HIGH COURT OF MADHYA PRADESH

W.P.Nos. 7126/2021, 5569/2021, 5571/2021, 7023/2021, 7025/2021, 7027/2021, 7051/2021, 7130/2021, 7285/2021, 7406/2021, 7410/2021, 7417/2021, 7483/2021, 7600/2021, 7856/2021, 7857/2021, 7859/2021, 7873/2021, 7960/2021, 7964/2021, 8324/2021, 8325/2021, 8376/2021, 8464/2021, 8738/2021, 8745/2021, 9073/2021, 10496/2021, 10815/2021, 10818/2021, 10901/2021, 12285/2021, 12500/2021, 12993/2021, 13156/2021

W.P.No. 7126/2021
Ashish Agarwal vs. State of M.P. & Ors.

W.P.No.5569/2021
Mahendra Singh vs. State of M.P. & Ors.

W.P.No. 5571/2021
Smt. Amarkaur W/o Shri Bahadur Singh through Power of Attorney Holder Shri Mahendra Singh vs. State of M.P. & Ors.

W.P.No.7023/2021
Sunil Chaurasiya vs. State of M.P. & Ors.

W.P.No.7025/2021
Nitendra Shukla vs. State of M.P. & Ors.

W.P.No. 7027/2021
Kuldeep Saluja vs. State of M.P. & Ors.

W.P.No.7051/2021
Sanjay Chaurasiya vs. State of M.P. & Ors.

W.P.No. 7130/2021
Vinay Shastri vs. State of M.P. & Ors.

W.P.No.7285/2021
Mahaveer Jain & Ors. vs. State of M.P. & Ors.

W.P.No.7406/2021
Shailesh vs. State of M.P. & Ors.

W.P.No.7410/2021
Shailesh & Ors. vs. State of M.P. & Ors.

W.P.No. 7417/2021
Shailesh & Ors. vs. State of M.P. & Ors.

W.P.No. 7483/2021
Shubhnarayan Solanki vs. State of M.P. & Ors.

W.P.No.7600/2021
Vinay Singh Sengar vs. State of M.P. & Ors.

W.P.No.7856/2021
Mukesh Rathore vs. State of M.P. & Ors.

W.P.No.7857/2021
Amit Raghuwansi vs. State of M.P. & Ors.

W.P.No.7859/2021
Preetam Singh Yadav vs. State of M.P. & Ors.

W.P.No.7873/2021
Trilokchand vs. State of M.P. & Ors.

W.P.No.7960/2021
Praful Chaurasiya & Anr. vs. State of M.P. & Ors.

W.P.No.7964/2021
Jaspal Gill vs. State of M.P. & Ors.

W.P.No.8324/2021
Omprakash Rathore & Ors. vs. State of M.P. & Ors.

W.P.No.8325/2021
Bhagwati Prasad Sharma vs. State of M.P. & Ors.

W.P.No.8376/2021
Shankarlal, Bhagwanlal vs. State of M.P. & Ors.

W.P.No.8464/2021
Champalal Chaurasiya vs. State of M.P. & Ors.

W.P.No.8738/2021
Balveer Singh Sikh vs. State of M.P. & Ors.

W.P.No.8745/2021
Riyaz Hussain & Anr. vs. State of M.P. & Ors.

W.P.No.9073/2021
Brajesh Singh Raghuvanshi vs. State of M.P. & Ors.

W.P.No.10496/2021
Jarnail Singh vs. State of M.P. & Ors.

W.P.No.10815/2021

Noorul Hassan Noor vs. State of M.P. & Ors.

W.P.No.10818/2021
Munshi Lal Yadav vs. State of M.P. & Ors.

W.P.No.10901/2021
Yashwant Kumar vs. State of M.P. & Ors.

W.P.No.12285/2021
Rani vs. State of M.P. & Ors.

W.P.No.12500/2021
Gaurav Shrivastava vs. Collector Guna & Ors.

W.P.No.12993/2021
Pradeep Jain & Anr. vs. State of M.P. & Ors.

W.P.No.13156/2021
Deewan Singh vs. State of M.P. & Ors.

Gwalior, dated 18-8-2021

Shri D.K. Agrawal, Counsel for the petitioner in W.P. No.7126/2021 and W.P. No.7130/2021.

Shri S.K. Shrivastava, Counsel for the petitioner in W.P. Nos.7960/2021, 7964/2021, 12285/2021 and 8745/2021.

Shri Yogesh Singhal, Counsel for the petitioner in W.P. Nos.7285/2021, 7406/2021, 12993/2021, 7417/2021 and 7410/2021.

Shri Vijay Sundaram, Counsel for the petitioner in W.P. No.8376/2021.

Shri Anil Kumar Shrivastava, Counsel for the petitioner in W.P. No.9073/2021.

Shri Ajay Raghuvanshi, Counsel for the petitioner in W.P.

No.12500/2021.

Shri Rajnish Sharma, Counsel for the petitioner in W.P. No.10901/2021.

Shri Avadhesh Parashar, Counsel for the petitioner in W.P. No. 10496/2021.

Shri A.S. Jadon, Counsel for the petitioner in W.P. No.13156/2021.

Shri Prashant Sharma, Counsel for the petitioner in all remaining petitions.

Shri Jitesh Sharma, Counsel for the respondents/State.

Shri Pawan Kumar Dwivedi, Counsel for respondents/Nagar Palika Parishad/Municipal Council.

By this Common order, W.P. Nos.7126/2021 5569/2021, 5571/2021, 7023/2021, 7025/2021, 7027/2021, 7051/2021, 7130/2021, 7285/2021, 7406/2021, 7410/2021, 7417/2021, 7483/2021, 7600/2021, 7856/2021, 7857/2021, 7859/2021, 7873/2021, 7960/2021, 7964/2021, 8324/2021, 8325/2021, 8376/2021, 8464/2021, 8738/2021, 8745/2021, 9073/2021, 10496/2021, 10815/2021, 10818/2021, 10901/2021, 12285/2021, 12500/2021, 12993/2021, 13156/2021 shall be disposed of.

2. For the sake of convenience, the facts of W.P. No.7126 of 2021 shall be referred.

3. This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :-

> (i) The order dated 10-2-2021 (Annexure P/1) passed by the Collector and District Magistrate, Guna/respondent no.2 may kindly be quashed.
> (ii) It may kindly be held that any action taken or proposed to be taken by the respondents in pursuance of the impugned order dated 10-2-2021 (Annexure P/1) would be void-ab-initio and cannot be given effect and/or;
> (iii) It may kindly be held that the order dated 10-2-2021 (Annexure P/1) is without jurisdiction, illegal and arbitrary, therefore, void-ab-initio and no coercive action against the petitioner alleging illegal colonization can be taken by the Respondents under the/in pursuance of the order dated 10-2-2021 (Annexure P/1) passed by the Collector and District Magistrate, Guna/Respondent no.2, and,
> (iv) to allow the cost of this petition with any other appropriate relief(s) may kindly be granted to the petitioner and,
> (v) To pass any other or further order(s) deemed fit and necessary in the facts and circumstances of the matter.

4. It is the case of the petitioner, that he and one Sunil Chaurasiya jointly purchased 0.523 hectares of land situated in Patwari Halka No. 77, village Kusmoda, within the limits of Municipal Council, Guna. The land was purchased by registered sale deed dated 27-3-1993. After getting their names mutated, the petitioner also got the land diverted. It is submitted that in the year 1996, the S.D.O., Guna issued a notice dated 6-7-1996 regarding colonization on the land purchased by the petitioner. As the petitioner was not intending to construct a colony, therefore, no license under M.P. Nagar Palika (Registration of Colonizer, Terms and conditions) Rules, 1998 (In

short Rules, 1998) was obtained. On 7-1-2019, the Tahsildar/ respondent no.4, initiated an action against the petitioner under the Municipalities Act, 1961 and Rules, 1998, alleging illegal colonization over the land in dispute. Thereafter, the S.D.O., Guna by its recommendation dated 9-1-2019, recommended to the Collector , to initiate proceedings under the Municipalities Act as well as under the Rules, 1998. Accordingly, the Collector, issued notice dated 24-6-2019, which was not served on the petitioner, on account of incomplete address. Again a revised notice was issued which was duly served on the petitioner, however, the copy of annexures were not supplied. The petitioner submitted his reply on 19-7-2019. Another Show Cause Notice dated 2-6-2020 was issued alleging illegal colonization, which was duly replied by the petitioner, taking a specific stand that the idea of colonization was never executed. Inspite of verbal objections with regard to the competence of the Collector, the impugned order has been passed. It is submitted that as per Section 313 of Municipalities Act, the action can be taken within 12 months, however, in the present case, the prosecution is barred by time, as in the year 1996 itself, the respondents were already aware of the fact that the petitioner is developing a colony. Although the order has been passed under Section 339 of Municipalities Act, but Section 339 of Municipalities Act, deals with

Requisition of Services in cases of emergencies and has nothing to do with illegal colonization. Further, the Collector/District Magistrate has no power under Section 313 of Municipalities Act. The Rules, 1998 do not give any authority to District Magistrate/ SDO /Tahsildar to initiate any coercive action alleging illegal colonization. The C.M.O., cannot carry out valuation of the unfinished work and the said amount cannot be recovered from the petitioner. The petitioner is not involved in colonization, therefore, doesnot require any license. It is submitted that once something is required to be done in a particular manner, then it should be done in that way only.

5. The respondents no. 3 & 5 have filed their reply. The State Govt. adopted the reply submitted by the respondents no. 3 & 5.

6. It is the stand of the respondents no. 3 and 5 that under Section 339-A (2) of Municipalities Act, “Competent Authority” means as may be appointed by the State Govt. It is submitted that “Competent Authority” has been defined in Rule 2(h) of Rules, 1998 which reads as under :

> 2(h) “Competent Authority” means in relation to such Municipal area which comes within the limit of any Municipal Corporation, Municipal Commissioner and in relation to such Municipal Area which comes within the limit of any Municipal Council or Nagar Panchayat, the Collector, Sub-Divisional Officer (Revenue)

Thus, it is submitted that Collector, is competent to exercise its

power under Chapter XII-A of Municipalities Act. It is further submitted that the petitioner has not claimed that he had not sold even a single plot. On the contrary, the S.D.O. has provided the details of the land sold by petitioners. Even the petitioner has admitted this fact in his reply filed before the Collector. The petitioner is involved in illegal colonization without having any colonizer license and without any approved map from Town and Country Planning Department and is also not having any permission for development of Colony. Public Facilities, amenities and basic infrastructure have not been provided. Further, the Municipal Council has been superseded and the Collectors have been appointed as Administrators for the purpose of exercise of duties and powers of the Council. It is further submitted that under Rule 12 and 15-C of Rules, 1998, the Collector can issue necessary directions.

7. In reply, it is submitted by the Counsel for the petitioner, that Rule 12 of Rules, 1998 applies to registered Colonizers only and not to Colonizers having no registration.

8. Heard the learned Counsel for the parties.

9. The Counsel for the petitioner has not disputed the fact that the Municipal Council has been superseded and the Collector, Guna has been appointed as an Administrator. Thus, it is clear that the Collector, Guna can exercise the powers of Council. However, it is

observed that in order to remove any doubt, the Collector, Guna, while exercising its powers under M.P. Municipalities Act, should have mentioned his designation as Administrator, Municipal Council, Guna and not as Collector/District Magistrate, Guna. Be that as it may.

10. Section 328 of M.P. Municipalities Act provides for dissolution of Municipal Council. Section 328(3)(b) of Municipalities Act deals with powers of an Administrator, which says that all powers and duties of the Council, the President-in-Council, Appeal Committee,Advisory Committee and President under this Act may, until the Council is reconstituted, be exercised and performed by such person as may be appointed as Administrator by the State Government in this behalf. Thus, as the Collector, Guna has been appointed at Administrator, therefore, in the said capacity, he can exercise the powers of Council.

11. Even otherwise, Rule 12 and 15 of Rules, 1998 provides for “Competent Authority” which means “Collector”. Thus, it is held that the impugned order dated 10-2-2021 is within the competence of Collector/Administrator and therefore, it cannot be said that it has been issued by transgressing the jurisdiction.

12. By referring to Section 313 of Municipalities Act, the Counsel for the petitioner submitted that the Council, the Chief Municipal

Officer or any other officer authorised by the Council in this behalf in the case of Municipal Council and the Council or any other officer authorised by the Council in this behalf in the case of other classes of Municipality may direct prosecution for any offence under this Act or under any rule bye-law made thereunder. However, as per Proviso (i) to Section 313(1)(iii), the prosecution shall be instituted within 12 months next after the date of commission of such offence. In the present case, a notice dated 6-7-1996 was issued to the petitioner in respect of development of colony, therefore, it is clear that the Municipality was already aware of the development of colony by the Petitioner, therefore, the prosecution should have been launched within 12 months from 6-7-1996 and having failed to do so, the Collector, Guna has committed mistake by directing prosecution of the petitioner.

13. Considered the submissions made by the Counsel for the petitioner.

14. Notice dated 6-7-1996 merely provides that if the petitioner is intending to develop a colony, then he may do so after obtaining due license by making an application in this regard. In this notice, it is no where mentioned that the petitioner has committed any act, which invites his prosecution under Section 339-C of Municipalities Act. It merely informs the petitioner, that he must obtain a license if he is

intending to develop a colony. Thus, it cannot be said that the period of 12 months had already started to run from 6-7-1996. Further, no period of limitation applies to the impugned order. The period of limitation is a mixed question of fact and law, and it would come into picture only when the prosecution is launched. As no complaint has been filed so far, therefore, the question of limitation has not come into picture so far.

15. It is next contended by the Counsel for the petitioner, that as per the provisions of Section 339-C of Municipalities Act, it is for the Court to assess the compensation amount, and by directing the C.M.O. to assess the value of incomplete development work as well as to forward the said estimate to Tahsildar Guna, who shall recover the said amount by issuing RRC against the petitioner, the Collector Guna has exceeded his jurisdiction.

16. In reply it is submitted by the Counsel for the respondents no. 3 & 5 that under Rule 15-C of Rules, 1998, the Collector / Competent Authority has jurisdiction to recover the amount.

17. Considered the submissions made by the Counsel for the parties.

18. Rule 15-C of Rules, 1998 reads as under :

> **15-C. Action be taken against the person for construction of illegal colony –** Action for punishment shall be taken in accordance with the law against the person

> for construction of illegal colony and action for recovery of the amount which is to be recovered from such person shall also be taken by the competent authority.

19. From the plain reading of Rule 15-C of Rules, 1998, it is clear that it merely speaks about recovery of amount and doesnot provide for assessment of cost of incomplete development work. There is a difference between "Levy" and "Recovery". The Supreme Court in the case of **Somaiya Organics (India) Ltd. And another Vs. State of U.P. And another** reported in **(2001) 5 SCC 519** has held as under:

> 29..... "Levy" would mean the assessment or charging or imposing tax, "collect" in Article 265 would mean the physical realisation of the tax which is levied or imposed. Collector of tax is normally a stage subsequent to the levy of the same. The enforcement of levy could only mean realisation of the tax imposed or demanded.....

20. "Levy" or "Assessment" are quite different from "Recovery". "Levy" or "Assessment" requires adjudication of rights or liabilities, whereas "Recovery" doesnot require adjudication of any right or liability. "Recovery" is an execution of decree or order. Rule 15-C of Rules, 1998 doesnot speak about adjudication or Assessment or Levy but it merely speaks about Recovery. Therefore, in the considered opinion of this Court, the Administrator/Council/CMO/Competent Authority cannot make assessment of cost of unfinished development work under Rule 15-C of Rules, 1998. Hence, the submission made

by the Counsel for the respondents no. 3 & 5 in this regard is misconceived. However, before rejecting the submissions of the Counsel for the respondents no. 3 & 5, it would be appropriate to find out as to whether there is any other provision of law, which permits the Council to assess the valuation of unfinished internal development work or not?

21. It is contended by Shri Dwivedi, Counsel for respondents no. 3 & 5 that the Competent Authority can make assessment under Rule 12 of Rules 1998. The said submission of Counsel for respondents No. 3 & 5 is refuted by the Counsel for the Petitioner by submitting that Rule 12 of Rules 1998 is applicable to "Registered Colonizers" only and not to those "Colonizers" who have constructed the Colony in an illegal manner.

22. Considered the submissions made by the Counsel for the parties.

23. Rule 12 of Rules 1998 reads as under :

> **12. Permission for the development works of the colony.**- On receipt of the application under Rule 8, subject to the provisions mentioned in Rules 9, 10 and 11, after fulfilment of the following conditions, the permission for the development of the colony in Form-Five shall be given by the Competent Authority,-
>
> (i) In order to ensure complete internal development in a colony, out of the plots or houses or flats, as the case may be, to be developed by the colonizer, leaving the plots or houses or flats reserved for the economically

weaker sections and the lower income group, the plots or houses or flats in the following proportion shall have to be mortgaged by the colonizer with concerned Municipality -

(a) in case of plotted development such number of plots, cost of which under the prevailing collector guideline rates for that area for plotted development, excluding the cost of construction on such plots if any, is equal to one hundred and twenty five percent of the cost of internal development.

(b) in case of group housing such number of flats, cost of which under the prevailing collector guidelines rates for that area for group housing is equal to one hundred and twenty five percent of the cost of internal development.

(ii) The Competent Authority shall publish a notice for information of the general public regarding the number, location and direction of plots or houses or flats, as the case may be, which have been mortgaged. A copy of such notice shall also be sent to the Sub Registrar.

(iii) Colonizer may be allowed to construct a building on the mortgaged plots and such mortgaged plot/house of colonizer shall be released in following ratio of executed construction and internal development:-

(a) On 50% completion of work (as per Rera certification) – 33% plot/house;

(b) On 75% completion of work (as per Rera certification) – 33% plot/house;

(c) On 100% completion of work (after completion certificate is issued) – 34% plot/house.

(iv) A colonizer may opt for submitting bank guarantee of an amount equivalent to one hundred and twenty five per cent of the cost of internal development calculated under rule 7A,

in favor of the municipality, in lieu of mortgaging the plots under clause (i). The bank guarantee so submitted by the colonizer should be valid till six months after expiry of the period approved by the competent authority for development of such colony.

(v) In case the colonizer has not carried out internal development of the colony within the approved period, the Competent Authority shall proceed forthwith to forfeit the mortgaged plots or the bank guarantee as the case may be. In such case the Competent Authority shall immediately make assessment of the internal development carried out by the colonizer, if any, and shall calculate the amount that would be required to complete internal development in such colony. An amount at the rate of one hundred and twenty five percent of such cost shall be recovered from open auction of the mortgaged plots or by realizing the bank guarantee. Thereafter the Competent Authority shall carry out the internal development in the colony.

(vi) The Colonizer shall have to deposit an amount equal to two percent of the cost to be incurred on the internal development of the colony, estimated under rule 7A, as supervision fee in the treasury of the concerned Municipality.

(vii) The coloniser shall have to comply with the criteria prescribed by the municipality in respect of the handing over of the colony to the municipality for maintenance.

(viii) After completion of the development work of the colony, information of completion of development work will be given to the competent authority in Form-Five-A. The competent authority within a period of 15 days after receipt of information, get inspected the development work of the respective colony by the competent technical officer and in case development work is found complete, the work

completion certificate will be issued in Form-Five-B. On the date of the issue of the completion certificate the concerned colony shall be deemed to have been transferred to the resident welfare committee (RWA) for maintenance.

(ix) On the basis of the total area of the colony, the amount at the rate of Rupees fifty per square metre for external development cost, shall be deposited by the coloniser in the treasury of the municipality in cash or by Bank Draft. The State Government may revise this rate from time to time:

[Provided that if the coloniser himself completes the external development of the colony as per the prescribed specification then it shall not be necessary to deposit the said amount by the coloniser:

Provided further that in the planning area declared by the Director of Town and Country Planning which is adjacent to the Municipal Limits, the coloniser shall have to undertake external development works as per the prescribed norms, in such cases the concerned coloniser shall not be required to deposit the amount prescribed for the external development.]

[(x)] The municipality shall complete the development works within a period of one year from the date of deposit of the amount under clause (v) and shall inform the coloniser accordingly,

[(xi)] The coloniser shall have to manage the minimum necessary facilities such as drinking water, shelter, toilets etc. for the laborers engaged in the development and construction work of colony and permission for development of colony shall only be given after making such arrangement.

[(xii)] The amount deposited for external development under clause (v) shall be kept in a

> separate Bank Account by the Competent Authority. The withdrawal from this account shall only be made for the purpose of external development works of that colony, through joint signature of the Competent Authority and Collector or a subordinate officer authorised by him for this purpose.]
>
> [**12-A. Permission for building construction in any colony**.- The permission for building construction in any colony may be granted after the permission for development in such colony has been given. However, building permission in a colony where plots are sold by the colonizer, under, plotted development, shall only be given when the Competent Authority is satisfied that internal development in the colony has been completed as per prescribed norms.]

24. It is true that any person who is intending to develop a colony has to obtain a license under Rules, 1998 and the permission can be granted subject to the terms and conditions mentioned in Rules, 1998, but the pivotal question for consideration is that whether the word “Colonizer” used in Rule 12 of Rules, 1998 is confined to “Colonizers having permission to develop colony” or would also include any “Colonizer” who has developed colony without getting himself registered and without having obtained permission under Rules, 1998?

25. In Rule 12(v), the word “Colonizer” has been used and not the word “Registered Colonizer”.

26. The provisions for Development of Colony is a provision beneficial for the residents of the Colony developed by a Colonizer,

so that they may get all facilities and amenities. The object is to regularize indiscreet colonization to ensure sustained urbanization. Chapter XII-A of Municipalities Act and Rules framed there under, are for providing facilities and amenities to the purchasers and have not been made solely with an intention to punish the Colonizers. Only when a colonizer fails in providing basic amenities and facilities to the occupants of plots/houses/flats developed by the Colonizer, then coercive action can be taken against the Colonizer. Further, As per Section 339-E and 339-F of Municipalities Act, the Competent Authority can also take over the Management of the land of illegal colonization and the right, title and interest of the colonizer in the land under illegal colonization shall stand forfeited and shall vest in the Council free from all encumbrances. Further “Internal Development Work” has been defined in Rule 2(i) of Rules, 1998 which reads as under :

> “(I) "Internal Development Work" means the following development works to be done within the limits of the colony under the prescribed standards:-
>
> (one) Levelling;
>
> (two) Demarcation of the proposed roads and plots sanctioned in the layout;
>
> (three) Construction of proposed bitumineous/cement concrete road (as per P.W.D. Standards);
>
> (four) If in the land of the colony, the road exists at present, in that case the construction

> or widening of the road on the basis of sanctioned layout (as per IRC standards);
>
> (five) Construction of culverts (as per IRC standards);
>
> (six) Construction of proposed drain, if existing them the cabalisation of existing drain (as per PHE standards);
>
> (seven) Implementation of internal water supply system (as per PHE standards);
>
> (eight) Construction of Internal sewage line / sewerage treatment plant (as per P.H.E.D. standards);
>
> (nine) Construction of septic tank (if proposed) (as per PHE standards);
>
> (ten) Fixation of electric polls under the internal electricity system (as per the standards prescribed by the MPEB);
>
> (eleven) Construction of overhead tank/sump well/pressure pump;
>
> (twelve) As per rule 47 (two) of the Madhya Pradesh Bhumi Vikas Niyam, 2012, the Development of proposed open area in the colony, in which infrastructure related service shall not be acceptable;
>
> (xiii) Plantation on road side;"

From the plain reading of definition of "Internal Development Work" it is clear that every colonizer has to provide the facilities and amenities mentioned therein.

Section 339-C of the Municipalities Act reads as under :

> 339-C. Punishment for illegal colonization.--- (1) A colonizer who, in contravention of the provisions of Section 172 of Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) and the rules made thereunder, diverts the land or part thereof, commits an offence of illegal diversion of land.

> (2) A colonizer who diverts his lands into plots or the land of any other person with the object of establishing a colony in branch of the requirements contemplated in this Act or the rules made in this behalf, commits an offence of illegal colonization.
> (3) Whoever commits or abets the commission of an offence of illegal diversion or illegal colonization shall be punished with imprisonment of not less than three years and not more than seven years or with minimum fine of ten thousand rupees or with both. Such offence shall be a cognizable offence.
> (4) Whoever constructs a building in an area of illegal diversion or illegal colonization commits an offence of illegal construction.
> (5) Whoever commits an offence of illegal construction shall be punished with imprisonment of not less than three years and not more than seven years or with minimum fine of ten thousand rupees or with both. Such offence shall be a cognizable offence.

27. From the plain reading of Section 339-C(3) of Municipalities Act, it is clear that apart from imposing the jail sentence of not less than three years and not more than 7 years with a minimum fine of ten thousand rupees, the Court, while passing the judgment in respect of any such offence, may order the accused to pay to the Council, such amount of **compensation** as specified in the judgment, after taking into consideration the amount required to be incurred towards the development of such illegal colony, and such offence shall be a cognizable offence. Thus, it is clear that the Court while passing a judgment of conviction may also award **compensation** to the Council. A guideline has been provided under Section 339-C(3) of Municipalities Act, that while assessing the **compensation,** the Court

can take into consideration the amount required to be incurred towards development of such illegal colony, and the **compensation** so awarded under Section 339-C of Municipalities Act, can be also recovered by exercising power under Rule 15-C of Rules, 1998.

28. If the contention of the Counsel for the petitioner, that unless and until **compensation** is adjudicated by the Court, the Municipal Council cannot assess the value of unfinished work is accepted, then it would mean, that unless and until the liability of the Colonizer is finally adjudicated by the Court, the residents of the locality will be deprived of the minimum facilities and amenities as defined in Rule 2(i) of the Rules.

29. In Black's Law Dictionary, “Compensation” has been defined as Money given to compensate loss or injury. The Supreme Court in the case of **Executive Engineer, Dhankanal Minor Irrigation Division, Orissa v. N.C. Budhiraj,** reported in **(1999) 9 SCC 514** has held as under :

> 8.....Mr Anil Divan, the learned Senior Counsel could not dispute that in *Jena case* the claim for award of interest for the pre-reference period under the Interest Act, 1839 has been rejected. He, however, strongly relied upon the observations/findings recorded by the Constitution Bench in *G.C. Roy case* in para 43, which read as under: (SCC pp. 532-33)
>
> > “*43*. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not

> provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:
>
> (*i*) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages.....

Thus, **compensation** is something which is awarded to a person, or institution in recognition of loss, injury, suffering etc. Section 339-C of Municipalities Act, doesnot provide for award of **compensation** to the occupants of the Colony. They are only entitled for facilities and amenities and in case the Colonizer fails to provide the same, then it can be done by the Municipality.

30. Thus, it is held that assessment of Compensation payable to the Municipal Council under Section 339-C of Municipalities Act, would not curtail the powers of the Municipal Council to develop the under-developed colony left by the Colonizer.

31. Rule 12 of Rules, 1998, empowers the Municipal Council to recover the amount required to complete internal development in such colony and can be recovered from open auction of the mortgaged plots or by realizing the bank guarantee. Rule 12(i) requires that on receipt of application under Rule 8 of the Rules, 1998, the Colonizer is required to mortgage the plots or houses or flats in the proportion mentioned in Rule 12(i)(a) and (b) of Rules,

1998. It is true that Rule 12(v) of Rules, provides mode of recovery of cost of unfinished internal development work from the Colonizer after auctioning the mortgaged plots/houses/flats, but keeping in mind, the purpose of such provision, if Rule 12 of Rules, 1998 is confined to “Registered Colonizer”, then it would lead to absurdity i.e., if any work is left unfinished by a “Registered Owner” then the amount of unfinished work can be recovered from 'Registered Owner” and if an illegal colony is developed by a person without getting a license under Rules, 1998, then the Municipal Council will have to develop the colony on its own expenses which shall be later on compensated by the Court after adjudicating the guilt of the Colonizer. It is well established principle of law that any interpretation which leads to absurdity should be avoided.

32. The Supreme Court in the case of **Eera Vs.State (NCT of Delhi)** reported in **(2017) 15 SCC 131** has held as under :

> 64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to

obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the "colour", "content" and the "context of statutes" and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

However, it has also been observed as under :

65. I have perceived the approach in *Hindustan Lever Ltd.* and *Deepak Mahajan*, *Pratap Singh* and many others. I have also analysed where the Court has declined to follow the said approach as in *R.M.D. Chamarbaugwalla* and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the statute. If the meaning is intelligible, the said principle has

> no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires.

33. The Supreme Court in the case of **Abhay Singh Chautala v. CBI,** reported in **(2011) 7 SCC 141** has held as under :

> **44.** It was also urged that a literal interpretation is a must, particularly, to sub-section (1) of Section 19. That argument also must fall as sub-section (1) of Section 19 has to be read with in tune with and in light of clauses (*a*), (*b*) and (*c*) thereof. We, therefore, reject the theory of litera regis while interpreting Section 19(1). On the same lines, we reject the argument based on the word "is" in clauses (*a*), (*b*) and (*c*). It is true that the section operates in praesenti; however, the section contemplates a person who continues to be a public servant on the date of taking cognizance. However, as per the interpretation, it excludes a person who has abused some other office than the one which he is holding on the date of taking cognizance, by necessary implication. Once that is clear, the necessity of the literal interpretation would not be there in the present case. Therefore, while we agree with the principles laid down in *Robert Wigram Crawford* v. *Richard Spooner*, *Bidie, In re, Bidie* v. *General Accident Fire and Life Assurance Corpn. Ltd.* and *Bourne (Inspector of Taxes)* v. *Norwich Crematorium Ltd.*, we specifically hold that giving the literal interpretation to the section would lead to absurdity and some unwanted results, as had already been pointed out in *Antulay case* (see the emphasis supplied to para 24 of *Antulay judgment*).

34. Rule 12 of Rules, 1998 is neither a taxing provision nor a penal provision. Therefore, the principle of Strict Interpretation of Law would not apply. The Supreme Court in the case of **Commr. of Customs v. Dilip Kumar & Co.,** reported in **(2018) 9 SCC 1** has held as under :

> **23.** In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to

> the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.
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> **24.** In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.

35. The Supreme Court in the case of **Dhenkanal Minor Irrigation Division v. N.C. Budharaj,** reported in **(2001) 2 SCC 721** has held as under :

> 23.....In our view, any such restricted and literal construction which is bound to create numerous anomalies and ultimately defeat the ends of justice should be scrupulously avoided. On the other hand, that interpretation which makes the text not only match the context but also make a reading of the provisions of an Act, just, meaningful and purposeful and help to further and advance the ends of justice must alone commend for the acceptance of courts of law. Adopting a different construction to deny a claimant

> who opts for adjudication of disputes by arbitral process alone and that too when recourse to such process is made without the intervention of court would amount to applying different and discriminatory norms and standards to situations which admit of no such difference and that too where there is no real distinction based upon any acceptable or tangible reason.

36. Further, interpretation of law, which puts wrongdoer in a more advantageous position, should be avoided. The Supreme Court in the case of **Corporation Bank v. Saraswati Abharansala,** reported in **(2009) 1 SCC 540** has held as under :

> **24.** The statute furthermore, it is trite, should be read in a manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those who have deposited the amount in time would be put to a disadvantageous position and those who were defaulters would be better placed, the same would give rise to an absurdity. Construction of the statute which leads to confusion must be avoided.

37. It is well established principle of law that while interpreting a provision of law, the Court must give purposive interpretation and any interpretation which leads to absurdity should be avoided. The Supreme Court in the case of **New India Assurance Co. Ltd. Vs. Nusli Nveille Wadia** reported in **(2008) 3 SCC 279** has held as under:

> 51.....For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or

> absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in *Ashoka Marketing Ltd.*
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> **54.** The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to. (See *Oriental Insurance Co. Ltd.* v. *Brij Mohan*.)

38. The Supreme Court in the case of **Commr. of Customs v. Dilip Kumar & Co.,** reported in **(2018) 9 SCC 1,** has held as under :

> **20.** It is well accepted that a statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In this connection, the following observations made by this Court in *District Mining Officer* v. *TISCO*, may be noticed: (SCC pp. 382-83, para 18)
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> > "*18*. … A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an

> imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.

22. In *Kanai Lal Sur* v. *Paramnidhi Sadhukhan*, it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and

policy of the Act.

> **23.** In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation.

39. It is also a well established principle of law that while interpreting any provision of law, the Court can supply the lacuna to achieve the object of law. The Supreme Court in the case of **K.B. Nagur Vs. Union of India** reported in **(2012) 4 SCC 483** has held as under :

> 40.....The courts can always supply such lacuna in the interpretation of provisions of a law so as to achieve the object of the Act particularly when such interpretation would be in consonance with the legislative object of the statute.

40. Thus, if the provisions of Rule 12 of Rules 1998 is considered in the light of provisions of Section 339-A(a) of Municipalities Act, it is clear that any Colonizer who intends to undertake the establishment of a Colony or Colonies for the purpose of dividing the land into plots, with or without developing the area, transfers or agrees to transfer gradually or at a time, to persons desirous of settling down on those plots by constructing residential or non-

residential or composite accommodation, will have to obtain registration under Rules, 1998. If it is held that Rule 12 of Rules 1998 would be applicable to only Registered Colonizers who were working after obtaining due permission and not to all other Colonizers who have acted in complete disregard to the provisions of law, by not obtaining Registration under the Rules, then such interpretation would put the wrongdoer in a more advantageous position in comparison to those who had obtained registration certificate after reserving some of the Plots/houses/flats for weaker section of society as well as by mortgaging some of plots/houses/flats with Municipal Council. Such an interpretation would run contrary to the law laid down by the Supreme Court in the case of **Saraswati Abharansala (Supra).**

41. Thus, it can be held that Rule 12(v) of Rules, 1998 authorizes the Council to make assessment of the internal development carried out by any colonizer, whether registered or not and can calculate the amount that would be required to complete internal development in such colony and the Municipal Council may recover the amount required to complete internal development by auctioning the mortgaged Plots/houses/flats and no civil suit for the said purpose would be required. However, after giving purposive interpretation to Rule 12(v) of Rules, 1998, it is held that the mode of recovery of

amount by public auction of mortgaged plots/houses/flats is only one mode of recovery, and doesnot debar the Municipal Council to adopt any other legally permissible mode like Rule 15-C of Rules, 1998. Thus, it is held that after calculating the amount that would be required to carry out Internal Development Work, the said amount can be recovered by taking recourse to Rule 15-C of Rules, 1998.

42. However, power under Rule 12 (v) of Rules, 1998 is subject to principle of Natural Justice. Therefore, before proceeding further under Rule 12(v) of Rules, 1998, the Competent Authority has to give full opportunity of hearing to the Colonizer, as well as persons intending to (Who have already entered into an agreement to purchase with the Colonizer) or have settled down on those plots/houses/flats. An *ex parte* assessment of amount of unfinished work cannot be done. Therefore, it is held that the direction given by the Collector, Guna to C.M.O., Guna to assess the unfinished development work is subject to the principle of Natural Justice. Therefore, it is directed that the C.M.O., Guna shall assess the amount of unfinished work after giving opportunity of hearing to the Colonizer as well as to the persons who have already settled down or are intending to settle down on the plots/houses/flats. After the assessment is completed the said amount shall be deposited by the Colonizer and in case if he fails to do so then the same can be

recovered in a manner as directed by the Competent Authority/Administrator in the impugned order.

43. An apprehension was also expressed by the Counsel for some of the petitioners in the connected petitions that since, the Collector, Guna has already given a finding that the petitioner(s) has/have developed an illegal colony, therefore, such finding would prejudice the case of the petitioners before the Court of competent jurisdiction.

44. Considered the submissions made by the Counsel for the petitioners. So far as the findings given by the Collector, Guna in the impugned order is concerned, they are preliminary findings for the purposes of prosecution of the petitioners. The said findings will not have any binding effect on the Court, nor they will influence the Court in any manner. The petitioner(s) shall be well within their right to plead and prove before the Court of competent jurisdiction that they had developed the Colony after obtaining due permission under the Rules, 1998 after following all mandatory requirements as provided under Rules, 1998. The Petitioner(s) shall also place the details of all the sale deeds or agreement(s) to sell entered into with the persons who were intending to or have settled down on the plots/houses/flats. The Municipal Council may also produce the record of the Registrar/Sub-Registrar to prove the sale transactions or agreements to sell. The Court shall decide the case on the basis of the

evidence which would come on record, without getting influenced or prejudiced by any of the preliminary findings recorded by Collector, Guna/Administrator.

45. The Counsel for some of the petitioners have submitted that an order of assessment has already been issued.

46. Accordingly, it is directed that in case the order of assessment has been issued without giving any opportunity of hearing to the petitioner(s), then those assessment order(s) shall not be given effect to, and the respondents shall pass fresh assessment orders after giving full opportunity to the Colonizer, as well as the purchasers. If the assessment orders have been passed after giving due opportunity of hearing or even in those cases, where the colonizers did not avail the opportunity of hearing inspite of service of notice, then those petitioners shall have a right to challenge the assessment order before the competent forum.

47. With aforesaid observations, all the writ petitions are **Dismissed.**

48. Interim orders, if any, are hereby **Vacated.**

(G.S. Ahluwalia)
Judge