and others as permitting them to forcibly take possession of the property in question.

54. From the cross-examination of Smt. Ramesh Kumari she admitted that she was unable to produce any document that evidencing the handing over the possession of the disputed land. She further maintained that she had been given the possession of the property by Shri G.C. Sharma, CO. She claimed not to have received any notice from the CO before the order dated 18th July 1996 was passed.

55. The cross-examination of Ramesh Kumari on 3rd March, 2007 in the contempt proceedings confirms that she was able to produce sale deed only from 1994 onwards. Therefore on the date of the original scheme of consolidation i.e. in 1986 she clearly was not in the picture at all. The relevant questions and answers in this regard read as under: Q. Where are the original documents Ans. Perhaps these are available at my house. It is correct that I was asked to produce the original records at the previous hearing on 19.12.2006. I apologize for not producing the same. Upon repeating the question whether the originals are available, the witness now says that she cannot recollect that she has the originals. Q. You had at the previous hearing on 19.12.2006 stated that you were the owner of the lands in question in 1986, whereas what you have produced today are documents pertaining to the year 1995. Where are those documents of 1986 Ans. I made a mistake at the previous hearing when I said that I was the owner of the lands in question in 1986. What I meant was relating to other lands in Village Kapharsera whereas the land in dispute to which I refer in my affidavit was purchased in 1994-95. The documents produced by me today pertain to those lands. I do not recollect filing any objections before the Consolidation Officer under Section 21 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act. I am not in a position to either refuse or admit the suggestion that I had filed any objections under Section 21 of the East Punjab Holdings Act. Q. Can you tell the Court whether pursuant to order dated 1.12.1995, when were you put in your physical possession of the exchanged land and which officer put you in possession of that exchanged land Ans. I was put in physical possession of the exchanged land in December, 1995 (witness is not able to recollect the

exact date) by Shri G.C. Sharma, the Consolidation Officer. (Mr. G.C. Sharma is present in Court and is identified by the witness). I am unable to produce any documents evidencing the handing over of the possession of the disputed land. It should be available the records. I deny the suggestion that Mr. G.C. Sharma had not given me the physical possession of the land. I did not inform the Office of the Deputy Commissioner that the lands belonging to the Deputy Commissioner, had been allotted to me by way of exchange. The witness adds that it was the duty of the Officers concerned to pass on the necessary information in this regard to the Deputy Commissioner.

56. According to Smt. Ramesh Kumari till time she was forcibly dispossessed on 9th September 1997 she continued to remain in possession of the property in question. However, she was unable to produce khasra girdawri entries which would show her ownership or possession of the land in question.

57. In his statement Shri Manoj Kumar, Additional Secretary, Urban Development, GNCTD who was, at the relevant time, working as Joint Secretary, Department of Urban Development, GNCTD, he affirmed whatever is stated by an affidavit dated 28th August 2006. He added: During the time April 1997 to November 1997 I was ADM Headquarters, having additional charge of Deputy Commissioner (South-West), Kapashera, New Delhi. Shri G.C. Sharma, CO ceased to be holding charge as such also, he did not report directly to the DC. This witness stated that he was not shown by the petitioner any copy of a stay order passed by this Court. He was unable to identify the portion of the site because more than ten years was elapsed. This witness denied the suggestion that pursuant to the order dated 1st December 1995 passed by the CO, possession was handed over to Smt. Ramesh Kumari and he affirmed that there was no kabza karwahi to that effect in the records of the case.

58. The next witness was Shri Mahesh Kumar, Inspector who clarified that the complaint made to him about removal of the foundation stone and ploughing of the land in question. He was apparently present on 9th September 2007 at the place of the incident. He specifically states that he reached the site, he noticed that the petitioner Smt. Ramesh Kumari was attempting to flee the place. He also noticed that some old tyres and other junk type articles in the premises. He did not notice any trailer or mobile van in the premises. In response to the specific question whether in view of the contesting claims made at the spot on 9th September 1997 he verified the facts with the revenue officials, this witness replied that he had no doubt that the land belonged to the DC and therefore, there was no occasion to ask such a question.

59. Shri Devendra Singh who was, at the relevant time i.e. 9th September 1997, working as SDM, Vasant Vihar, New Delhi was examined on behalf of the DC office. He had identified the photographs produced by petitioner. In response to the question whether the appellant had asked the DC office to produce documents evidencing DCs ownership of the possession in question, he replied that he informed the police that the Junior Engineer (PWD) will be asked to furnish those documents to the police. He affirmed that the Khasra Girdawari is maintained by the Patwari indicating that the land is in the possession of the DC. He admitted that the Patwari was present on 9th

September 1997. He denied that any trailer was found at the site within the boundary wall. He was informed by the Standing Counsel for the State about the Court having apprised of DC to have taken the possession of the site in question.

60. G.C. Sharma is the key person since he has affirmed that the reply affidavit filed by him on 13th March 2007 is true and correct. He added in his examination-in-chief that he was not present on 9th/10th September 1997 at the site and by that time he was working in North-West District situated at Kanjhawala, Delhi. Despite opportunities being given to the learned counsel for the petitioner he did not cross-examine this witness. Thus, the uncontroverted affidavit of G.C. Sharma completely negates the case of any contempt having being committed. In this affidavit, he has stated categorically in particular para 9 that: 9. That in reply to para no. 9 of the contempt petition, it is submitted that Smt. Ramesh Kumari did not take possession of the said land in question nor had she cultivated. She has not produced any documentary evidence to prove her possession and cultivation. Respondent No.4 seeks permission of this Honble Court to file relevant revenue record i.e. Khasra Girdawri for the relevant period, of the land in question, which clearly shows that Smt. Ramesh Kumari was never in possession of the said land, and she was never in cultivation on the land in question. Original Khasra girdawri is enclosed, as Annexure B.

61. Again in para 10 he states that he did not trespass into the property of Smt. Ramesh Kumari nor he did make the labourers to demolish her property. He has also pointed out that by an order dated 11th September 2007 passed by this Court in paras 2 and 5, the DC was directed to be deleted and therefore, expunging the remarks that the CO had not findings properly in accordance with law. Nevertheless this Court clarified that some respondent was free to deal with the representation to be made by G.C. Sharma in accordance with law.

62. To this Court it appears that the claim of Smt. Ramesh Kumari that she was in the possession of the land in question is not borne out by the records at all. The evidence shows that on the date the Court passed the interim order granting stay of dispossession she was in fact not in possession. The said order could not have been operationalized since it was contrary to the factual situation prevailing on the ground. At the highest it could have been construed to be status quo order in the case neither party could have remedy therein to alter to the status quo order.

63. It appears that since Smt. Ramesh Kumari was never in the possession of the land in question prior to the passing of the interim order, an attempt was made by her to forcibly enter the property. This was foiled by the DCs office. The khasra girdawri and other records confirm that the land belonged to the DC and the DC was in the possession of the property in question. The DC office had in fact planned the use of land for building a mini secretariat. That proposal is evidenced by the notes on file which have been produced in these proceedings. A foundation stone was laid for this purpose and on 17th January 1997 and the new office of the DC was inaugurated at the old terminal tax building Kapashera by the then Governor and Chief Minister. The photographs of the ceremony have also been placed on record. It has emerged in the evidence of Devender

Singh that the site in question was handed over to the PWD on 8th January 1997 for the purpose of construction of boundary wall. The proposal of Shri Mehto in respect of the building plans and approval from the Delhi Development Authority was approved by the then Chief Minister on 29th January 1997. On the complaint of Shri Ajmer Singh, Junior Engineer, PWD-27 to the police force Kapashera informing the police that the petitioner had removed the inauguration stone of the secretariat on the site and a case was registered under Section 379/427/447 IPC and the petitioners son was arrested. The inauguration stone was recovered from his possession. The said affidavit also states that the work of construction of the boundary wall was entrusted to the contractor by the PWD and the construction of the boundary wall is completed on 24th June 1997.

64. A collective consideration of the above facts, these lead to the conclusion that the petitioners were never in the possession of the land in question; that after obtaining the stay order from this Court they sought to disturb the possession of the DC; that the revenue records and entries in the khasra girdawri clearly show that the land belonging to the DC. Therefore, the interim order has to be understood as not disturbing the possession of whichever party was as on that date in possession of the property in question. The events antecedent to the incidence of 9th and 10th September 1997 support the case of the DC that they never ceased to be in possession of the land in question even as on that date. The evidence also shows that no attempt was made by the DC to forcibly dispossess Smt. Ramesh Kumari on 9th or 10th September 1997 from the land in question. Therefore, the inevitable conclusion is that no contempt was committed by the DCs office or by any of its officers by disobeying the interim orders passed by this Court. The contempt petitions have sought to be built up on the edifice of a false case against the respondent officers and have involved a waste of precious judicial time. As noticed earlier, in one of the petitions by BRB Constructions, the petitioner did not even to choose to lead evidence to substantiate the allegations despite being afforded an opportunity. They deserve dismissal with exemplary costs.

65. The contempt petitions are dismissed with costs of Rs.50,000/- each will be paid by the petitioners to the DC within a period of four weeks from today. Summary of Conclusions

66. To summarise the conclusions: (a) The order dated 1st December 1995 passed by the Consolidation Officer whereby he divested the DC of his land without notice in exchange for the land offered by the transferee respondents was without any authority of law whatsoever. Such an order could not have been passed after the completion of the consolidation proceedings, as amended, in 1991. The order dated 1st December 1995 is illegal and is hereby set aside. The position regarding DCs land which was sought to be exchanged by the said order will stand restored to the position that obtained prior to the passing of the said order. (b) This Court has ample powers under Article 226 of the Constitution of India to strike down the COs order dated 1st December 1995 notwithstanding order being passed by FC on 25th March 1997. (c) The FC was not right in rejecting the DCs revision petition on the ground that it was not maintainable. The setting aside of the COs order dated 18th July, 1996 by the FC by his order dated 25th March 1997 did not ipso facto mean that the COs earlier order dated 1st December, 1995

stood revived. (d) No case for equitable relief is made out by any of the transferees, who took a risk in entering into illegal transactions concerning the land in question despite the pendency of court proceedings. Nevertheless this Court is not persuaded to accede to the plea of the subsequent purchasers that the transfers consequent upon and subsequent to the order dated 1st December, 1995 of the CO should not be disturbed. Since the root order dated 1st December 1995 is bad in law, all subsequent transfers on that basis will have to meet the same fate. (e) All transfers of any part of the DCs land subsequent to and consequent upon the COs order dated 1st December 1995 are hereby declared illegal and the authorities including the DC will take all necessary consequential steps to give effect to the declaration. (f) The writ petitions by those complaining of shortage of allotment of land pursuant to consolidation are misconceived. If their lands are not part of the DCs land, then they will have to work out their rights independently. (g) There is no merit in the contempt petitions. The evidence shows that the DC never ceased to be in possession of the land in question even as on 9th and 10th September 1997. The evidence also shows that no attempt was made by the DC to forcibly dispossess Smt. Ramesh Kumari on 9th or 10th September 1997 from the land in question. Therefore, the inevitable conclusion is that no contempt was committed by the DCs office or by any of its officers by disobeying the interim orders passed by this Court. Each of the contempt petitions is dismissed with exemplary costs.

67. To conclude, for the reason set out hereinbefore and with the direction as aforesaid, WP(C) No. 7687 of 2004 is allowed with costs of Rs. 10,000/-. Each of the respondents [except respondent No.9 in W.P. (C) No. 7687 of 2000] will pay costs of Rs.10,000/- to the DC within a period of four weeks from today. Writ Petition (Civil) Nos. 2193 of 2006, 2194 of 2006, 2219 of 2006, 2263 of 2006 and 3770 of 2006 are dismissed. Contempt Case (Civil) No. 307 of 1997 and Contempt Case (Civil) No. 353 of 1997 are both dismissed with costs of Rs. 50,000/- each which will be paid by each of the petitioners to the DC within a period of four weeks. The applications in all the matters stand disposed of.

Sd./-
S. MURALIDHAR, J.

DECEMBER 5, 2008