

Judgment reserved on 04.7.2011  
Judgment delivered on 30.8.2011

- (1) **CIVIL MISC. WRIT PETITION NO.254 OF 2009**  
M/s Ansal Properties & Infrastructure Ltd. vs. State of UP & ors  
Connected with
- (2) **CIVIL MISC. WRIT PETITION NO.59514 OF 2009**  
Crossing Infrastructure Pvt. Ltd & anr vs. State of UP & ors
- (3) **CIVIL MISC. WRIT PETITION NO.39389 OF 2009**  
Anil Kumar Tyagi vs. State of UP & ors
- (4) **CIVIL MISC. WRIT PETITION NO.64043 OF 2009**  
Ash Mohammad vs. State of UP & ors
- (5) **CIVIL MISC. WRIT PETITION NO.64347 OF 2009**  
Suresh Kumar Sharma vs. State of UP & ors
- (6) **CIVIL MISC. WRIT PETITION NO.64348 OF 2009**  
Vijay Singh vs. State of UP & ors
- (7) **CIVIL MISC. WRIT PETITION NO.68558 OF 2009**  
Gaurav Garg & ors vs. State of UP & ors
- (8) **CIVIL MISC. WRIT PETITION NO.1836 OF 2011**  
Ram Bhul and others vs. State of UP & ors

**Hon'ble Sunil Ambwani, J.**

**Hon'ble Kashi Nath Pandey, J.**

1. We have heard Shri S.M.A. Kazmi, Senior Advocate assisted by Ms. Tahira Kazmi; Shri Navin Sinha, Senior Advocate assisted by Shri Nisheeth Yadav and Shri D.K. Tiwari; Shri D.S. Pandey; Shri Shiv Prakash Misra and Shri Suneel Rai for the petitioners. Shri Jafar Naiyer, Additional Advocate General assisted by Shri M.C. Tripathi,

Additional Chief Standing Counsel appears for the State respondents. Shri Prem Chand appears for Nagar Nigam, Ghaziabad. Shri V.B. Misra appears for Ghaziabad Development Authority.

2.(A) In **Writ Petition No. 254 of 2009**, (M/s Ansal Properties & Infrastructure Ltd. Kaushambi, Ghaziabad through its Authorized Signatory Shri Pankaj Tiwari vs. State of UP and others), the petitioner has prayed for setting aside the order dated 12.12.2008 passed by the Special Secretary, Government of UP, communicating the decision of the State Government to the Vice Chairman, Ghaziabad Development Authority, Ghaziabad in response to his letter dated 4.9.2008 to construct Solid Waste Management Plant (SWMP) on the 14 acre land in village Dundahera, Pargana Loni, District Ghaziabad; directing him to invite objections under subsection (3) of Section 13 of U.P. Urban Planning and Development Act, 1973 to advertise for holding public hearing for change of the land use of the selected site in village Dundahera for construction from 'residential', to 'Solid Waste Management (Dumping) Yard,' and to forward the proposal after disposing of the objections and suggestions to the Government. The petitioner has also prayed for a writ of mandamus not to give effect to the order dated 12.12.2008, and to restrain the respondents to proceed with the construction of SWMP.

2. (B) In **Writ Petition No. 59514 of 2009** (Crossings Infrastructure Private Limited and another vs. State of UP and others), the petitioner, a private company as a Lead Party of Consortium of various real estate developers and a private developer in category "A" with Ghaziabad Development Authority under a licence for developing Integrated Township at villages Dundahera, Akbarpur Behrampur, Tehsil and District Ghaziabad, has prayed for a direction to quash the notification dated 21.10.2009 issued by the Principal

Secretary, Department of Housing and Urban Planning, Government of Uttar Pradesh, changing the user of 14 acres land in village Dundahera, District Ghaziabad from residential to Dumping Yard (Solid Waste Management) by amending the Ghaziabad Master Plan-2021. They have also prayed commanding the respondents not to change the user of the land in village Dundahera, Ghaziabad and not to construct/set up any kind of dumping yard next to the petitioner's group housing colony in the village.

2 (C) In **Writ Petition No. 39389 of 2009** (Anil Kumar Tyagi vs. State of UP and others), the petitioner, a private individual claiming to be resident of village Dundahera, District Ghaziabad, has prayed for a writ of certiorari to quash the order dated 12.12.2008 passed by the Special Secretary, State of UP, Lucknow and for a writ of mandamus restraining the respondents from constructing Solid Waste Management Plant i.e. Dumping Yard over the residential land situate at Khasra No. 937, village Dundahera, Ghaziabad.

2.(D) In **Writ Petition No. 64043 of 2009** (Ash Mohammad vs. State of UP and others), the petitioner, claiming to be permanent resident of village Dundahera and looking after the Graveyard/Kabristan situated at Plot Nos. 937 and 953 at village Dundahera, Ghaziabad, where he alleges that the people belonging to Muslim community have been performing last rituals, has prayed for a writ of certiorati quashing the impugned order dated 21.10.2009 passed by respondent no. 1 changing the land use of village Dundahera from residential to Dumping Yard (Solid Waste Management). The petitioner claimed that the plot nos. 397 and 953 are recorded as 'Kabristan' in the revenue record and 'Dargah Sayad Baba Chutko Shah Madersa Va Masjid Waqf Butwaliat Mohd. Ibrahim' is adjacently situated in plot no. 673.

2.(E) In **Writ Petition No. 64347 of 2009** (Suresh Kumar Sharma

vs. State of UP and others) the petitioner, claiming to be allottee of Plot no. 0042 in Block 'C' measuring 251 square meters (approximately 300 square yards) @ Rs. 10,458/- per square meter in "Acquapolis", Ghaziabad in pursuance to an agreement entered into between him and M/s Ansal Landmark Township (Pvt) Limited, has prayed for a writ of certiorari quashing the notification dated 21.10.2009 passed by respondent no. 1, changing the land use of village Dundahera from residential to dumping yard.

2.(F) In **Writ Petition No. 64348 of 2009** (Vijay Singh vs. State of UP and others), the petitioner, claiming to be allottee of plot no. 0015 in Block "B" measuring 342 square meters (approx. 409 square yards) @ Rs. 10, 464/- per square meter in "Acquapolis", Ghaziabad in pursuance to an agreement entered into between him and M/s Ansal Landmark Township (Pvt) Limited, has prayed for a writ of certiorari quashing the notification dated 21.10.2009 passed by respondent no. 1, changing the land use of village Dundahera from residential to dumping yard.

2.(G) In **Writ Petition No. 58558 of 2009** (Gaurav Garg and others vs. State of UP and others), the petitioners, claiming to be buyers of flats being constructed by one 'Paramount Residency Pvt. Ltd at N.H. 24, village Dundahera, Ghaziabad after depositing substantial amount, which has not been disclosed in the writ petition, have prayed for directions to quash the impugned order dated 21.10.2009 passed by respondent no. 1 changing the land use of land at village Dundahera in District Ghaziabad from residential to Dumping Yard (Solid Waste Management) and further not to give effect.

2.(H) In **Writ Petition No. 1836 of 2011** (Ram Bhul and others vs. State of UP and others), the petitioners, tenure holders of land in Gata no. 1327 (area 0.405 hec.); Gata no. 1298, 1297 and 1304 (area 1.013 hec.); Gata no. 1286 (area 1.5190 hec); Gata no. 1278, 1283,

1285, 1307 (area 3.292 hec); Gata No. 1314, 1320 (area 1.17 hec); Gata No. 1278, 1283, 1285, 1307 (area 3.292 hec), village Galand, Tehsil Hapur, District Ghaziabad, have prayed for quashing notification under Section 4 (1) read with Section 17 (1) and (4) dated 9.7.2010 and the notification under Section 6 read with Section 17 (1) of the Land Acquisition Act dated 10.11.2010, acquiring the 34.213 hectares of land for Dumping Yard for solid waste disposal.

3. Brief facts giving rise to this writ petition, and the connected writ petitions are that M/s Ansal Properties & Infrastructure Limited (M/s APIL)-the petitioner in leading Writ Petition No. 254 of 2009 is a private developer in Category "A" in Ghaziabad Development Authority (GDA) for the purposes of Land Assembly Infrastructure Development and Construction Works, for housing schemes within Ghaziabad planning area under the policy on Land Assembly and Infrastructure Development for housing schemes through private investment in urban areas in Uttar Pradesh declared by the State Government on 21.5.2005. M/s Ansal Properties & Infrastructure Limited submitted a Detailed Project Report for construction of the integrated housing scheme, which was approved in the Board's meeting of the GDA dated 15.9.2006. The lay out plan was sanctioned on 18.11.2006. In pursuance thereto a Memorandum of Understanding was prepared and signed between the GDA and M/s Ansal Properties & Infrastructure Limited on 9.5.2007.

4. It is stated that in pursuance to the MOU the company acquired 60% of the land situated in village Dundahera, Pargana Loni, District Ghaziabad from the tenure holders to develop the township in tune with the Master Plan-2021 and came in possession of the land through various sale deeds executed in favour of the company upto 21.5.2005. The assistance was to be provided for 40% of land in the event of such private acquisition for development of integrated

township. The company deposited Rs. 4, 28, 05, 252/- by two demand drafts of Rs. 2, 14, 02, 126/- each, towards acquisition cost on 35.1798 acres of land. The development agreement was entered into between the company and the GDA.

5. It is stated that after the execution of the agreement the company started development work in accordance with the detailed development project report. On 30.11.2007 the Additional District Magistrate (Land Acquisition) Ghaziabad informed the GDA that a sum of Rs. 17, 44, 130/- was further required to be deposited by the company towards difference of the circle rate. The amount was paid by the company on 10.12.2007 in favour of the GDA. A notification under Section 4 of the Land Acquisition Act, 1894 was made by the State Government on 14.6.2008. The plot No. 937 is an area earmarked as a residential area medium density in Master Plan 2021 of GDA prepared on 14.7.2005. In this Master Plan the areas as A-1 to A-10 were marked as dumping grounds. Village Dundahera has been excluded from those 10 areas and that plot No. 937 was not part of the areas earmarked as dumping ground in Master Plan 2021. The State Government, however, intended to construct a Solid Waste Management and Drainage Plant in the village on plot No. 937.

6. A Writ Petition No. 12496 of 2006 was filed by Shri Anil Kumar Tyagi for restraining the respondents to make the dumping yard. The writ petition was disposed of by the Court on 01.3.2006 with a direction that in case the petitioner files a representation, the same may be considered and decided by the State Government, if possible, within three months.

7. The Vice Chairman, GDA considered the representation. The Nagar Nigam submitted in its reply, to the representation that Khasra No. 937 area about 50 bighas in village Dundahera, Tehsil and District Ghaziabad is a 'Banjar land' and is proposed for construction

of SWMP as dumping yard. In a **Writ Petition No.888 of 1996 (Almitra H. Patel vs. State of UP & others)** filed in public interest the Supreme Court had given directions for establishment of Solid Waste Management Sewerage and Drainage Improvement Centre in the areas of Hindan Air Force Station in Ghaziabad City. Under the directions of the Supreme Court, in all the cities of the country, where Air Force Stations are established, 100% financial grants will be provided by the Ministry of Urban Development and Poverty Eradication of the Central Government, for urban waste management and to establish the plants for management of urban waste. The Ghaziabad city was also included in the scheme. The Municipal Solid Waste (Management) Rules 2000 were notified on 24.9.2000 by the Central Forest and Environment Ministry. In pursuance to the directions of the Supreme Court and the notification notifying Municipal Waste (Management) Rules 2000, a plan was prepared by the experts of HUDCO to select a site for disposal of urban waste by scientific means. The preparation of compost plant and land filling is the main part of this scheme. A joint inspection was made by the Deputy Advisor of C.P.H.O. associated with the Ministry of Urban Development and Poverty Eradication of the Central Government along with the experts of HUDCO, representatives of the Hindan Air Force and the Regional Manager of the U.P. Pollution Control Board. They identified the land of about 14 acres in village Dundahera, for construction of SWMP and the land was made available by Nagar Nigam to the UP Jal Nigam on 20.10.2004. A boundary wall was constructed around the land in village Dundahera by the Jal Nigam surrounding Khasra Nos. 030, 941, 937/1, 937/2, 944, 946, 949, 951 and 953.

8. The Nagar Nigam submitted to the Vice Chairman, GDA that any obstruction in the proposed SWMP constructed in pursuance to

the directions issued by the Supreme Court, the Central Government and the Government of UP, will be against public interest. The SWMP is being constructed far away from the residential area. The petitioner has misled the High Court after selling the land to the private colonizers, who want to further sell the land on a very higher rate. The land around the proposed site is being used for agriculture and is recorded in the revenue records as agricultural land. The suggestion, that some land has been kept reserved for the said purpose at Dasna Jail is not correct. It is not within the areas of Nagar Nigam. The Nagar Nigam is authorised to carry out the schemes only within its notified areas.

9. The Vice Chairman, GDA found that the Master Plan 2021 was prepared and was enforced from July, 2005. At the time of preparation of Master Plan, objections were invited from all concerned including the residents and the organisations in which the members of the Nagar Nigam also participated and that their objections were considered and decided. In the Master Plan the proposed land was shown to be as residential. At that time if Nagar Nigam has any objection or that if any project of Nagar Nigam was proposed on the site, it should have raised objection, which was not raised by it. The Master Plan has reserved areas for sewer treatment, water purification and solid waste management. The Nagar Nigam is not authorised to act contrary to the Master Plan. The Supreme Court did not give any such directions in **Almitra H. Patel's** case (supra) to establish SWMP in residential areas whereas in **M.C. Mehta vs. Union of India & others** the Supreme Court has given directions that the constructions should be made strictly in accordance with the Master Plan. The Nagar Nigam was a member of the Master Plan Committee. The Master Plan was prepared in cooperation with the Nagar Nigam and thus now the Nagar Nigam cannot make



constructions contrary to the Master Plan. The land use of the concerned areas is residential. There are 10 areas earmarked in the Master Plan for waste management and that it is not appropriate even on the environmental concerns to have SWMP near residential colonies. The construction of SWMP in village Dundahera should be made only in accordance with the Master Plan.

10. Shri Anil Kumar Tyagi filed a Second Writ Petition No. 57172 of 2006 in the High Court alleging that inspite of the orders of the Vice Chairman, GDA, the construction of boundary wall is being raised by the Nagar Nigam. The High Court, after perusing the order of the Vice Chairman, GDA and the objections raised by the Nagar Nigam stating that it has already spent about Rs. 70 lacs for construction of SWMP, expressed surprise of developing the land against the Master Plan. A direction was issued to the Nagar Nigam to stop the constructions forthwith and not to establish any dumping yard on the land in question. The High Court, however, made it open to the Nagar Nigam to approach the Vice Chairman, GDA to consider its contention to review its decision, in case it has committed any mistake. The directions issued by the High Court are quoted as below:-

“We hereby order the Nagar Nigam/Respondent no. 3 to stop forthwith the constructions in any manner and from establishing any dumping yard on the land in question and in the meanwhile, we direct the Nagar Nigam to approach the Vice Chairman, Ghaziabad Development Authority to consider its contention sought to be raised before this Court and the said Authority exercising its inherent power may review its decision in case it has committed any mistake because of misrepresentation or ignorance of relevant facts. Otherwise, we find no justification for the act of the Nagar Nigam regarding establishment of dumping yard in a residential area so long as the order of Vice Chairman dated 27.5.2006 exists on record. If the Nagar Nigam felt aggrieved, it should have challenged the order before the appropriate authority.

In view of above, a writ of mandamus is issued to the

Nagar Nigam/Respondent no. 3 not to undertake any construction work of dumping yard as directed by the Vice Chairman, Ghaziabad Development Authority vide order dated 27.5.2006. This order is subject to any order which may be passed in future by the Ghaziabad Development Authority or by the State Government at the instance of the Nagar Nigam after hearing the concerned aggrieved parties.

Mr. Prem Chand Advocate, at this stage, also states that Nagar Nigam has already approached the Ghaziabad Development Authority by filing a petition to review its order dated 27.5.2006. If that be so, let the same be decided expeditiously preferably within six weeks of receipt of a certified copy of this order after hearing the concerned parties.

The writ petition stands finally disposed of subject to above observations/directions.

No order as to costs.

Dated: 1.11.2006

Sd/- A.K. Yog, J.

Sd/- R.K. Rastogi, J.”

11. In pursuance to the above order dated 1.11.2006 passed by the High Court, the Vice Chairman, GDA once again considered the matter for review of his earlier decision dated 27.5.2006. He rejected the review application on 20.11.2007 on the ground that M/s Ansal Properties and Infrastructure Limited Consortium, developing the integrated township on the site, had in pursuance to the policy of the State Government, applied for developing the township. After considering their competence and capacity the licence was given to them to develop the land. According to the policy of the State Government the licensee had acquired 60% of the land directly from the farmers and had deposited the necessary amount for the acquisition of the remaining land. The Ghaziabad Development Authority had sent a proposal for acquisition of the remaining land to the State Government. The developers have requested that in pursuance to the decision taken in the meeting of GDA on 13.9.2006, the scheme for township was accepted including this 14 acres of land of Nagar Nigam. The scheme was approved with the consent of the

Municipal Commissioner. When the Master Plan 2021 was approved on 14.7.2005, the Municipal Commissioner was present for giving final approval. The Master Plan also bears the signatures of the Municipal Commissioner. The developer was given permission to start the development work on 14.7.2005 and thus it is clear that the builder/developer has completed all the conditions and directions of the State Government in accordance with the Master Plan. The developer also informed that after the DPR is accepted, it was open to the developer to make the plots/houses. According to the ratio of the development of land this 14 acre land was included and has been given final shape. **The licensee builder has sold the land, after which third party interest has accrued on this 14 acres of land.** Since the developer is not at fault but still it is ready in the circumstances of the case to bear the cost of the construction of the boundary wall by the Nagar Nigam.

12. The Vice Chairman, G.D.A. further observed that the developer has also informed that the cost of the land of the Gaon Sabha and the rate, on which the land is to be purchased, has been settled by the Commissioner, Meerut Division in respect of a part of this land for another builder, and thus the licensee company can deposit the amount at the same rate on which the GDA can acquire this land, in accordance with the land use proposed in Master Plan 2021. Taking into account the third party interest and the objections taken by the general public, it will be illegal and difficult to establish SWMP on this place. It is thus necessary in the interest of the scheme that the licensee builder be allowed to complete the integrity township. It was further observed that the SWMP will require at least 42 acres of land, whereas only 14 acres of land is available on the spot and that the Nagar Nigam should look some alternate plot for establishing the SWMP.

13. The Vice Chairman, GDA has stated in the order that he is not agreeable to the objections that the Nagar Nigam was not heard while passing the order dated 27.5.2006. In the objections of the Nagar Nigam the orders of the Supreme Court and preparation of the SWMP was narrated in detail. The objections of Nagar Nigam, that the construction of SWMP was started from the grants received by the Central Government w.e.f. 14.7.2005 and that 1% interest has to be paid, if the amount is to be returned, and further that under the Master Plan 2021 the site was not reserved for residential use and was agricultural area prior to 14.7.2005, was not denied. The Commissioner was of the view that at the same time when the land was selected for SWMP and in the original documents of the Master Plan 2021 the site was selected for SWMP, the Nagar Nigam had not made any objections on the protests made by the local Member of Parliament and other public representatives that the Solid Waste Scheme should be taken out of the residential area. In the meeting of the Board, the representatives of Nagar Nigam and the members of the GDA were present. No one took objections, nor it can be said now that they had no knowledge of the change of land use. The Nagar Nigam has also not made any reference for change of land use to the GDA/State Government. It is not proper for any government agency to do any work contrary to the Master Plan after its approval. Further the scheme for construction of SWMP will require 42 acres of land, whereas only 14 acre is available on the spot. The neighbouring area is in the boundaries of Greater NOIDA. The land use of adjoining area is not reserved for SWMP. Contrary to this in Dasna village there is more than 42 acres of land in the Master Plan 2021, the land use of which is appropriate for establishment of this plant. The High Court has also not made any comments on the construction of SWMP against the land use of any site. The

developer has proposed that he is ready to bear the entire cost of the construction of boundary wall and acquisition of land at village Dasna and that emergency clause can be applied in view of the directions of the Central Government for acquisition of the land. A proposal has also been forwarded in this regard to the District Magistrate, Ghaziabad. In the end the Vice Chairman observed that since the construction is not going to be completed before 31.3.2008 and that the remaining 33 acres of land in village Chipiyana of neighbouring district Gautam Budh Nagar is still to be given to the Nagar Nigam, there is no reason to amend the previous order.

14. By the order dated 12.12.2008 under challenge in these writ petitions the State Government has taken a decision, in response to the letter of the GDA dated 4.9.2008, to construct SWMP on the same 14 acres of land in village Dundaheda in District Ghaziabad and consequently the GDA has been directed to invite objections and suggestions for change of land use of the selected site from residential to SWMP under Sub-section (3) of Section 13 of UP Urban Planning and Development Act, 1973.

15. M/s APIL has filed amendment applications dated 9.1.2009, 16.2.2009, 25.2.2009 and 26.10.2009. It has also filed application dated 18.1.2010 for direction to respondents to maintain status quo on the spot and to restrain them from making any constructions. M/s APIL has also filed supplementary affidavits dated 13.12.2009 and 7.7.2011.

16. Brief description of the facts and grounds in these amendment applications and supplementary affidavits are given as follows:-

**Amendment application dated 9.1.2009**

17. In the amended paragraphs 28-A to 28-L, it is stated by M/s APIL that subsequent to issuance of the order dated 12.12.2008 by the State Government, a public notice was issued in 'Hindi' daily

including Hindi edition of 'Hindustan' of 19.12.2008 inviting objections to the change of land use of the land under Section 13 (3) of the Act within 15 days. To avoid the complications, formal objections have been filed by the petitioner on 01.9.2009. Another development company M/s Crossing Infrastructure Pvt. Ltd. had approached the Court on the same subject by filing a Writ Petition No. 54790 of 2008, and in which the Court observed that so long the user of the land in the Master Plan is not changed, no development/construction work for SWMP may be carried out on the land. The Court has directed the State Government to take appropriate decisions in accordance with the law within the shortest possible time. A Contempt Petition No. 3479 of 2008 was also filed alleging that the constructions are being raised in violation of the order passed by the Court. A printed copy of the Master Plan is annexed to the amendment application, which was signed by all authorities including the Municipal Commissioner, Nagar Nigam, Ghaziabad. In the said Master Plan all the sites, which had to be used as Solid Waste Disposal Points, have been earmarked as Point A-1 to A-10 and this exercise was completed after the entertainment of objections from all the relevant persons.

18. It is stated in paragraph 48-G of the amendment application that a Development Project Report (DPR) for Sushant City at village Dundaheda, Ghaziabad was duly prepared and approved by GDA as the conceived project would be an extension as well as satellite of Delhi on 127.05 acre area. In the DPR, which was duly sanctioned by the GDA at the time of signing of the development agreement dated 09.5.2007, all aspects were duly considered. In column-D under, Chapter-3 it was provided that the land already acquired by the Developer Company (DC), is 76.2932 acres. The land measuring 33.41 acres, which is not yet purchased by DC and is to be acquired

under Sections 4, 6 and 17 of Land Acquisition Act, 1894. The Gaon Sabha land and LMC land, which is to be resumed for the DC is 17.2968 acres. Such land is to be transferred to the DC after resumption by the Government or the district administration. In pursuance to above, it is stated in paragraph-48-H that under the development agreement 76.2932 acres, of land was already purchased by the petitioner company. With regard to the land, which had to be acquired under Sections 4, 6 and 17 of the Land Acquisition Act, the State Government has already issued the notification under Section 4 on 6.6.2008, and with regard to Gaon Sabha land and LMC land had to be resumed to the DC, in the manner that GDA by its letter dated 7.11.2006 has requested the District Magistrate, Ghaziabad to resume the land, which includes the land in question. The District Magistrate has in turn initiated the proceedings on 12.7.2007, and from the above it is clear that the scheme, which was notified by the State Government in 2005 finally culminated into an agreement of development vide MOU between the petitioner and the GDA after due approval of the DPR which specified the user of the land and also the mode of acquisition of the land and in the circumstances the impugned order dated 12.12.2008 for change of land use under Section 13 (3) of the Act and consequential notice issued on 19.12.2008 are violative of Article 14 of the Constitution of India. The amendment application was allowed on 13.1.2009.

**Amendment application dated 16.2.2009**

19. By this second amendment application M/s APIL sought amendments of the prayers in the writ petition. By the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> prayers a writ of certiorari was sought to quash the order dated 12.12.2008 (Annexure No. 14 to the writ petition); directions issued by the State Government to invite objections under Section 13 (3) of

the Act and writ of mandamus directing the respondents not to give effect to the order dated 12.12.2008 and to proceed in pursuance thereof. A further prayer was added to quash the order dated 19.12.2008 inviting objections in Hindi newspapers 'Hindustan' for change of land use of the site. The petitioner also proposed to add grounds (a) to (f) namely, that the government policy dated 25.5.2005 and development agreement, is still in existence and has not been modified or amended and that the impugned order does not take into consideration the objections which were filed by the petitioner on 1.1.2009, nor any plausible reason has been given to reject them; objections raised with regard to violation of environmental laws by implementing the proposal for establishment of the Dumping Yard has not been taken into consideration and further that the notification dated 12.12.2008 suffers from malafides.

**Amendment application dated 26.10.2009**

20. By this third amendment application the petitioner has prayed to add paragraph 58 in the writ petition to include the prayers to challenge the order dated 12.12.2008. By an order dated 13.1.2009 the Court allowed the amendment application to add and incorporate Section 13 of the Act (Amendment of the Master Plan and Zonal Development Plan); the order passed by the Court on 14.5.2009 and the order dated 21.10.2009 (Annexure-22); the order by which a notification has been issued by the State Government changing the land use of 14 acres of land in Gram Dundaheda from residential to 'Dumping Yard (Solid Waste Disposal)'.

**Amendment application dated 25.2.2010**

21. By this 4<sup>th</sup> and last amendment application M/s APIL sought to add paragraphs 58, 59, 60 alleging that the respondents are indulging in all kinds of unreasonableness and arbitrariness. The Gazette



Notification dated 7.5.1999 de-notifying village Dundaheda has been issued apparently to correct mistake. There was no occasion for any further notification. The notifications issued by the State Government on various occasions for last seven years even during the pendency of the writ petition are unprecedented in the history of administrative governance of the State. The impleadment application on behalf of Shri Rajendra Thakur-a sitting Corporator is only to dislodge the claim of the petitioner. A Corporator could not be allowed to file such impleadment and to bring on records the facts, which are already there in the affidavits of the Nagar Nigam.

**Supplementary affidavit/application dated 13.12.2009,  
17.1.2010 and 7.7.2011**

22. M/s APIL has filed a supplementary affidavit dated 13.12.2009, an application dated 17.1.2010; and filed another supplementary affidavit dated 7.7.2011.

23. In the supplementary affidavit dated 13.12.2009 almost the same facts are sought to be introduced with an addition that under Section 15 of UP Urban Planning & Development Act, 1973 and the restriction placed by the bye-laws the areas in the Master Plan are reserved for roads, drainages, parks, green areas, institutional areas and various public utility land. In the Development Plan approved on 18.11.2006 an integrated area of 131 acres including Gaon Sabha land and government land was sought to be transferred for the integrated policy issued by the Government. The land of this area can be singled out and taken away by any other purpose. Various building blocks are coming up on the site and public in general has been allotted plots on the basis of development plan approved by the Government on 18.11.2006. Once the plan has been approved and third party right has been created, the Government cannot take out a piece of land for establishing Dumping Yard, which may create

nuisance and pollutions for those, who have purchased plots and flats in the township.

24. In the application dated 17.1.2010 a prayer has been made to direct the respondents to maintain status quo and not to make any constructions on the site.

25. In the supplementary affidavit dated 7.7.2011 filed on the day when the matter was heard, the petitioner has annexed a notification under Section 4 of the Land Acquisition Act dated 9.7.2010 issued by the Government of UP for acquisition of 34.213 hectares of land in village Galand, Tehsil Hapur, Pargana Dasna, District Ghaziabad for the purposes of establishment of a dumping yard for disposal of solid waste. The affidavit also encloses the letter dated 17.8.2010 addressed by the Vice Chairman of GDA to the Commissioner, Meerut Region, Meerut stating that on the request of Nagar Nigam, Ghaziabad, in Master Plan 2021 the land use of 14 acres of land in village Dundaheda reserved as residential area was changed to solid waste disposal site. In the meeting dated 9.4.2010 the Municipal Commissioner, Nagar Nigam was informed that the dumping yard is proposed on 45 acres of land, whereas the Nagar Nigam has only 14 acres at present and thus it is not possible to implement the long term plan of dumping yard. In the next meeting dated 6.5.2010 a decision was taken to establish the dumping yard in village Galand with a direction that the GDA will compensate the cost of acquisition of land from its own sources. Consequently the proposal for acquisition of 32.213 hectares of land is in progress. The development authority has, after the publication of notification under Section 4 (1), deposited Rs. 409 lacs and has also deposited Rs. 14.76 lacs in the Land Acquisition Office for publication under Section 6. In the subsequent meeting under the Chairmanship of the District Magistrate, Ghaziabad a direction was issued on 12.8.2010 that the

development authority will also bear the 20% cost of the development of the land. The letter further states that after establishment of dumping yard the entire waste of the city has to be disposed of at the concerned site out of which most of the area is of Nagar Nigam and Awas Vikas Parishad, whereas the entire cost of the scheme has to be born by the GDA from its own sources for which it is not possible to compensate from any other financial head. Since the development and management of the dumping yard is the responsibility of the Nagar Nigam and the project is to be financed by the GDA, a request has been made that for the establishment of dumping yard in village Galand, the 14 acres of land in village Dundaheda may be made available to the GDA free of cost, so that the GDA can compensate itself for the expenses born by it.

26. The supplementary affidavit dated 7.7.2011, also annexed notification under Section 6 read with Section 17 (1) dated 10.11.2010 for acquisition of 34.213 hectares of land in various villages in village Galand, Tehsil Hapur, Pargana Dadri, District Ghaziabad as well as a letter of Shri P.N. Batham, President (U.P. Project) Ansal Landmark Township Pvt. Limited for depositing 50% proportionate amount of the proposed expenses of acquisition of land in village Galand on NH-24 of Rs. 35 lacs. The letter informed the Chief Architect and Town Planner, GDA that Rs. 21.50 lacs has already been deposited with GDA and that further amount of Rs.13.50 lacs is being forwarded with the demand draft. On 24.7.2010 the Chief Architect and Township Planner, GDA informed M/s APIL to deposit the proportionate cost of Rs. 35 lacs in pursuance to the letter of GDA dated 26.5.2010 within 15 days.

27. The supplementary affidavit annexes the DPR dated 7.7.2011, and the site plan of the net licence areas of 140.63 acres by way of revised DPR and lay out plan, after its approval in the meeting of

GDA on 25.4.2011 for which the GDA had by its letter dated 12.5.2011 demanded the required fees to be deposited in the account of GDA. The letter confirms that GDA has received deposits of Rs.43, 14, 700/- on 2.6.2011 and Rs. 47, 44, 915/- as CDC instalments on 23.4.2011. The inspection fee of Rs. 23, 61, 100/- and connectivity charge of Rs. 50, 65, 700/- was deposited by M/s APIL in GDA on 20.5.2011. The letter has been issued with 40 conditions of which Nos. 5, 7, 13 and 18 are relevant to this case. Condition No. 5 of the revised GPR and lay out plan dated 6.6.2011 places a restriction for making constructions/development work on the 14 acres of land of Nagar Nigam reserved for dumping yard until the land use is not converted into residential and the land is not handed over to the developer. It further states that the developer will have to maintain status qua on the land until the High Court passes final orders and will have to comply with the orders of the High Court.

28. Condition No. 7 provides that in the subject lay out plan the Gram Samaj/Government land area 15.6204 acres will be kept in the same condition, until the land is not requisitioned lawfully, and for which the Nagar Nigam, Irrigation Department and District Magistrate, Ghaziabad will be fully responsible. Until then no construction will be permitted on the land.

29. Condition no. 13 provides that the developer will be responsible for all the land records and facts produced by it. In case any information is found to be incorrect, the approval will be terminated. The GDA will not be responsible for any land dispute and that Khasra numbers affected by the suit pending in the High Court will be kept in the same condition on which the constructions will not be permitted.

30. Condition no. 18 provides that the dumping yard is proposed for solid waste disposal in village Galand, the expenses for which, to

be born, will be proportionately paid by the developer as and when demanded from him.

31. **The State of UP** represented by the Standing Counsel has filed counter affidavits dated 16.2.2009; 7.3.2009 sworn by Shri H.P. Singh, Under Secretary, Housing and Urban Planning, Government of UP, Lucknow, and the counter affidavit dated 26.11.2009 sworn by Shri Ram Niranjana, Under Secretary, Housing and Urban Planning, Government of UP.

32. In the first counter affidavit of Shri H.P. Singh filed on 16.2.2009 it is stated that under Sections 3, 6 and 25 of the Environment (Protection) Act 1986, the Municipal Solid Wastes (Management and Handling) Rules, 2000 have been framed. Under Schedule III of these Rules the project is to be established and supervised by the Nagar Nigams, throughout the State. There was some communication gap between the development authority and the Nagar Nigam, with the result the Committee decided to shift the SWMP outside the area of Dundaheda, as a result of which 14 acres of land, which is basically owned by the Nagar Nigam and lying in the area of Dundaheda was marked as residential in the Master Plan 2021. The Writ petitions were filed by Shri Anil Kumar Tyagi to restrain respondents from establishing dumping yard in village Dundaheda on which orders were passed by the High Court to make the constructions strictly in accordance with the land use in the Master Plan 2021. The GDA passed an order on 27.5.2006, on the ground that SWMP at Dundaheda is against the existing Master Plan. Subsequently the Nagar Nigam moved a review application. The GDA realised that SWMP on the land of Nagar Nigam in village Dundaheda is virtually a scheme of Government of India and is directly related to the policy matter, as such it referred the matter to the State Government. Keeping in view the sensitiveness of the issue

the State Government directed GDA to decide objections giving opportunity to all the concerned parties. The review application was rejected. In paragraphs 13 to 16 of the counter affidavit of Shri H.P. Singh, Under Secretary, Housing and Urban Planning Department, Government of UP it is stated as follows:-

“13. That it appears that subsequently a question arose with regard to the establishment of dumping yard and the alternative sites, which were shown in the master plan was inspected by the officers of the Air Force Station Hindan, Ghaziabad to grant no objection certificate for establishment of Solid Wastes Disposal Project on the land situated at Dasna and Shahpur etc. The aforesaid team of officers have totally disapproved the aforesaid site basically on the ground that the area is situated in a zone where the establishment of plan will not be conducive from Air Force point of view. So far as site No. A-1, A-5 and A-10 as mentioned in the map enclosed along with amendment application is concerned, as per information received treatment plants are already existing there. However, Site No. A-1, A-2 and A-8 have been rejected by the Inspecting Officers and they have not given No Objection Certificate. Site No. A-7 is also situated in the same very belt. So far as site No. A-6 shown in the map is concerned, it may be pointed out that it is under the jurisdiction of U.P. Awam Vikas Parishad and is also a very small piece of land. In such situation again the exercise started to complete the project in accordance with law as well as directions issued by the Hon'ble Supreme Court to have a project in reality, not on paper.

14. That in the petition the petitioner has tried to confuse the issue and directly or indirectly misleading the Hon'ble Court as if 14 acres disputed land situated in village Dundaheda belongs to the petitioner, and if the state or any instrumentality of the State is going to establish dumping yard at the disputed site, it will be directly in teeth of memorandum of understanding between the State and the petitioner. The allegations are totally misleading because at no point of time the State or any instrumentality of the State has entered into any agreement with the petitioner that 14 acres disputed land that too belonging to Nagar Nigam, Ghaziabad will be given to the petitioner for the alleged township. On the other hand, the Government Orders, which were relied upon by the petitioner dated 21.5.2005, 29.12.2005, 12.1.2006, 28.4.2006, 22.8.2006 & 10.10.2006 have been amended by the Government vide Government Order dated 27.8.2008. Earlier as per policy of the

State Government any consortium, who wanted to develop any high-tech township was supposed to arrange 60% of the land and for rest of 40% State and its instrumentality Ghaziabad Development Authority was supposed to work like facilitator for rest of the 40% land but the said policy has been amended vide Government Order dated 27.8.2008.

15. That it may further be clarified that the disputed land belongs to Khasra No. 937 situated in village Dundaheda and is owned by the Nagar Nigam. The petitioner company has no ownership with regard to the said land. In order to protect their own land, the respondent no. 5 is having full authority to raise boundary wall and to protect the land and to use the land in accordance with law. So far as DPR and Layout Agreement or Agreement is concerned with the petitioner company, it may further be clarified that at every stage the DPR as well as Layout was approved only in relation to the land belonging to the petitioner. The petitioner is not supposed to compel the other persons to throw their own land for the alleged township. So far as the present revised policy is concerned, now the State is not going to acquire any land for the alleged high-tech city of the petitioner company.

16. That the petitioner has not given the complete facts with regard to the establishment of Solid Wastes Management Project at the disputed site. In fact, the establishment of the project at the disputed site i.e Khasra No. 937 at village Dundaheda, Ghaziabad has already started prior to the revision of the master plan in the year 2005. Moreover in order to get cleared the township, the petitioner's company has made first attempt to purchase the aforesaid land from Nagar Nigam in the year 2007. A detailed description of which will be given by the Nagar Nigam, Ghaziabad in their counter affidavit. When they failed to purchase the aforesaid land then they have also filed an affidavit to the respondent-Development Authority that they will abide by the decision of the Government with regard to the establishment of Solid Wastes Management Project at Dundaheda. In such situation the petitioner's company is stopped from challenging the establishment of the project at Dundaheda as well as the proceedings set in motion by the answering respondent for change of user as per statutory power provided by the Act of 1973. A copy of the latest policy of the Government regarding high-tech city 2008 is being filed herewith and marked as Annexure CA-1 to this counter affidavit.”

33. In the second supplementary counter affidavit of Shri H.P. Singh dated 2.3.2009 filed on behalf of the State of U.P. on 7.3.2009, it is denied in paragraph-7 that the development agreement signed between the petitioner and the Ghaziabad Development Authority is still in existence. It is stated in paragraph-7 as follows:-

“7. That the contents of paragraph no. 38-C (a) of the affidavit as stated are incorrect and as such denied. It is wrong to claim that development agreement signed between the respondent no. 4 and the petitioner is still in existence. In fact after the amendment of the Government Policy regarding High Tech City, the aforesaid agreement ought to have been revised and the petitioner is legally bound to submit a modified DPR. The old DPR has now loses its significance unless it is being revised in accordance with the new policy.”

34. In the third counter affidavit of Shri Ram Niranjana, Under Secretary, Housing and Urban Planning, Government of UP it is stated in paragraphs 5, 6 and 7 as follows:-

“5. That before giving parawise reply to the affidavit in support of the amendment application it is submitted that the Development Project Report (DPR) submitted by the petitioner was sanctioned only in respect of the land purchased and owned by the petitioner and not with regard to land of 14 acres belonging to Nagar Nigam/Land Management Committee in village Dundaheda. In this connection letter dated 19.1.2007 may also be referred which was served upon the petitioner, which has been enclosed as Annexure-3 to the writ petition. In counter affidavit it has been made clear that the sanction of the plan was accorded only in respect of 60% land under the ownership of the petitioner vide meeting of Board dated 18.11.2006. It has been further made clear that the matter in respect of 14 acres of land of the Land Management Committee under the licensed area was pending for consideration before the state Government and the decision of the State Government shall be accepted by the parties.

6. That a copy of the sanctioned plan has also been enclosed as Annexure-3 by the petitioner, which further shows that the sanction was given only on the land purchased and owned by the petitioner and not on the 14 acres land which is



under dispute. Thereafter the agreement was executed on 9.5.2007 and as such the conditions imposed by Ghaziabad Development Authority the respondent no. 4 in the letter dated 19.1.2007 (Annexure-3) clearly excludes 14 acres land of village Dundaheda and further shows that the decision of the State Government in this respect shall be binding upon the petitioner.

7. That it is also pertinent to submit that Executive Director P.N. Mishra representing the petitioner filed an affidavit on 30<sup>th</sup> January 2008, to the Ghaziabad Development Authority wherein it has been mentioned that any decision taken by the State Government in respect of 14 acres land of Nagar Nigam proposed for Dumping Yard shall be accepted by the Company. A copy of the aforesaid affidavit on behalf of the petitioner verified by Shri P.N. Mishra, Executive Director has already been enclosed as Annexure-3 with the counter affidavit already filed on behalf of Nagar Nigam in the present writ petition.”

35. **The Nagar Nigam, Ghaziabad** is the main contesting party to the prayers made in the writ petition. In the counter affidavit of Shri Surendra Kumar Varma, Law Superintendent, Nagar Nigam, Ghaziabad, he has enclosed a booklet containing the history and selection of site of SWMP of Nagar Nigam, Ghaziabad arising out of directions issued by Hon'ble Supreme Court in PIL No. 888 of 1996 *Almitra H. Patel vs. Union of India* and has given current status as well as details of money sanctioned and spent through U.P. Jal Nigam in its letter dated 25.11.2009 of the Project Manager. It has also annexed the no objection certificate dated 23.11.2009 from U.P. Pollution Control Board; the details of land available in village Dundahera and copy of proceedings of resumption of 33/29 acres of land in village Chipiyana Buzurg, District Gautam Budh Nagar under consideration of the State Government. The Nagar Nigam has also annexed the letters of Wing Commander, Air Force Station Hindan dated 25.7.2008 and 12.9.2008 in respect of the alternative site stating that no objection can be given to such alternative site.

36. In the objections filed **by the Nagar Nigam, Ghaziabad** before the Vice Chairman, GDA in support of its review petition, it is stated that in Writ Petition No.888 of 1996 (Almitra H. Patel vs. Union of India & others) filed in public interest, directions were issued by the Supreme Court to the Housing Development and Poverty Eradication Ministry, Government of India to provide for cent percent financial help for constructions of solid waste management plants in all the cities where the Stations of the Air Force are established to avoid accidents of Aircraft on account of birds hit. The Ghaziabad city was also included in the scheme as the Hindan Air Force Station of the Defence Department of the Government of India is established in between village Pasauda and Karhaida, which is surrounded by urban habitation and industries from all the sides. Subsequently vide notification dated 25.9.2000 the Municipal Solid Waste (Management and Handling) Rules 2000, were made and notified by the Central Government under the Environment (Protection) Act, 1986. Rule 6 Schedule-3(1) gives responsibility to all the development authorities to select the sites for development and maintenance by the concerned municipal authorities. The Ghaziabad Development Authority did not make any land available for the scheme.

37. Dr. C.S. Bhatt, Member Secretary of the U.P. Pollution Control Board gave a notice under the Municipal Solid Waste (Management and Handling) Rules 2000, that Rule 4 (1) of the Rules be complied with and the reply be given by 17.8.2001. The Secretary, Nagar Vikas, Government of UP, by his letter dated 4.10.2001 informed all the District Magistrates and Chief Development Officers to comply with the orders of Hon'ble Supreme Court in Writ Petition No. 888 of 1996 filed in public interest. The Nagar Nigam vide its letter dated 19.10.2001 informed the Vice

Chairman, GDA to select a site in compliance with the notification issued by the Ministry of Environment and Forest (MOEF) and the U.P. Pollution Control Board for compliance with the Rules of 2000. A copy of the notifications was also sent along with letter but that the Development Authority neither selected the site nor transferred it to Nagar Nigam. The Nagar Nigam informed UP Pollution Control Board on 23.6.2003 in response to its letter dated 5.9.2001 with the selection of site annexing therewith the site plan for issuing the authority letter. Once again on 01.9.2003 the letter was written to Secretary, GDA. On 4.2.2004 the experts from HUDCO; Adviser of CPHO of the Ministry of Urban Development and Poverty Eradication; the representative of Station Officer of Hindan Air Force, Ghaziabad and the Regional Manager of UP Pollution Control Board made a joint inspection and found the land in village Dundahera and in Chipiyana to be most suitable for construction of SWMP. About 14 acres of land in village Dundahera vested in Nagar Nigam and 33 acres in village Chipiyana of Gaon Sabha was identified after which a letter was written on 26.2.2004 to the Member Secretary, UP Pollution Control Board for issuing the authority letter. A letter was also sent to the District Magistrate on 9.2.2004 to requisition the 33 acres of land in village Chipiyana which is adjacent to 14 acres of land of village Dundahera for construction of the plant.

38. The representation of Nagar Nigam to GDA enclosed the letter of Shri V.P. Singh of Air Force Hindan, Ghaziabad as member of the Selection Committee giving no objection certificate on 16.4.2004 for construction of SWMP in village Dundahera and Chipiyana. A letter was again sent on 22.7.2004 to Member Secretary, U.P. Pollution Control Board to issue no objection certificate. In the meantime a show cause notice was issued by the Principal Secretary,

Environment, Government of UP dated 3.8.2004 for non-compliance with the Rules of 2000 and to take necessary steps under Section 19 of the Environment (Protection) Act, 1986.

39. On 11.8.2004 the Member Secretary, U.P. Pollution Control Board gave its no objection to construct SWMP. The State Government as well as the Central Government were informed on 20.8.2004 of the selection of site and for taking steps for construction of SWMP in accordance with the plan prepared by HUDCO. In between notices were again received on 3.8.2004 by the Principal Secretary, Environment, Government of UP to show cause as to why progress has not been made in the construction of the plant.

40. The Nagar Nigam gave possession of the 14 acres of land, after its identification, to the Project Officer, Jal Nigam on 14.10.2004 for constructions. A letter to that effect was sent by the Chief General Manager, (C&DS) to the Director, Urban Development and Poverty Eradication, New Delhi enclosing the site plans. The Principal Secretary, Government of UP in the meeting dated 17.1.2005 gave directions to the Superintendent Engineer, Awas Evam Vikas Parishad, Ghaziabad by letter dated 24.1.2005; Vice Chairman, GDA by letter dated 25.2.2005 and the Secretary, GDA by letter dated 24.1.2005 for submitting the compliance reports. The reports of the meetings held by the Municipal Commissioner, Nagar Nigam, Ghaziabad dated 14.9.2005, 29.9.2005 were published in the newspapers 'Amar Ujala' on 30.9.2005. The report of the meeting dated 20.3.2006 and 6.5.2006 were also published. In these meetings Shri Jai Singh, Executive Engineer, GDA and Shri S.P.S. Raghav, Chief Engineer, GDA had participated. The GDA was therefore fully aware of the facts.

41. The Nagar Nigam further stated in its representation that when the construction work started, the Director (Executive) of M/s Ansal

Landmark Township Private Limited sent a letter to the Municipal Commissioner, Nagar Nigam, Ghaziabad on 12.7.2005 to make available the same land at Village Dundahera for its township. Since the constructions of SWMP was already in progress in pursuance to the directions of the Supreme Court, Government of India and Government of UP; the letter of Ansal Landmark Private Limited, was not considered. As soon as the construction of boundary wall started, the builders instigated the villagers to make demonstrations against the construction with the object to acquire the land for construction of houses. On the intervention of the District Magistrates of District Ghaziabad and Gautam Budh Nagar the agitation was stopped and the construction work continued. It is at this stage that a Writ Petition No. 12496 of 2006 was filed by one Shri Anil Kumar Tyagi not to construct dumping yard in the residential area earmarked in the mater plan. The High Court directed the GDA to decide the representation.

42. The Nagar Nigam received a letter from the Officer on Special Duty, GDA dated 1.4.2006 to make representation on which a detailed representation was filed on 7.4.2006 giving the facts as stated above. Once again a writ petition was filed and a direction was issued to GDA to decide the representation.

43. The Nagar Nigam has stated in its representation that the Vice Chairman, GDA fixed the date for hearing on 28.4.2006 to allow the Nagar Nigam to represent its stand. The Nagar Nigam had already filed written objections on 7.4.2006. The Secretary GDA informed Nagar Nigam, that the Vice Chairman, GDA has adjourned the hearing from 28.4.2006 to 5.5.2006. When the Municipal Commissioner and the Property Superintendent reached the office of Vice Chairman, GDA on 5.5.2006, they were informed that the Vice Chairman is not present and the matter will be heard on 10.5.2006.

The next date on 10.5.2006 was declared as a holiday. The offices of GDA was closed on that date. Thereafter no information was given to Nagar Nigam and that without taking into consideration the detailed objections filed by the Nagar Nigam enclosing all necessary documents, in writing, the representation was decided by the Vice Chairman, GDA on 20.11.2007 rejecting the review application, in pursuance to the order of the High Court dated 1.11.2006.

44. The Nagar Nigam has further stated in the affidavit of Shri Surendra Kumar Verma, Law Superintendent, Nagar Nigam, Ghaziabad in paragraph-19 that since the establishment of SWMP and the Dumping Yard is necessary for a big industrial city like Ghaziabad, it persuaded the matter with the State Government for reconsideration and for amending the Master Plan 2021. An inspection was made in village Dundahera on 14.7.2008. The inspection was also made in village Dasana where SWMP is proposed in the Master Plan 2021. A no objection certificate was required from the Hindan Air Force authorities. The letters were sent to the Inspection Officer, Air Force Station Hindan, Ghaziabad on 18.7.2008 and 20.8.2008 to grant no objection certificate for establishment of SWMP on the land situated in Dasana and Shahpur which are also marked for SWMP in Master Plan 2021. The Air Force Station Hindan, Ghaziabad refused to grant the no objection certificate and disapproved the proposals vide their letters dated 25.7.2008 and 12.9.2008. We find it useful to quote these letters to decide these writ petitions:-

“Tele: 2899401/4303  
Air Force Station Hindan,  
Ghaziabad (UP)- 201004  
WO 28103/C. 2481/5FS  
Mr. S.K. Dwivedi,  
Vice Chairman,  
GDA  
Vikas path, Ghaziabad

25<sup>th</sup> July, 2008

**SOLID WASTE DISPOSAL PROJECT: NO OBJECTION  
CERTIFICATE FOR DUMPING SITE AT DUNDA HERA AND  
DASNA**

1. Reference is made to your letter No. 576/Planning Section/2008 dated 18<sup>th</sup> July, 2008 in respect of issue of NOC for Solid Waste Disposal Dumping site at DASNA.
2. The proposed site plan has been studied in detail and the following are the observations:
  - (a) The proposed site at DASNA is along the extended centre line and approach path for aircraft landing at Hindan Airfield.
  - (b) The distance of the site is 15 kms from the boundary wall of the station.
  - (c) An aircraft making an approach would be low in height while passing over this site and would be affected by its associated bird activity.

In view of the above, NOC for the site at DASNA is NOT APPROVED. A sketch giving the approach funnel is annexed (upto 20 Kms from runway). You are requested not to select a site within this approach funnel (Highlighted area). However the NOC already granted for DUNDHERA is hereby reconfirmed and any site in the vicinity of Dundahera or Chipiyana Buzurg would be a good option.

(V. Choudhary)  
Wing Commander  
Station Flight Safety &  
Inspection Officer.”

“Tele: 2899401/4303  
Air Force Station Hindan,  
Ghaziabad (UP)- 201004  
WO 28103/C. 2489/4/1/FS  
Secretary,  
Ghaziabad Development Authority  
Vikas path,  
Ghaziabad (UP)

12<sup>th</sup> Sept. 2008

**SOLID WASTE DISPOSAL PROJECT: NO OBJECTION  
CERTIFICATE FOR DUMPING SITE AT VILLAGE SHAHPUR**

1. Reference is made to your letter No. 325/MP/2008 dated 20<sup>th</sup> August 2008 in respect of NOC for Solid Waste Disposal Dumping site at village Shahpur.

2. The proposal and map was studied in detail and the following are the observations:-

(a) The proposed site at village Shahpur is 08 Kms from the centre of airfield and as per Aircraft Act, 1934, no waste dump can be less than 10 Km from any air field.

(b) The proposed site is located on the circuit flying pattern for aircraft operating from this air field. No waste dump can be allowed in the circuit pattern due to the acute bird hazard associated with it (copy of map annexed).

(c) The Local Flying Sectors for this air field are in the North, North-East & East and hence any waste dump in this area would be a hazard for flying operations.

3. In view of the above, NOC for the proposed site at village Shahpur is NOT APPROVED. A copy of Local Flying Area and circuit area map is annexed for your reference. You are once again requested to shortlist a site in the general area South East of Ghaziabad (Dundahera/Chipyana Buzurg) as this area would be most suitable due to minimal interference of bird activity on aircraft flying operations from this air field.

(Vishal Choudhary)  
Wing Commander  
Station Flight Safety &  
Inspection Officer.”

45. The Nagar Nigam, after receiving the letters from Station Flight Safety & Inspection Officer, Air Force Station Hindan, Ghaziabad, again approached the Vice Chairman, GDA to consider the matter in detail and the GDA, on the basis of bonafide requirement in public interest, wrote a letter dated 4.9.2008 to the State Government that the GDA has no objection in case the SWMP is established in village Dundahera after amending the land use in according with the law.

46. At this stage M/s Crossing Infrastructure Pvt. Ltd filed a Writ Petition No. 54790 of 2008 with a prayer for a direction not to establish the Dumping Yard for disposal of solid waste at Dundahera.



The writ petition was disposed of on 4.11.2008 with observations that there appears to be no dispute about the situation as stated by the respondent side that so long the user of the land in the Master Plan is changed, no development/construction work for Dumping Yard is to take place. The Court restrained the respondents to install/create/establish Dumping Yard so long the user of the land is changed, giving directions to the State Government to take appropriate decision in the matter of change of land use in accordance with the law within the shortest possible time. In these circumstances the State Government, after considering the public interest as well as the letter of the Vice Chairman, GDA dated 4.9.2008, proposed amendment in accordance with Section 13 (3) of the UP Urban Planning and Development Act, 1973 of the change of land use of village Dundahera.

47. In the counter affidavit of Nagar Nigam, it has been explained that out of 10 sites indicated in the Master Plan 2021 on Site No. A-1, A-5 and A-10 the treatment plants are already existing. On Site No. A-1, A-2 and A-8 the Hindan Air Force has already objected. Site No. A-7 is also situated in the same area, which is not feasible as per objection of the Air Force. The Site No. A-6 is under jurisdiction of Awas Evam Vikas Parishad and is also small piece of land and thus the establishment of SWMP on the 47 acres of land, out of which 14 acres belonging to the Nagar Nigam is situated in village Dundahera and the remaining in the adjacent village in Chipiyana belonging to the Land Management Committee, will serve the purpose. In paragraph 9 of the short counter affidavit of Shri Surendra Kumar Verma, Law Superintendent, Nagar Nigam, Ghaziabad, it is stated that the Government of India has sanctioned a sum of Rs. 12.76 crores, out of which a sum of Rs. 605.75 lacs has already been spent and the progress of the project is 50%. In para-12

of the short counter affidavit, it is stated that in the Revised Detailed Project Report dated 29.8.2008, it was made clear by Chief Architect and Town Planner, GDA that sanction is accorded only in respect of the land of which M/s Crossing Infrastructure are sole owners. The DPR was not sanctioned on 14 acres of land at village Dundahera.

48. In the counter affidavit in reply to the amendment application the Nagar Nigam has stated that the DPR submitted by M/s APIL was sanctioned only in respect of the land purchased and owned by the petitioner and not on the land of 14 acres belonging to Nagar Nigam/LMC in village Dundahera. The sanction of the plan provides for 60% of the land under the ownership of the petitioner. The 14 acres of land in village Dundahera does not belong to M/s APIL and for which change of land use was pending with the State Government. The 14 acres of land of Land Management Committee belongs to Nagar Nigam, Ghaziabad. The Nagar Nigam has also referred to the affidavit of Shri P.N. Mishra, Executive Director of M/s APIL dated 30.1.2008 given to GDA mentioning therein in paragraph-2 that any decision taken by the State Government in respect of 14 acres of land of Nagar Nigam proposed for dumping yard shall be accepted by the company.

49. The **Ghaziabad Development Authority** has filed seven counter affidavits. Their stand taken in these counter affidavits filed on 12.1.2009; 4.2.2009; 3.3.2009; 7.3.2009; 7.11.2009; 16.12.2009 and 26.12.2010 is as follows:-

50. In the first counter affidavit of Shri N.K. Bhatia, Assistant Engineer, Ghaziabad Development Authority, Ghaziabad filed by Shri Ved Byas Mishra, Advocate on 12.1.2009, it is stated that under a scheme of Government of India the SWMP was proposed to be established by the Nagar Nigam on 14 acres of land in village Dundahera owned by Nagar Nigam, when the Master Plan of the

year 2005 was under revision. The boundary wall has already been constructed and objections were invited from the public. The Committee for deciding objections on the draft Master Plan included Mukhya Nagar Adhikari and the public representatives. The local Member of Parliament and other public representatives objected that the SWMP should be shifted outside the densely populated area of the city on which the representative of the Nagar Nigam did not raise any objection and consequently on the recommendation of the member of Parliament and other public representatives the Committee decided to shift SWMP outside the city. In the meeting dated 20.6.2005 the Nagar Ayukt and the representative of Nagar Nigam were present. They did not raise any objections. Thereafter Shri Anil Kumar Tyagi, who is an employee of M/s Crossing Infrastructure Pvt. Ltd, filed Writ Petition No. 12496 of 2006, which was disposed of on 01.3.2006 to decide the representation. Shri Anil Kumar Tyagi filed another Writ Petition No. 21398 of 2006 impleading the Nagar Nigam and Jal Nigam, which was disposed of on 19.4.2006 on the same terms and conditions and in pursuance to which the GDA passed a reasoned order on 27.5.2006 holding that establishment of SWMP is against the Master Plan. Shri Anil Kumar Tyagi filed a third Writ Petition No. 57172 of 2006, which was also disposed of on 01.10.2006 with directions to decide the review application of Nagar Nigam, Ghaziabad. Since the matter was a policy matter under the Scheme of Government of India, the matter was referred to the State Government. The review application of Nagar Nigam was rejected on 20.11.2007 in the hearing in which Shri P.N. Mishra, Director, APIL on behalf of Anil Tyagi; Shri Ajay Shankar Pandey, Nagar Ayukta, Nagar Nigam, Ghaziabad; Shri S.K. Jaman, Chief Architect and Town Planner and other representatives were heard. The Inspection Officer, Air Force Station, Hindan,

Ghaziabad thereafter was approached to construct the SWMP at Dasna and Shahpur. The Air Force Station refused to grant no objection certificate for construction of SWMP at village Dasna and Shahpur as there was no land available Dumping Yard, which could be viable for Air Force Station, Hindan. The GDA wrote a letter on 04.9.2008 that if the land use of the land of Nagar Nigam at village Dundahera is changed, the GDA will have no objection. At this stage M/s Crossing Infrastructure Pvt. Limited filed the Writ Petition No.54709 of 2008, in which once again an order was passed that until the land use is changed, the construction may be stopped and the State Government may take a decision within shortest possible time. By Government Order dated 22.8.2008 the State Government amended the previous policy of land acquisition and development for integrated township by public private partnership. In the earlier order dated 21.5.2005, it was provided that instead of 60%, the developer has to purchase 75% of the land and for the remaining 25% the Government agency will act as facilitator. M/s APIL is registered under the old policy. All the previous Government Orders have been amended for which the GDA has sought clarification from the State Government as to whether M/s APIL will be governed on the basis of old or new policy.

51. In the supplementary counter affidavit filed on 4.2.2009 the GDA has annexed the proceedings of the meeting held on 19.1.2009 for change of land use at village Dundahera. Shri Anil Kumar Tyagi as well as the residents of village Shahberi, Dundahera, Chipiyana and the representatives of the builders namely M/s APIL; M/s Crossing Infrastructure Pvt. Ltd and the academic institutions namely Academy of Business and Engineering Science; M/s A.B.E.S. Institute of Technology were heard. In these proceedings objections were raised by M/s APIL that it was selected under the policy of the

State Government for development of township of 127 acres of land which also included 14 acres under the ownership of Nagar Nigam at village Dundahera. They have spent about Rs. 9.5 crores for sanction of lay out plan after borrowing from general public and financial institutions and that the developer company has also established third party claims over the land. The Dumping Yard will create noise, dust, and discharge of gas, which will make the habitation in the area impossible and will destroy the environment. The builder will be disturbed by the foul smell arising from the area and will suffer from various illness. According to Manual of Urban Solid Waste Management and Gazette of Ministry of Forest and Environment, Government of India dated 25.9.2000, the dumping yard should be at least 500 meters from the residential area. The Committee in its recommendation accepted the proposal for change of land use on the grounds and representations of the Nagar Nigam that the project was undertaken under the policy of the Central Government in pursuance to the directions of the Supreme Court for protecting the aircrafts from bird hits including the construction of SWMP on 14 acres of land in village Dundahera. The Nagar Nigam has handed over the site on 20.10.2004 to Jal Nigam and on which boundary wall has been constructed. The remaining 33 acres of land is in District Gautam Budh Nagar and the total 47 acres of land will be used for SWMP for which 50% of the grant has been received by the Nagar Nigam. The Hindan Air Force has objected to construction of SWMP at village Dasna and Shahpur. The Committee observed that M/s APIL was not even sanctioned by GDA for development of this 14 acres of land in village Dundahera. The permission was given with the condition that the developer will be bound by the decision taken by the State Government and the Court over this land. The 12 objections against the dumping yard were thus rejected with a

proposal to change the land use in Master Plan.

52. In the counter affidavit of Shri N.K. Bhatia filed on 3.3.2009, it is stated that the notification was made in the newspapers on 19.12.2008 under Section 13 of the Act of 1973 to hear the objections. The petitioners do not have any rights over the land in dispute in village Dundahera.

53. In the counter affidavit of Shri N.K. Bhatia filed on 7.3.2010 it is stated by the GDA that after the de-notification from the Greater Noida Industrial Development Authority, the areas in three villages namely Dundahera, Akbarpur-Bahrampur and Mavi (Mavai), Ghaziabad are being treated within the development area of GDA. In paragraph-16 it is stated that after inviting objections and considering the same, the State Government has issued notification on 21.10.2009 and land use of the 14 acres of land in village Dundahera has been changed for dumping yard.

54. In the counter affidavit of Shri N.K. Bhatia filed on 7.11.2009 the GDA has reiterated that the land use of 14 acres of land in plot No. 937 has been changed and same is earmarked for dumping yard vide notification dated 21.10.2009 under Section 13 of the Act of 1973. In the counter affidavit of Shri N.K. Bhatia filed on 16.12.2009 it is stated in paragraph-16 as follows:-

“16. That objections were received by the Committee constituted by the State Government under the Chairmanship of Vice Chairman, GDA and the same was heard by the Committee on 19.1.2009 in which 12 objections were received. During the course of hearing the representative of Nagar Nigam, Ghaziabad made clear that the proposed Solid Waste Management Project is pollution free and the same is temporary project and after the end of scheme the land in dispute shall be developed in a green park and the Committee decided to recommend for change of land use. The decision taken by the Committee sent to the State Government along with letter dated 2.2.2009.”

55. In the counter affidavit of Shri N.K. Bhatia filed on 16.12.2009 and thereafter on 26.10.2010 the same facts have been reiterated namely that the recommendations dated 19.1.2009 were sent on 2.2.2009 to the State Government for change of land use after public hearing and that the land use at village Dundahera has since been changed. A reference has also been made to the notification dated 12.1.2010 including the areas of villages Dundahera, Akbarpur-Bahrampur and Mavi (Mavai) in the development of GDA.

56. Shri P.C. Shukla appears for **UP Pollution Control Board**. He has filed an affidavit of Shri G.S. Srivastava, Assistant Environmental Engineer, UP Pollution Control Board, Regional Office, Ghaziabad. In the affidavit dated 23.3.2009 the UP Pollution Control Board has stated that the Nagar Nigam, Ghaziabad applied for authorisation as per the provisions of Municipal Solid Waste (Management & Handling) Rules, 2000 vide letter dated 23.6.2003. The application was rejected on 21.7.2004 due to lack of sufficient information. The Nagar Nigam furnished the requisite information on 22.7.2004 on which the UP Pollution Control Board has issued a conditional no objection certificate in principal to the Nagar Nigam for establishment of Municipal Solid Waste Management System of 400 MT/day capacity on Bhumi Sampati Sankhya 939, 941/2, 944, 946, 949, 951, 953 at village Dundahera, Ghaziabad and Bhumi Sampati Sankhya 937/1 Chipiyana (total area 47 acres) vide letter dated 11.8.2004. Subsequently the application for grant of no objection certificate was received from M/s Ansal Properties and Infrastructure Ltd., Sushant City, Dundahera, Ghaziabad and file was closed by U.P. Pollution Control Board on 19.11.2007 with observations that the objections will be decided only after a decision is taken by the Allahabad High Court in Public Interest Litigation. It

is further stated in para-7 of the counter affidavit that the no objection certificate was issued on the information furnished by the Nagar Nigam and on certain conditions. Under condition No. 1, the SWMP was to be constructed at a spot proposed in the Master Plan 2021. Since the condition was not complied with, the Nagar Nigam was to submit a reply. On 15.7.2008 the no objection certificate was cancelled on the ground that condition no. 1 regarding the land use of the site has not been complied with and that no reply was given to the show cause notice dated 10.6.2008.

57. In the counter affidavit of Shri Vijay, Assistant Environmental Engineer, UP Pollution Control Board, Regional Office, Ghaziabad dated 25.6.2010 it is stated that municipal solid waste to be dumped should be taken care of by the concerned Municipal Authority as stipulated in the Schedule of Municipal Solid Waste (Management & Handling) Rules, 2000. The proposed municipal solid waste site should be set up after having environment clearance from State Level Environment Impact Assessment Authority for which public hearing has been conducted on 20.4.2010.

58. Shri Samir Sharma has filed impleadment application on behalf of **Shri Rajendra Tyagi** claiming to be a public spirited person and also an elected Nagar Parshad and also a member of GDA Board. He submits that the GDA was created on 9.3.1977 under Section 3 of the Act of 1973 with object under Section 7 to promote and secure the development of the development area declared under Section 3 of the Act of 1973 with powers to acquire, hold, manage and dispose of land and other property; to carry out building, engineering, mining and other operations; to execute works in connection with the supply of water and electricity; to dispose of sewage and to provide and maintain other services and amenities and generally do anything necessary or expedient for the purposes of



such development and for purposes incidental thereto. Both the Master Plan as well as Zonal Development Plan under Sections 8 and 11 relate to the development areas. The provisions of Chapter III-A also relates to the arterial roads in the development area and these also pertain to the development and ancillary matters relating to the development of the development area. The village Dundahera is situated in District Ghaziabad. The Ghaziabad Nagar Nigam has sizeable vested properties in village Dundahera which upon abolition of Zamindari by virtue of Section 117 (1) of UP ZA & LR Act 1950, have vested in the Ghaziabad Nagar Palia (Now Ghaziabad Nagar Nigam). By notification dated 11.8.1954 the land in village Dundahera vested in Ghaziabad Nagar Palika.

59. Shri Samir Sharma submits that village Dundahera was included in the notifications dated 29.1.1972 and 9.3.1977 in development area of Ghaziabad Development Authority, which was earlier the area declared under UP Regulation of Building Operations Act, 1958. By another notification dated 21.2.1994 under Section 2 (d) of the U.P. Industrial Area Development Act, 1976 the village Dundahera was included within the limits of industrial area of Greater Noida Industrial Development Authority vide notification dated 21.2.1994 at item No. 71 and thus by operation of Section 17 of the U.P. Industrial Area Development Act, 1976 the village Dundahera was excluded from any plan (master plan or zonal development plan). Section 17 of the Act of 1976 has an overriding effect of the Act to the effect that if such area was included in the master plan or zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973 with effect from the date of such declaration be deemed to be excluded from any such plan. Thereafter by a notification dated 7.5.1999 the village Dundahera was de-notified under U.P. Industrial Area Development

Act, 1976. Again vide notification dated 12.1.2010 issued by the State Government, the village Dundahera was included in the development area of GDA from the date of publication of the notification. These facts will indicate that the village Dundahera was not within the development area of GDA from 21.2.1994 when it was included in the limits of industrial area of GNOIDA vide notification dated 21.4.1994 until it was denotified on 7.5.1999 and was included in the development area of GDA vide notification dated 21.1.2010. The village Dundahera was unauthorisedly shown in the Master Plan 2021 and in the meantime this 14 acres of land in village Dundahera was selected for construction of SWMP in the year 2004 after no objection certificate was received from the Hindan Air Force Station and UP Pollution Control Board. The UP Jal Nigam was authorised to execute the construction work of SWMP and possession was handed over to the UP Jal Nigam on 20.10.2004. A huge amount has been sanctioned on the construction of SWMP, which was underway. In the meantime the GDA executed several development agreements with several private Real Estate Developers for development of the land in and around village Dundahera, even though the area did not come within the development area of GDA. The GDA has no authority as it could not have taken any action for development of the area, which was not included in its development area. On the basis of these development agreements the construction companies started making efforts to stall the construction of the plant. It is at this time that by the order dated 27.5.2006 the GDA came to the conclusion that the establishment of SWMP in village Dundahera cannot be permitted against the land use prescribed as residential in the Master Plan. The GDA after about two years on 4.9.2008 addressed the State Government to indicate that it has no objection for establishment of SWMP at village Dundahera after amending the land use and by

notification dated 12.12.2008 objections were invited under Section 13 of the Act of 1973. The land use was finally changed by notification dated 21.10.2009.

60. Shri Samir Sharma relies upon the contents of paragraph-27 of the counter affidavit that the petitioner has no right over the 14 acres of land in village Dundahera earmarked for construction of SWMP, yet by misrepresentation of facts M/s APIL committed fraud in carving out plots over said 14 acres of land in village Dundahera and sold the land by the advertisement by the name of 'Aquapolis Scheme, C Block' to about 133 persons. A list of allottees is annexed as Annexure-7 to the affidavit. When the allottees came to know of the facts, they raised a hue and cry on which M/s APIL invited the representatives of the allottees for a discussion through letter dated 13.11.2009 and thereafter agreed to accommodate the allottees by giving alternate plots after pursuing the matter with the GDA. The letter written by Shri Harish Gulla, Additional Vice President (Marketing & B.D.) of Ansal Landmark Township (Pvt) Ltd to the alleged 'C-Block Allottees' of Aquapolis NH-24, Ghaziabad and the minutes of meetings are quoted as below:-

**“Ansal Landmark Townships Pvt. Ltd.**

To  
C Block Allottees  
of Aquapolis  
NH-24, Ghaziabad

13<sup>th</sup> Nov. 2009

Dear Sirs,

We are in receipt of your letter dated 13<sup>th</sup> Nov. 2009 wherein you have desired to retain the allotment as original in Aquapolis scheme of the same size which was allotted to you.

As you are aware and as also mentioned in our letter dated 3<sup>rd</sup> November, 2009, certain developments have taken place, as a

result of Government Act. We have however taken steps by challenging the decision of the Government and the matter is subjudiced before the competent authority.

We take serious note of contents of your above referred letter and assure you that we will sincerely consider your request, as may be possible, to allot a plot of the same size as was allotted to your originally on an approved layout of Aquapolis Integrated Township Doondaherra Ghaziabad.

All terms and conditions of the allotment letter will remain the same, and would revert at an appropriate time with the positive and workable solution.

You are requested to please send your 3-4 representatives to sit with us on 25<sup>th</sup> Nov'08 so that we may convey you a specific decision on the matter.

Thanking you,

Yours faithfully,

Sd/-  
(AUTHORISED SIGNATORY)”

**“Ansal Landmark Townships (Pvt) Ltd**  
Aquapolis, (Behind ASES Engineering College NH-24)  
Doondahera, Ghaziabad

25<sup>th</sup> Nov., 2009

**The Minutes of the meeting with the representatives of the allottees of C Block of Aquapolis Scheme on 25<sup>th</sup> Nov. 2009 whose plots have been adversely affected by the notification of dumping ground as issued by the Govt.**

In continuation of the meeting with the deputation of C Block allottees of Aquapolis held in company office on 13<sup>th</sup> Nov., 2009, the representatives of affected group met the officials of the Developer Company in their office and they further emphasized that they are interested in getting an alternative in the same colony only.

The progress related to the proceedings being conducted in the Hon'ble High Court of judicature at Allahabad for cancellation

of the Govt. notification as above, and other facts were explained to the representatives. It was also explained to them on behalf of the company that if we succeed in the legal process then their allotments will remain intact as in the original scheme. However, if there is no relief from the court then we will try to revise the lay out of the project in such a way that the affected allottees are accommodated in the same scheme and for that purpose, the company will submit a revised lay out plan with Ghaziabad Development Authority. After GDA approves the revised layout plan in continuation of the earlier lay out which was approved by them then the newly created plots as alternative will be allotted to the affected allottees. The principle followed will be land for land and rest of the terms and conditions will be followed but no higher amount will be charged for the area of the plot which has been allotted to them.

It was accordingly agreed with mutual consent that the legal proceedings will be affectively pursued and consequently, if need arises then as a last measure the further steps with GDA will be taken up for creating alternative plots so that the allottees of C Block may be accommodated at earliest possible date depending on all the approvals as required within the law.

(Authorised Signatory)  
(HARISH GULLA)  
Adl. V.P. (Mkg. & B.D).”

61. Shri Samir Sharma submits that the GDA could not have entered into licence agreement with any private real estate developers with respect to land in village Dundahera belonging to Nagar Nigam, Ghaziabad. It not only entered into such agreements but also got cleared the lay out plans/DPR on the basis of which the developers are carrying out their development activities in village Dundahera. The private builders concealed the facts from the High Court regarding the actual status of the land in the village. The GDA is also guilty of not disclosing full facts, for providing illegal and undue benefits to the private real estate developers.

62. Shri S.M.Z. Kazmi, learned counsel appearing for M/s APIL- the petitioner in Writ Petition No. 254 of 2009 and Shri Navin Sinha appearing for M/s Crossing Infrastructure Pvt. Ltd in Writ Petition

No. 59514 of 2009 submit that under the Land Assembly and Infrastructure Development Policy of the State Government for housing schemes through private investment in urban areas dated 21.5.2005 the petitioners submitted detailed project reports for construction of integrated housing scheme, which was approved by the GDA. The lay out plans were sanctioned and the MOU was prepared and signed in respect of M/s APIL on 9.5.2007. The company acquired 60% of the land situated in village Dundahera from tenure holders to develop the township impugned with Master Plan 2021 and came in possession of the land through various sale deeds upto 21.5.2005. The assistance was to be provided for 40% of the land in the event of such private acquisition for development of the integrated township. The company deposited Rs. 4, 28, 05, 252/- by two demand drafts towards acquisition cost of 35.1798 acres of land on which the development agreement was signed. He submits that on 30.11.2007 the Additional District Magistrate (Land Acquisition) Ghaziabad informed the GDA that a further amount of Rs. 17.44 lacs was to be deposited towards difference of circle rate which was also deposited. A notification under Section 4 of the Land Acquisition Act made by the State Government on 14.6.2008. The plot no. 937 was earmarked in Master Plan 2021 as residential area of medium density. In village Dundahera was excluded from the 10 areas marked as dumping grounds. The State Government, however, intended to construct the SWMP on plot No. 937 on which the writ petitions were filed by Shri Anil Kumar Tyagi. Shri Kazmi submits that Writ-C No. 888 of 1996 Almitra H. Patel vs. Union of India was decided on 15.2.2000 relating to pollution control and environment protection with relation to residents of Delhi. However, some directions were issued to ensure proper and scientific disposal of the waste in a manner so as to subserve the common good. The Court did

not make any specific directions with regard to SWMP at any particular site. The State Government by notification dated 20.9.2004 declared that in view of the budget provided by the Government of India for the two cities namely Ghaziabad and Bareilly in the State of UP decided to set up SWMP. The minutes of the meeting dated 9.10.2006 and 11.1.2007 would show that as per decision of the State Government, 10 cities all over the country were chosen as Airfield Towns where SWMP has to be executed. No specific site was mentioned. The Master Plan 2021 for District Ghaziabad was finalised on 14.7.2005 after considering all objections. Serious objections were raised with regard to the construction of SWMP on 14 acres of land in village Dundahera. The Mukhya Nagar Adhikari of Nagar Nigam and other officials of Nagar Nigam did not raise any objection to earmark the site as residential area. Shri Anil Kumar Tyagi filed writ petitions detailed as above in which orders were passed not to use the land marked as residential area as dumping yard. He submits that the company has spent considerable amount for integrated township project on the land, which was earmarked in the Master Plan 2021 as residential. The entire 47 acres of land is not available with the Nagar Nigam. It wanted to start the project halfheartedly at village Dundahera on 14 acres of land. He submits that 33 acres of land at village Chipiyana is also not available as yet. At village Dasna 47 acres of land is available, which can serve the purpose and for which the developers are ready to finance and compensate any expenditure, which has been made. M/s APIL filed detailed objections on 31.12.2008 to the change of land use in pursuance to the notice given to the public on 19.12.2008. Even this Court considered the matter and passed an exhaustive order on 14.5.2009 that the SWMP shall not be constructed until a final decision is taken by the State Government in the matter of change of

land use. The notification dated 21.10.2009 changing the land use has been challenged by the amendment application dated 26.10.2009. It has been passed without any application of mind and without exhausting the procedure mechanically. In the meeting dated 19.4.2010 the GDA and the State Government in presence of representative of Nagar Nigam decided that 14 acres of land in village Dundahera is not sufficient and thus a letter dated 17.8.2010 was issued by the Vice Chairman, GDA on which the State Government took a decision to acquire total area of 34.213 hectares of land in village Galand for the same purpose and project. The same was followed by notification under Section 6/17 of the Act dated 10.11.2010, which has been challenged in the writ petition No. 1836 of 2001 (Ram Bhul and others (tenure holders) vs. State of UP and others) to which no reply has been filed by the GDA and the State Government.

63. Shri Kazmi submits that the Dumping yard (Solid Waste Management) must be constructed far away from residential areas. Dumping yard releases gas with 50% to 60% methane by volume, which is more potent than Carbon Dioxide and results in irreparable harm to human health and serious global warming problems. Dumping yard also emanates fuel smell and becomes breeding ground for flies, rodents and pests. The liquid seeping through rotten organic waste in Dumping yard called leachate pollutes underground water posing serious threat to human, animal health and environment.

64. Shri Kazmi further submits that for establishment of the SWMP at village Galand contributions were sought from 12 developers and all of them are contributing their share for establishment of the plant which is far away from the densely populated area and most suitable from hygienic point of view. It is 20



Kms away from Hindan Airport. The contribution has nothing to do with 14 acres of land at village Dundahera. Shri Kazmi submits that the Pollution Control Board has also refused the permission to Nagar Nigam. However, subsequently the permission was granted with the condition that the work will start only after the land use has been changed and that siting criteria under the Rules of 2000 should be followed which provides for leaving a buffer zone. The Nagar Nigam has not carried out these conditions so far. The shifting within the radius of 20 Kms does not make any difference. The new site at Galand is about 20 Kms from Hindan Airport. The 84 acres of land at village Galand has been made available for establishment of the plant. This area does not have any habitation or constructions and is the better site. The Civil Aviation Department of the Central Government has not raised any objections with regard to shifting of venue from Dundahera to Galand. The purpose of acquisition at Galand is for common good and pollution free hitting atmosphere to the inhabitants of the houses which are developed under the integrated township plan as well as by the developers. Shri Kazmi submits that with the proposed establishment of plant at Galand as per latest notification of the State Government under Section 4/6 of the Land Acquisition Act dated 9.7.2010 and 10.11.2010 a most feasible land measuring 84 acres is available for the project. The approval has been granted by all the concerned parties and after considering all objections raised by the local residents and public representatives. The project is in tune with the true spirit of the judgment of Supreme Court as well as directions issued by the High Court on 1.11.2006.

65. Shri Navin Sinha assisted by Shri Nisheeth Yadav appearing in **Writ Petition No. 59514 of 2009** filed by Crossing Infrastructure Pvt. Limited submits that the petitioner is private company

incorporated under the Companies Act, 1956. It is a Lead Party of consortium of various real estate developers of repute. It is registered as a Private Developer in category "A" with the GDA and has been granted licence for developing an Integrated Township at Villages Dundahera, Akbarpur Behrampur, Tehsil and District Ghaziabad. The petitioner has altered his position by making investment of about Rs. 600 cores after which the respondents are resiled. Keeping with the object and spirit of the National Urban Housing and Habitat Policy 2005 the Government of UP has issued a Government Order dated 21.5.2005 for public private partnership housing policy for development of Integrated Townships in urban areas. The policy envisaged two models of 'Bulk Land Allotment Model' and 'Development Licence Model'. The development licenced model provides for purchase of at least 60% land directly from the private land owners and 40% to be provided by the State Government's designated agency after acquisition and resumption. The private developer was to bear the cost and proportionate administrative charges. After purchasing 25% of the land the private developer was to apply to the State Government for registration and licence and to submit a Detailed Project Report (DPR) for execution of development agreement for providing balance 40% of the land. The GDA at Ghazaibad was designated as one of the agency to implement the policy. It invited applications for registration of private developers. The petitioner applied for registration as private developer to develop group housing on 360 acres of land in villages Dundahera, Akbarpur Bahrampur, Tehsil and District Ghaziabad. Out of the said land, 236 acres being more than 605 was purchased by the petitioner directly from various land owners. The remaining land was to be provided by the GDA. The GDA registered the petitioner on 29.5.2006 and also granted licence for development of

housing scheme on 360 acres of land. A detailed project report was submitted and was approved by the GDA on 15.9.2006 and 29.11.2006. The Committee, which approved the petitioner's DPR, consisted of the representatives of GDA as well as the Nagar Ayukt, Ghaziabad Nagar Nigam.. The petitioner deposited Rs. 10.33 crores towards 10% acquisition charges for the total estimated cost of compensation and 10% compensation for acquisition of 91.007 acres of land. The user of the land at village Dundahera in the Master Plan 2021 was residential except one existing and running 'Sewer Treatment Plant (STP)'. The Master Plan 2021 also earmarked 10 different sites for dumping yard (Solid Waste Management) including a site near Dasna District Jail, 20 Kms away from village Dundahera. A Sewer Treatment Plan is different from Solid Waste Dumping Yard. While the former treats and purifies sewer water and is a necessary in residential colonies, the later is a huge site where the solid waste of the entire city is dumped. While the former is a housing necessity, the later is a health hazard.

66. It is stated that on 3.2.2007 a development agreement was entered into by the petitioner and GDA. The project was to be completed within five years. The petitioner had to mortgage 25% of the land for the project or to submit a bank guarantee equivalent to 25% of the land cost as Performance Guarantee. The bank guarantee of Rs. 19.11 crores issued by the Corporation Bank, New Delhi to GDA was subsequently replaced by two bank guarantees for Rs.19.11 crores (a. bank guarantee dated 22.1.2009 of Rs. 10 crores issued by Bank of Baroda, Branch at Parliament Street, New Delhi & b. bank guarantee dated 22.1.2009 for Rs. 9.11 crores issued by Punjab National Bank, New Delhi). On 09.5.2007 the Chief Architect and Town Planner, Ghaziabad approved the site map. The petitioner on these assurances went ahead and obtained height

clearance on 6.9.2007 from Airports Authority of India; no objection certificate dated 26.10.2007 from Chief Fire Officer; environmental clearance dated 26.12.2007 from Ministry of Environment and Forests, Government of India; NOC dated 13.6.2008 from Air Headquarters, Ministry of Defence, Government of India; NOC dated 4.7.2008 from Central Ground Water Authority, Government of India and NOC dated 31.7.2008 by Uttar Pradesh Pollution Control Board. The revised sanctioned DPR was issued by Chief Architect and Town Planner, Ghaziabad on 29.8.2008. The petitioner thereafter advertised the Group Housing Colony as a world class habitat in the name and style of "Crossings Republik". By the time of filing the writ petition on 5.11.2009, it is stated that the petitioner has booked 431 flats/shops in the project and has received approximately Rs. 68 acores from the buyers/allottees. The petitioner in the year 2006 noticed that a dumping yard was coming up and solid waste being dumped by Municipal authorities, which was a health hazard to the life of the residents and which dissuaded the people to live there. Various representations were made by the residents requesting the authorities to stop using the adjoining land as dumping yard but of no avail. In the meantime Shri Anil Kumar Tyagi filed writ petitions, details of which, have been given in the preceding paragraphs.

67. The facts and circumstances, in which the GDA rejected the review application of the Nagar Nigam in pursuance to the orders passed by this Court and thereafter the representation of the Nagar Nigam to GDA on which the GDA sent a letter of no objection to the State Government and change of land use by the State Government for which public hearing was made by the GDA and recommendations were sent for change of land use have been given in detail in the preceding paragraphs. The land use has now been changed by the impugned notification issued by the State

Government on 21.10.2009. Shri Navin Sinha submits relying upon paragraphs 55 to 59 of the writ petition, that the methane gas emitted from the dumping yard, causes irreparable harm. The foul smell, and the seeping water from dumping yard will pose serious threat to human and animal life. A grant of Rs. 13.52 crores was sanctioned by the Ministry of Urban Development, Government of India for Ghaziabad SWMP, out of which Rs. 12.76 crores has already been paid to Government of India. The Dumping yard was to be completed by 31.3.2008, with the condition that if it was not completed by the said date a penal interest of 1% will be imposed. The project has yet to see the light of the day. Shri Navin Sinha has adopted the arguments advanced by Shri S.M.A. Kazmi to the change of land use and other prayers made in the writ petition.

68. Shri Anil Kumar Tyagi-the petitioner in **Writ Petition No. 39389 of 2009** filed through Shri D.S. Pandey, Advocate, has prayed for a writ of certiorari to quash the order of the Special Secretary, Government of U.P dated 12.12.2008 directing the Vice Chairman, GDA to invite objections for change of land use under sub-section (3) of Section 13 and to forward its recommendation and for restraining the Nagar Nigam to construct the dumping yard over the residential areas situated in Khasra No. 937 in village Dundahera. In this writ petition Shri Anil Kumar Tyagi has stated that he is resident of village Dundahera, District Ghaziabad. He has, however, not denied the allegations made by Shri Samir Sharma appearing for Shri Rajendra Tyagi that he is an employee of Crossing Infrastructure Private Ltd and has been filing repeated writ petitions to stall the construction of SWMP in village Dundahera. He claims to represent the residents of village Dundahera but has not annexed any resolution of the Gram Sabha and no other person of the same village has joined them to challenge the change of land use and for construction of the

SWMP.

69. In **Writ Petition No. 1836 of 2011** (Ram Bhul and others vs. State of UP and others) filed through Shri Suneel Rai, Advocate, the six petitioners resident of village and post Galand, Tehsil Hapur, District Ghaziabad have challenged the notification under Section 4 (1) read with Section 17 (1) and (4) of the Land Acquisition Act dated 9.7.2010 and the notification under Section 6 read with Section 17 (1) dated 10.11.2010 for acquisition of 34.213 hectares of land in village Galand, Tehsil Hapur, District Ghaziabad for construction of dumping yard for Solid Waste Management. The acquisition has been challenged on the ground that the land of Nagar Nigam in village Dundahera was selected for SWMP and the constructions have started. The land falls under the development area of Hapur-Pilkhua Development Authority, which is developing two residential colonies. There is no need for dumping yard. It is the responsibility of the Municipal authorities under Rule 4 (1) of the Municipal Solid Wastes (Management and Handling) Rules, 2002 to develop and establish infrastructure for collection, storage, segregation, transportation, processing and disposal of municipal solid waste in its own territory. The population of petitioners' village is more than ten thousand and that the acquired site is about hundred meters away from the village abadi. The construction of dumping yard will seriously jeopardise the life of all the villagers. Another site at village Bhowapur having a population of eight thousand at a distance of 500 meters has been acquired for the purposes of dumping yard.

70. The village Dundahera was selected for construction of dumping yard and for which no objection was issued by Air Force Station, Hindan, Ghaziabad by its letter dated 25.7.2008. There was no such proposal of construction of dumping yard at village Dasna

for which the Air Force has serious objection as it falls within the flight path of the Aircrafts taking of and landing at Hindan Air Force Station. The land in village Dundahera and Chipiyana is sufficient for construction of SWMP. Suddenly without considering the effect on the nearby population and in order to facilitate some private builders who have purchased the land in village Chipiyana and Dundahera, the site has been changed. In paragraph-21 of the writ petition it is stated as follows:-

“21. That it appears that a well considered decision for construction of dumping yard at Dundahera and Chipiyana Bujurg was changed suddenly without considering the effect on the nearby population only in order to facilitate some private developers who had purchased land at Chipiyana Bujurg and Dundahera.”

71. The petitioners have further contended that the construction of Solid Waste Management Plant cannot be made over night. It takes years for seeking permission and no objection from Pollution Control Board. The money for construction has been provided by the private developers, who have illegally included the land at village Dundahera in their DPR. In the circumstances, the land has been acquired in colourable exercise of powers against the objections of the Hindan Air Force authorities and for which the cost is being paid by private developers. The entire acquisition, therefore, is illegal, malafide and in violation of the petitioners' right under Article 300A of the Constitution of India. In such circumstances Section 17 could never have been applied. The petitioner has relied upon latest judgment of Supreme Court in **Anand Singh & anr. v. State of Uttar Pradesh & ors 2010 (11) SCC 242; State of West Bengal and others v. Prafulla Churan Law 2011 (4) SCC 537; Dev Sharan & ors vs. State of UP & ors 2011 (4) SCC 469; Radhey**

**Shyam (Dead) through LRs vs. State of UP, Civil Appeal No. 3261 of 2011 decided by Supreme Court on 14.4.2011** in which it was held that though initially a presumption is raised in favour of the Government that pre-requisite conditions for exercise of powers to invoke urgency clause is satisfied, such presumption can be disclosed by the circumstances themselves having no reasonable nexus with purpose for which the power has been invoked.

72. Shri Suneel Rai submits that where the site for SWMP has been changed at the instance of the private developers and they are contributing the cost of construction of SWMP the entire acquisition without selecting the site and against the objections taken by the Hindan Air Force authorities is in colourable exercise of powers and is thus liable to be set aside.

73. He has also relied upon the judgments in **Greater Noida Industrial Development Authority vs. Devendra Kumar and others, SLP (c) No. 16366 of 2011 decided on 6.7.2011** and in which the Supreme Court relied upon its observations in **State of Punjab vs. Gurdial Singh 1980 (2) SCC 471:-**

“Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat...that all power is a trust-that we are accountable for its



exercise-that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

74. We may now summerise the facts, as have been brought on record by the petitioners in the writ petitions; the amendment applications and supplementary affidavits filed by M/s APIL and the affidavits filed by State respondents; Nagar Nigam, Ghaziabad; Ghaziabad Development Authority; U.P. Pollution Control Board and Shri Rajendra Tyagi-intervener, as follows:-

1. The writ petition was filed in Supreme Court in public interest being Writ Petition No. 888 of 2009 (Almitra H. Patel vs. Union of India in which on the directions issued by the Supreme Court, the Central Government had taken a decision to give 100% financial grants to establish Solid Waste Management Plants in the cities where the Air Force Stations of Indian Air Force are established. The grant was given to avoid accidents of the aircrafts on account of bird hits which are mostly found in the area where the solid waste is dumped all around cities.

2. The Ministry of Forest and Environment, Government of India issued a Notification No. S.O./908 (3) dated 25.9.2000 notifying the Municipal Solid Waste (Management and Handling) Rules 2000 entrusting the responsibility of construction of SWMP to the municipal authorities. The Central and State Pollution Control Boards were required to monitor the compliance of the standard and in case the area falls within the jurisdiction of development authorities, para-1 of Schedule III under Rule 6 (1) and (3); 7 (2) were made responsible to identify the Landfill Sites and to hand over the sites to the concerned Municipal Authorities for development/operation and maintenance. Elsewhere this responsibility was to lie with the concerned development authority. Detailed provisions were

made for prevention of pollution including Water Quality Monitoring and Ambient Air Quality Monitoring by the Pollution Control Boards and the plantation at landfill site. The Rules also provide for closure of landfill site and post-care and standard for composting, treated liachates and incineration in Schedule (IV).

3. The U.P. Pollution Control Board gave a notice on 5.9.2001 to Nagar Nigam to ensure the compliance of Rule 4 (1) of the Rules of 2000 for construction of SWMP.

4. The Secretary, Urban Development, Government of UP wrote letters on 4.10.2001 to all District Magistrates and Nagar Nigam to comply with the directions of the Supreme Court.

5. The GDA, inspite of receipt of the letters from the Ministry of Environmental Forest, Government of India; Secretary, Urban Development, Government of UP and UP Pollution Control Board, did not identify and hand over the land to Nagar Nigam, Ghaziabad. A request in this regard by the Municipal Commissioner, Ghaziabad dated 5.9.2011 was also not complied with. The Nagar Nigam again sent a reminder on 19.10.2001 specifically stating that provisions have not been made in the proposed Master Plan 2021 for reserving sites for SWMP. Reminders were also given on 21.1.2004 by Municipal Commissioner, Ghaziabad to GDA that the District Magistrate, Ghaziabad has taken part in a meeting dated 14.11.2003 convened by Government of India in which the District Magistrate was made the Chairman of the Committee.

6. The experts of HUDCO; the adviser of CPHO of the Urban Development and Poverty Eradication Ministry of Government of India; the representatives of the Hindan Air Force Station Officer, Ghaziabad and the Regional Manager of the UP Pollution Control Board made a joint inspection in which they found that the land in village Dundahera (14 acres) vested in Nagar Nigam and 33 acres land belongs to Gram Sabha in village Chipiyana to be suitable for construction of SWMP.

7. The Municipal Commissioner, Ghaziabad informed the Secretary, Environment, Government of UP on 26.2.2004 with the selection of site. He also sent a request on 9.2.2004 to requisition the 33 acres of land in village Chipiyana for construction of SWMP, which is adjacent to 14 acres of land in village Dundahera.

8. Shri V.P. Singh, representative of the Air Force Station,

Hindan, Ghaziabad in the Land Selection Committee issued a no objection certificate on 16.4.2004 for establishing SWMP in Villages Dundahera and Chipiyana.

9. The Municipal Commissioner, Ghaziabad by his letter dated 22.7.2004 informed the Secretary, U.P. Pollution Control Board, Lucknow with the development and to issue a no objection certificate.

10. The Principal Secretary, Environment, Government of UP issued a notice to Municipal Commissioner, Ghaziabad on 3.8.2004 to show cause as to why proceedings be not taken against him under Section 19 of the Environment (Protection) Act, 1986. The Principal Secretary, UP Pollution Control Board by his letter dated 11.8.2004 issued a letter of no objection to the selection of site for construction of SWMP in villages Dundahera and Chipiyana.

11. The Municipal Commissioner, Nagar Nigam, Ghaziabad informed the Urban Development Department, Government of UP in pursuance to the meeting with the concerned Secretary of Ministry of Urban Development and Poverty Eradication, Government of India dated 5.7.2004 that 14 acres of land is available in village Dundahera and for 33 acres of land a proposal for acquisition has been forwarded to the District Magistrate/Commissioner.

12. The Principal Secretary, Urban Development, Government of UP constituted a Committee for construction of SWMP in accordance with the plan prepared by HUDCO for Ghaziabad and Bareilly cities. The committees were constituted on 20.9.2004 separately for Ghaziabad and Bareilly after which on 3.8.2004 a clarification was sent to the Principal Secretary, Environment, Government of UP in reply to show cause notice.

13. The Nagar Nigam, Ghaziabad handed over possession of 14 acres of land in village Dundahera after its identification on 20.10.2004 to the Project Director, Jal Nigam in pursuance to his letter dated 14.10.2004 for construction of SWMP vide a Dakhalnama. On 20.11.2004 the Chief General Manager (C & DC) requested the Ministry of Urban Development and Poverty Eradication to make available the remaining land of Chipiyana after requisition and enclosing a map of the land in village Chipiyana.

14. In the year 2005 in the meetings dated 17.1.2005 under the Chairmanship of the Principal Secretary, Environment, Government of UP, decisions were taken to direct the

Executive Engineer, Awas Evam Vikas Parishad, Ghaziabad and Vice Chairman as well as Secretary, GDA on 24.1.2005 and 25.2.2005 respectively to make the land available to Ghaziabad Nagar Nigam for SWMP. In all these meetings the representatives of the Ghaziabad Development Authority including the Engineers were present.

15. The State Government declared a Policy on 21.5.2005 for Land Acquisition and Development for Housing Schemes in the urban areas of the State by investment of private capitals. The State Government, taking into account the need for 16 lacs housing unit in the 10<sup>th</sup> Five Year Plan decided to create a new housing stocks for which it found it necessary to invite private investment. The scheme provided for (a) Bulk Land Allotment Scheme and (b) Licensed Based Development Permission Scheme. M/s APIL got itself registered under the scheme as a Category 'A' private developer and submitted a DPR which was approved in the Board meeting of GDA on 13.9.2006 along with Crossing Infrastructure Private Ltd (Consortium); Agarwal Associates (Consortium); Summer Construction Limited (Consortium) and S.N.S.V. Agencies Private Limited (Consortium). In the Board meeting of the GDA dated 18.11.2006, the site plants for Integrated Township Schemes were approved including the site plan submitted by APIL including the 14 acres of land in village Dundahera with condition No. 12 in the letter of the Chief Architect and City Planner, GDA dated 19.1.2007 that the matter relating to 14 acres of LMC land in the licensed area is under consideration at the level of the State Government and on which the decision of the State Government will be binding.

16. The DPR issued to M/s APIL on 19.1.2007, was only in respect of 60% of the land owned by M/s APIL vide Boards meeting dated 18.11.2006. On 30.1.2008 Shri P.N. Misra, Vice President of M/s APIL gave an affidavit stating therein that M/s APIL will accept the decision of the State Government in respect of 14 acres of land in village Dundahera.

17. The Director (Executive), Ansal Landmark Township (P) Ltd, New Dehli gave a letter to the Nagar Nigam on 12.7.2005 to provide the same 14 acres of land in village Dundahera to the company for developing township. The Nagar Nigam did not consider the letter as it had already given possession of the land for construction of SWMP.

18. Having failed to get the ownership of the land from GDA and Nagar Nigam, Ghaziabad M/s APIL and the other

companies instigated the villagers to start demonstration. On the intervention of the District Magistrates, Ghaziabad and Gautam Budh Nagar, the residents of the local area stopped their agitation. Shri Anil Kumar Tyagi, stated to be an employee of M/s Crossing Infrastructure Private Limited claiming to be resident of village Dundahera, filed Writ Petition No. 12496 of 2006 without impleading Nagar Nigam, Ghaziabad alleging that the construction of SWMP is being raised against the land use in the Master Plan. The writ petition was disposed of on 1.3.2006 directing the GDA to decide the representation and on which the Vice Chairman, GDA issued a letter on 7.4.2006 to Nagar Nigam to present its case before him. A detailed objections giving all the aforesaid facts along with the plans, maps of SWMP, the proposed land fill sites and buffer zone surrounding the SWMP was presented before the Vice Chancellor, GDA. The GDA fixed on 28.4.2006 for hearing. The date was adjourned to 5.5.2006. When the Municipal Commissioner and the Superintendent (Law-Property) went to the office of the Vice Chairman, GDA on 5.5.2006, they were informed that the Vice Chairman is not present and that the hearing will be held on 10.5.2006. On 10.5.2006 the office was closed due to local holiday on account of 'Saheed Diwas' and thereafter no information was given.

19. By the order dated 27.5.2006 the Vice Chairman, GDA rejected the representation of the Nagar Nigam purportedly on the directions of the Court to decide the representation and on the ground that when meetings were held for finalising the Master Plan, no one from Nagar Nigam had raised objections that the land has been selected, reserved and on which the construction of SWMP has been started by the Nagar Nigam after the site was handed over on 20.10.2004. The Master Plan approved by the State Government had reserved the land use in village Dundahera as residential. The Vice Chairman observed that there are ten sites reserved for sewage treatment, water purification and solid waste management in the development area of Ghaziabad.

20. A review petition was moved by the Nagar Nigam on which the GDA passed an order on 27.5.2006 to refer the matter to the State Government. At this stage the same Shri Anil Kumar Tyagi, who appears to have knowledge of all the proceedings, filed another Writ Petition No. 57172 of 2006 in which the Court expressed an opinion that if the Nagar Nigam was aggrieved by the order dated 27.5.2006, it should have challenged the order before the appropriate authority. A writ of mandamus was issued not to undertake any construction work of dumping yard as directed by the Vice Chairman, GDA on

27.5.2006 and that if any review petition is pending before the GDA, the same shall be decided within six weeks.

21. The Vice Chairman, GDA again considered the matter for review and rejected the application on 20.11.2007. The GDA accepted the stand taken by M/s APIL that according to the policy of the State Government, which has acquired 60% of the land directly from the farmers and had requested that in pursuance to the decision taken in the meeting of GDA on 13.9.2006 the scheme for township was accepted. When the Master Plan 2021 was approved on 14.7.2005, the Municipal Commissioner was present. He had signed the proceeding without raising any objections. The GDA also observed that the licensee builder had sold the land after which third party interest accrued on this 14 acres of land and that since the SWMP will require at least 42 acres of land, whereas only 14 acres of land is available on the spot.

22. The GDA thereafter approached the Inspection Officer, Air Force Officer, Hindan, Ghaziabad for construction of SWMP at village Dasna and Shahpur. The Air Force Station Hindan by its letters dated 25.7.2008 and 12.9.2008 refused to grant permission on the ground that Dasna is along with the extended centre line and approach path for aircraft landing at Hindan air field. It is at a distance of 15 Kms from the boundary wall of the station. The aircraft making the approach would be low in height over passing over this site and would be affected by its associated bird activity. The Air Force Station requested not to select the site within the approach funnel which is extended upto 20 Kms from run way and re-affirmed that any site in the vicinity of Dundahera or Chipiyana Bujurg would be good option. It also informed that Shahpur is at a distance of 8 Kms and as per Aircraft Act 1934 no waste dump can be less than 10 Kms from any air field. The Wing Commander Vishal Chaudhari also informed in his letter dated 12.9.2008 that proposed site at village Shahpur is located on the circuit flying pattern for aircraft apparent from the air field. No waste dump can be allowed in the circuit pattern due to acute bird hazard associated with it enclosing the local flying area and circuit area. The objections were taken for construction of any waste dump in the north, north-east, and east as construction of waste dump would be hazard for flying operations.

23. At this stage M/s Crossing Infrastructure Private Limited filed Writ Petition No. 54790 of 2008 for not constructing dumping yard at Dundahera. This writ petition was disposed of on 4.11.2008 with observations that there appears

to be no dispute about the situation as the land use of the area in the Master Plan has not been changed. The Court restrained the respondents to install/create/establish dumping yard so long the user of the land is not changed. At this stage the GDA realised that the construction of SWMP on the land of Nagar Nigam in village Dundahera is a scheme of Government of India and is directly related to policy matter and as such it referred the matter to the State Government. The State Government by its order dated 12.12.2008 directed the GDA to invite objections under sub-section (3) of Section 13 of UP Urban Planning and Development Act, 1973, to dispose of the objections and suggestions and to send its recommendation to the State Government. The GDA held a public hearing for change of land use and after hearing all concerned including Shri Anil Kumar Tyagi the residents of village Shahberi, Dundahera, Chipiyana, representatives of builders including the petitioner M/s APIL and M/s Crossing Infrastructure Pvt. Ltd, the academic institutions and others made recommendations to change the land use of 14 acres of land in village Dundahera giving reasons which have been mentioned as above.

24. The State Government accepted the recommendations and by notification dated 21.10.2009 the land use of 14 acres land in village Dundahera has been changed as dumping yard. By the amendment application the notification dated 21.10.2009 has also been challenged.

25. In the meantime a subsidiary-associated company of APIL namely Ansal Landmark Township Private Limited sold away the 14 acres of land in village Dundahera to 133 persons by plotting the land in the name of "Acquapolis" Scheme C-Block." When they raised objections, meetings were held on 13.11.2009 at the company office of the developer in which offers were given to the persons interested in getting an alternate in the same colony. The company explained that they are pursuing the matter in the High Court at Allahabad for cancellation of the Government notification. If no relief is given by the Court, then the company will try to revise the lay out plan of the project in such a way that the affected allottees are accommodated in the same scheme and for that purpose the company will submit a revised lay out plan with GDA. An interim order was passed in this writ petition on 13.1.2009 not to take any action against the petitioner till the next date of listing. A further detailed order was passed on 14.5.2009.

26. Despite the change of land use by notification dated 21.10.2009, taking advantage of the interim orders passed by the High Court, the petitioners persuaded the GDA to move the

State Government for acquisition of the land in village Galand at the cost to be deposited by the developers including the petitioners. The State Government, without knowledge of the developments as aforesaid and the construction of the SWMP by the Nagar Nigam at village Dundahera and the change of land use at Dundahera, proposed acquisition and issued notifications under Section 4 read with Section 17 (1) and (4) dated 9.7.2010 and thereafter issued notification under Section 6 read with Section 17 (1) dated 10.11.2010 for acquisition of 34.213 hect of land in village Galand, Tehsil Hapur, District Ghaziabad for acquisition of land at Dasna for which the no objection certificate was not given by the Air Force Station, Hindan Air Base, Ghaziabad, which is under challenge in Writ Petition No. 1836 of 2011 (Ram Bhul and others vs. State of UP and others).

27. The Chief Architect and Town Planner, Ghaziabad has passed the revised DPR of M/s APIL on 7.7.2011 and the site plan for the net licence area of 140.63 acres after its approval in the meeting of GDA on 25.4.2011 with about 40 conditions with condition nos. 5, 13 and 18 providing for restriction to raise constructions/development on 14 acres of land of Nagar Nigam reserved for dumping yard until the land use is not converted as residential and the land is not handed over to the developers. It further states that the developer will have to maintain status quo of the land until the High Court passes final order and will have to comply with the order of the High Court. Condition no. 7 provides that in the subject lay out plan the Gram Samaj/Government land area 15.6204 acres will be kept in the same condition until the land is not requisitioned lawfully and for which the Nagar Nigam, Irrigation Department and District Magistrate, Ghaziabad will be fully responsible. Until then no construction will be constructed on the land. Condition no. 13 provides that the developer will be responsible for all land records and the facts proved by it. In case any information found to be incorrect, the approval will be terminated. The GDA will also not be responsible for any land dispute and khasra numbers affected by the suit pending in the High Court will be kept in the same condition on which the construction will not be permitted. Condition no. 18 provides that the dumping yard is proposed for solid waste disposal in village Galand, the expenses for which to be born will be proportionately paid by the developers as and when demanded from them.

28. M/s APIL-the petitioner has filed supplementary affidavits enclosing letters informing Chief Architect and Town Planner that it has already deposited Rs. 21.50 lacs and a further



amount of Rs. 13.50 lacs, total Rs. 35 lacs toward 50% proportionate amount for proposed expenses of acquisition of land in village Galand on National Highway No. 24 in response to the letter of the Chief Architect and Town Planner, GDA dated 24.7.2010.

75. The facts, narrated as above and summarised by us, demonstrate the manner, in which the Ghaziabad Development Authority on the representations made by the builders and developers, have included the 14 acres of land of Land Management Committee of village Dundahera belonging to Nagar Nigam, Ghaziabad in their DPR. Having full knowledge of the facts, that in pursuance to the directions issued by the Supreme Court, the land in village Dundahera has been selected for construction of SWMP, and that the work of SWMP has started on 100% grants given by the Central Government under supervision of the Urban Development Department of the State Government and UP Pollution Control Board, the GDA rejected the representations of Nagar Nigam and the review petition, against the statutory duties imposed on it under the Municipal Solid Waste (Management and Handling) Rules, 2000, to allow private developers to usurp the land and to sell it to the third parties. Repeated writ petitions were filed by the private individuals having close connection with the builders and after the change of land use was proposed by the State Government by the builders to stall the constructions of SWMP. The GDA thereafter recommended for change of land use on which the Notification was issued for changing the land use under Section 13 of the U.P. Urban Planning and Development Act, 1973. Despite these developments the GDA not only proposed change of site of the construction of the SWMP from village Dundahera but also approved in its Board meeting dated 24.5.2011 and issued a revised DPR and lay out plan on 7.7.2011 to Ms APIL including the land in village Dundahera subject to the

decision to be taken by the High Court after getting Rs. 35 lacs deposited towards the cost of acquisition of the land at Dasna in village Galand at a new site, towards 50% cost of acquisition for which the Air Force had raised strong objections.

76. We also find it strange and express our surprise on the acquisition of land at Dasna in village Galand, Tehsil Hapur, District Ghaziabad for construction of dumping yard for solid waste management at the cost of private builders and deposit by them of the cost of acquisition of land. The notifications acquiring the land do not specify the authority, which will develop the land apparently on the ground that the area falls under the development area of Hapur-Pilkhua Development Authority, which is developing two residential colonies nearby. The acquisition, for which the cost is being paid by the developers with their plans to usurp the land in village Dundahera, and for which the acquiring body has not been specified for construction of dumping yard and solid waste management, is wholly illegal and is contrary to the scheme of the Land Acquisition Act. Under the Municipal Solid Waste (Management and Handling) Rules, 2000, the SWMP, is to be planned, constructed and managed by the Nagar Nigam. The Development Authority is only required to select the site. The land at Dasna, near Dasna Jail, in village Galand is not within municipal area of Nagar Nigam, Ghaziabad, nor the Nagar Nigam has funds or authority to transfer the grant given by Government of India, and to utilise the unused grant for constructing SWMP at village Galand, for which the Air Force Authorities have raised strong objections. The State Government has not considered these aspects before issuing notifications under Section 4 (1) read with Section 17 (1) and (4) and Section 6 (1) read with Section 17 (1) of the Land Acquisition Act.

77. The Ghaziabad town with population of more than 4 million

bordering the State of Delhi, is the fastest developing town in the State of UP, and falls in national capital region. The Nagar Nigam, Ghaziabad as the municipal authority is under obligation to establish SWMP and land filling sites. The initiative was provided before the issuance of the Rules of 2000 under the Environmental Protection Act, 1996, by the Supreme Court additionally on the ground of saving aircrafts, from the accidents on account of menace of birds in the area, where the solid waste is littered. The site was selected jointly by the representatives of the HUDCO, Ministry of Urban Development and Poverty Eradication, Officers of the Hindan Air Force Station and the Regional Manager of U.P. Pollution Control Board. The land in village Dundahera and Chipiyana is away from the funnel; the flight path of the aircrafts was found to be most suitable. The money was released by Government of India and that after repeated reminders by the Department of Environment, Government of UP and the UP Pollution Control Board, the Committees were constituted for SWMP in Ghaziabad and Bareilly on 20.9.2004. The site was handed over by Nagar Nigam to the Jal Nigam, the construction agency on 20.10.2004. As soon as the construction of boundary wall started, the local residents started their agitation, which stopped when the District Magistrates of Ghaziabad and Gautam Budh Nagar explained the benefits of the project to the residents of the areas.

78. It is at this stage the State Government announced a policy on 21.5.2005 of development of urban land to meet the requirements of the residential units in the State of UP. The petitioner and other developers got themselves registered under the policy in the 'Licensed Based Development Scheme,' and in which 60% of the land was to be acquired by the registered private developer.

79. The petitioners conniving with officers of the GDA took

benefits of the default committed by the Municipal Commissioner, Nagar Nigam in the meeting in which the Master Plan 2021 of GDA was proposed to be finalised. Despite the fact, that the officer of GDA was present in almost all the meetings for construction of SWMP at village Dundahera, no objection appears to have been raised by Nagar Nigam in the proposed residential use of land in village Dundahera.

80. Even if the land use of village Dundahera in the Master Plan 2021 of GDA was residential, this land could not have been included in the DPR of the petitioners, as it never belonged to GDA. It was the land belonging to the Land Management Committee of the village, which was handed over to the Nagar Nigam, Ghaziabad. The GDA had no authority to include it in the DPR sanctioned in favour of petitioners. The petitioners as well as GDA were fully aware that the SWMP is being constructed on the 100% financial grants given by the Central Government under the orders of the Apex Court. The brazenness of GDA is evident from the fact that taking advantage of its own wrong in showing the land use of the area as residential, it not only included the same land in the DPR of the petitioner, it also rejected the representation of the Nagar Nigam and thereafter a review petition filed by the Nagar Nigam.

81. It appears that some good sense prevailed in the GDA after realising that the SWMP is being constructed under a policy of the Central Government and the State Government and for which the GDA is also statutorily responsible to select the site under the Municipal Solid Waste (Management and Handling) Rules, 2000. The GDA thus forwarded a request to the State Government on which the State Government in exercise of its powers under subsection (3) of Section 13 of UP Urban Planning and Development Act, 1973, directed it to advertise and hold public hearing and

forward its recommendation after deciding the objections and recommendations, if any. The GDA held a public hearing on 19.1.2009, and rightly recommended that the land use of the 14 acres of land in village Dundahera should be changed as 'dumping yard' and consequently the State Government issued impugned notification on 21.10.2009, giving rise to these writ petitions.

82. The officers of GDA appear to have no respect for law. Having made recommendations of change of land use, and forwarding its recommendations for change of land use, instead of allowing the SWMP to be constructed for the benefits of residents of Ghaziabad and for environmental protection, proposals were sent to the State Government for acquiring land at Dasna in village Galand for changing the site of the SWMP. Once again the officers of GDA forgot that there was strong objections raised by the authorities of Hindan Air Force Base for constructing any dumping yard at Dasna and Shahpur as they lie directly in the flight path (funnel) of the aircrafts taking off and landing at low height within 20 Kms of the air base. The GDA also misrepresented to the State Government that the village Galand including Dasna falls within the development area of GDA and consequently the State Government did not mention in the Notifications dated 9.7.2010 and 10.11.2010 for acquisition of 34.213 hectare land in village Galand, Tehsil Hapur, District Ghaziabad, the acquiring body for which the land has been acquired, has not been specified. The GDA also did not realise that where the land is being acquired by the State Government for construction of a environmental project, the cost of acquisition cannot be met by the private companies. In order to change the site of SWMP and to hand over to M/s APIL, which had already sold the land, which never belongs to either GDA, the private developers have offered and that the officers of the GDA accepted the compensation from them and

have deposited it for acquisition of land in village Galand. The petitioners have, in an extraordinary zeal to defend themselves in a matter where it committed gross misrepresentation, which is also a crime under IPC in selling away the land of Nagar Nigam, Ghaziabad, have filed documents to support that they have deposited Rs. 35 lacs towards 50% cost of acquisition of land in village Galand for the purposes of changing the site of SWMP and have thereafter persuaded the GDA in requesting the Commissioner of the Division to allot the site to GDA so that the same could be given to the petitioners.

83. We are surprised on the boldness of the officers of the GDA and the extent to which they can use their administrative powers to help private developer companies. The GDA has not only settled the land, which never belonged to it, and was being used for an important environmental project for general public to them, but has also thereafter without realising its consequences proposed the change of the site to a place for which the Hindan Air Force Base has raised serious objections. In our view officers of GDA have not only committed a criminal act of disposing of the land, which did not belong to them, they have also committed gross contempts of the orders of the Supreme Court in **Almitra H. Patel's** case and have also allowed the petitioners to sell away the land with approval in Board meeting of GDA held on 25.4.2011, to the revised DPR and lay out plan dated 7.7.2011, including the land in village Dundahera and some more land of Land Management Committees of neighbouring villages. The DPR includes the Gram Samaj/Government land area of 15.6204 acres, which does not belong to GDA, to be given to the builders after requisitioning it from Nagar Nigam, and the Irrigation Department. The GDA has included in DPR and lay out plan of M/s APIL the parcels of land

which does not belong to it nor it had any authority to dispose it of either by giving allotment or licence for its development. It appears that the reservation of the land use in the Master Plan 2021 is understood by GDA, to confer on it property right for its transfer to the private developers.

84. The reservation of landfill sites, at a safe place away from thick urban population and the construction of Solid Waste Management Plant, in accordance with Municipal Solid Waste(Management and Handling) Rules, 2000, is a larger public purpose. The State Government, through its Urban Development Department, Municipal Authorities, Development Authorities and the Pollution Control Boards in the State, have been given important statutory responsibility under the Municipal Solid Waste (Management and Handling) Rules, 2000, to reserve the sites and to construct landfill site and Solid Waste Management Plants with its scientific specification given in the Schedule appended to the Rules. This responsibility to protect the environment serves the rights of citizen under Article 21 of the Constitution of India. All the powers of the State Government under Articles 12, 14, 16 and 298 read with the Preamble & Part-IV of Constitution of India, as held in **Akhil Bhartiya Upbhokta Congress vs. State of M.P and others (2011) 5 SCC 29**, are in larger public interest, for public good and have to be used without any discrimination. The State Government does not have absolute or unfettered discretion, incompatible with doctrine of equality and is an antithesis to concept of rule of law. In our constitutional structure no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of rule of law. Reference may be made to the long lines of cases

beginning from **S.G. Jaisinghavi v. Union of India**, AIR 1967 SC 1427; **Erusian Equipment and Chemicals Ltd. v. State of W.B. (1975) 1 SCC 70**; **Ramana Dayaram Shetty v. International Airport Authority of India**, (1979) 3 SCC 489; **Kasturi Lal Lakshmi Reddy v. State of J&K**, (1980) 4 SCC 1; **LIC v. Consumer Education & Research Centre (1995) 5 SCC 482** and **Common Cause (Petrol Pumps Matter) v. Union of India (1996) 6 SCC 530**.

85. In **Akhil Bhartiya Upbhokta Congress's** case (supra) the Supreme Court, in considering the matter in which the State Government had changed the land use in the Bhopal Development Plan under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, declared allotment of 20 acres of land to respondent no. 5 in the Civil Appeal registered as a Trust, having no nexus with the purpose for which the modification of the development plan could be affected under that Section. Paragraphs 76 and 79 of the judgment are quoted as below:-

“76. The development plan prepared under Chapter IV is the foundation of development of the particular area for a specified number of years. No one can use land falling within the area for which the development plan has been prepared for a purpose other than for which it is earmarked. Section 23-A was inserted in 1992 and amended in 2005 with a view to empower the State Government to modify the development plan or zoning plan. However, keeping in view the basic objective of planned development of the areas to which the Act is applicable, the Legislature designedly did not give blanket power to the State Government to modify the development plan. The power of modification of development plan can be exercised only for specified purposes.

79. It is not in dispute that in the Bhopal Development plan, the use of land which was reserved and allotted to respondent No.5 was shown as public and semi public (health). The State Government modified the plan by invoking Section 23-A(1)(a)



of the Act for the purpose of facilitating establishment of an institute by respondent No. 5 and not for any proposed project of the Government of India or the State Government and its enterprises or for any proposed project relating to development of the State or for implementation of the Town Development Scheme. As a matter of fact, the exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality because land had been allotted to respondent No.5 almost two years prior to the issue of notification under Section 23-A (1) (a) and the objects for which respondent No.5 was registered as a trust have no nexus with the purpose for which modification of development plan can be effected under that section. Therefore, there is no escape from the conclusion that modification of the development plan was ultra vires the provisions of Section 23-A(1) (a) of the Act.”

86. In the present case we find that by default the Master Plan 2021 prepared by the GDA, without taking into consideration the orders of Supreme Court, selection of site, the grants given by the Central Government and the construction of SWMP, had prescribed the land use of the area of village Dundahera as residential. The State Government had, thereafter in bonafide exercise of its powers on the recommendation of GDA after giving public hearing and considering the report of the Committee of the GDA, which had heard all the concerned parties, changed the land use to dumping yard, for the purposes, for which it was selected and was being utilised. The power of change of land use was exercised by the State Government to save the important environmental project coming up on the land in larger public interest.

87. The GDA, thereafter again completely lost sight of the change of land use, release of grants by Government of India, and the utility of the project and was ill-advised in not following the orders passed by the Supreme Court in **Almitra H. Patel's** case and in which the Supreme Court was monitoring Action Plan for management of

municipal solid waste in respect of Metro cities and State capitals by the Ministry of Urban Development in consultation with all concerned. The record of proceedings of the Writ Petition No. 888 of 1996 dated 26.7.2004 and 4.10.2004 shows the deep concern with which the Supreme Court is monitoring the progress of the implementation of the Municipal Solid Waste (Management and Handling) Rules, 2000. In this case not only the site was selected but the LMC land in the management of Nagar Nigam was put to use and the constructions were started when Shri Anil Kumar Tyagi apparently set up by the private builders, who had taken out licence and included the land in village Dundahera without authority in their development plans, in connivance with the GDA, started filing one after another writ petitions, and obtained restraint orders on constructions against the land use. Unfortunately without calling for reply, adhoc directions were given to stop constructions against the proposed land use in the Master Plan 2021. In spite of the representations of the Nagar Nigam, trying to inform the High Court as well as GDA that SWMP is under construction, with no objection certificate received from the Hindan Air Force Base and the UP Pollution Control Board, the GDA brazenly colluding with private builders even after the change of land use by State Government, allowed the revised DPR and lay out plan including the land in village Dundahera, which never belongs to GDA.

88. We have noticed with pain and anguish the pleadings in which the Municipal Commissioner, Nagar Nigam, Ghaziabad has stated that though he had filed the written objections, he was not given any hearing by the Vice Chairman of the GDA even after adjourning the matter twice. It is apparent that the Vice Chairman, GDA was trying to avoid to face the Municipal Commissioner having strong objections, to the interference made by the GDA. This strange

method of hearing adopted by the Vice Chairman, GDA in which he fixed dates but never heard the Municipal Commissioner, Nagar Nigam, Ghaziabad inspite of orders of this Court needs to be strongly condemned.

89. In Writ Petition No. 64043 of 2009, Shri Ash Mohammad has alleged that the people belonging to Muslim community have been burning their dead on plot nos. 937 and 957 at village Dundahera, Ghaziabad. His claim is not supported by the revenue record. There is nothing to show that he had ever made any claim before the Nagar Nigam or had objected at the time of public hearing held by GDA for change of land use. We, therefore, do not find any substance in his claim.

90. The Writ Petition Nos. 64347 of 2009, 64348 of 2009 and 58558 of 2009 have been filed by the persons claiming to be allottees of the plots by the Ansal Landmark Township Private Limited. We have already found from the pleadings and the documents annexed to the writ petitions and hold that 14 hectares of land in village Dundahera, belonging to Land Management Committee and recorded as agricultural land prior to change of the land use to residential in the Master Plan 2021 and thereafter as Dumping Yard by the State Government by impugned orders, was not transferred in any manner by the Land Management Committee; Nagar Nigam or GDA to M/s APIL. The land was illegally and arbitrarily included in the DPR and the lay out plan by the GDA. M/s APIL did not acquire any rights over the land by its inclusion in the DPR and lay out plan and had no right to further transfer it by way of allotment to any person. The petitioners in these writ petitions have no right over the plots allotted to them. They were already informed of the pending litigation by M/s APIL and meetings were held in which M/s APIL proposed allotments to them in some other plots. They have no right

whatsoever to challenge the notification dated 21.10.2009 passed by the State Government changing the land use of village Dundahera from residential to Dumping Yard (Solid Waste Management).

91. In Writ Petition No. 1836 of 2011 (Ram Bhul and others vs. State of UP and others) challenging the acquisition of 34.213 hectares of land at Dasna in village Galand, Tehsil Hapur, District Ghaziabad, it is established that the land was acquired by the State Government not for any construction of dumping yard for solid waste disposal of District Ghaziabad for which the responsibility of the construction and maintenance under the Rules of 2000 is with the Nagar Nigam. The land was acquired by the State Government under an arrangement in which the construction of SWMP was proposed to be shifted from village Dundahera to Dasna to which serious objections were made by the Hindan Air Force Station. We further find that the cost of the compensation was deposited by M/s APIL and other developer companies, which have no concerned or responsibility to construct SWMP. The land was acquired for shifting the site of SWMP on account of the litigation and interim orders passed by the Court. The GDA, in active connivance with the developers and to help them to acquire the land for which GDA has no authority, proposed the shifting of the site of SWMP from village Dundahera to Dasna. The entire object was to allow the land in village Dundahera to M/s APIL. The land use of the site and the alleged nuisance, which was claimed to be caused to the residents of the area, was only a facade. The entire object of filing of repeated writ petitions initially by proxy and thereafter by developers themselves was to illegally grab the land in village Dundahera and other lands of the Land Management Committee and Nagar Nigam for development and sale. The acquisition of land was in colourable exercise of powers. We also not find that in view of the law developed by the Supreme Court

in **Anand Singh & anr. v. State of Uttar Pradesh & ors** (supra); **State of West Bengal and others v. Prafulla Churan Law** (supra); **Dev Sharan & ors vs. State of UP & ors** (supra); **Radhey Shyam (Dead) through LRs vs. State of UP** (supra) and **Greater Noida Industrial Development Authority vs. Devendra Kumar & ors** (supra), Section 17 (1) could not be applied to the acquisition as the construction of Solid Waste Management Plant takes considerable time. The nature of the alleged project in contravention with the objections taken by the Hindan Air Force authorities could not be completed within a short time so as to avoid the minimal hearing to the land owners.

92. Before parting with the case, we find that the petitioners, in connivance with the Ghaziabad Development Authority with their illegal acts, misrepresentation and evil designs to grab the 14 acres of land at village Dundahera, which they had also transferred without any right, title or authority, have delayed a project of public importance. The environmental project has been delayed, not only increasing the cost of the project but also depriving the growing population of Ghaziabad, landfill sites and Solid Waste Management Plant. The petitioners along with the GDA must, therefore, compensate the Nagar Nigam, and the citizens of Ghaziabad for the increased cost of the project.

93. The principles of restitution in environmental matters in **Indian Council for Enviro-Legal Action vs. Union of India & others, Writ Petition (C) No. 967 of 1989 decided on July 18, 2011** were explained by the Supreme Court following the analogy drawn from the polluter pays principle in Bichhri village case, in which the offending companies were in spite of the proceedings, which ended upto Supreme Court restraining them from polluting the area, continued to dump the solid and created entombment of sludge of

highly corrosive waste water, exercised the powers to make the beneficiary whole restitution. The Supreme Court held in paragraphs 193 to 200 & 2008 to 218 as follows:-

“193. This court in *Grindlays Bank Limited vs Income Tax Officer, Calcutta* (1980) 2 SCC 191 observed as under :-

“...When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. ...”

194. In *Ram Krishna Verma and Others vs State of U.P. and Others* (1992) 2 SCC 620 this court observed as under :-

“The 50 operators including the appellants/ private operators have been running their stage carriages by blatant abuse of the process of the court by delaying the hearing as directed in *Jeevan Nath Bahl's* case and the High Court earlier thereto. As a fact, on the expiry of the initial period of grant after Sept. 29, 1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in *Grindlays Bank Ltd. vs Income-tax Officer* - [1990] 2 SCC 191 held that the High Court while exercising its power under Article 226 the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it. In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route or area or portion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated Feb. 26, 1959. ...”

195. This court in *Kavita Trehan vs Balsara Hygiene Products* (1994) 5 SCC 380 observed as under :-

“The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words ‘Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, ...’. The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.”

196. This court in *Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. and Another* (1999) 2 SCC 325 observed as under :-

“From the narration of the facts, though it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Because of the delay unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also known fact that after obtaining a decree for possession of immovable property, its execution takes long time. In such a situation for protecting the interest of judgment creditor, it is necessary to pass appropriate order so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, Court may appoint Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour decree is passed and to protect the property including further alienation.”

197. In *Padmawati vs Harijan Sewak Sangh - CM (Main)* No.449 of 2002 decided by the Delhi high Court on 6.11.2008, the court held as under:-

“The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Court. One of the aims of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

198. We approve the findings of the High Court of Delhi in the aforementioned case.

199. The Court also stated: “Before parting with this case, we consider it necessary to observe that one of the main reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrongdoer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

200. Against this judgment, Special Leave to Appeal (Civil) No 29197/2008 was preferred to the this Court. The Court passed the following order:



“We have heard learned counsel appearing for the parties. We find no ground to interfere with the well-considered judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed..”

208. In *Marshall sons and company (I) Limited v. Sahi Oretrans (P) Limited and another* (1999) 2 SCC 325 this court in para 4 of the judgment observed as under:

“...It is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such a situation, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the court may appoint a Receiver and direct the person who is holding over the property to act as an agent of the Receiver with a direction to deposit the royalty amount fixed by the Receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation.”

209. In *Ouseph Mathai and others v. M. Abdul Khadir* (2002) 1 SCC 319 this court reiterated the legal position that the stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risk and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

210. This court in *South Eastern Coalfields Limited v. State of M.P. and others* (2003) 8 SCC 648 on examining the principle of restitution in para 26 of the judgment observed as under:

“In our opinion, the principle of restitution takes care of this submission. The word ‘restitution’ in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan v. Board of Revenue, U.P - (1984) Supp SCC 505*) In law, the term ‘restitution’ is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another.”

211. The court in para 28 of the aforesaid judgment very carefully mentioned that the litigation should not turn into a fruitful industry and observed as under:

“...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.”

212. The court in the aforesaid judgment also observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

213. In a relatively recent judgment of this court in *Amarjeet Singh and others v. Devi Ratan and others (2010) 1 SCC 417* the court in para 17 of the judgment observed as under:

“No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in

the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. ... ..;

214. In another recent judgment of this court in *Kalabharati Advertising v. Hemant Vimalnath Narichania and others* (2010) 9 SCC 437 this court in para 15 observed as under:

“No litigant can derive any benefit from the mere pendency of a case in a court of law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the court.”

215. In consonance with the concept of restitution, it was observed that courts should be careful and pass an order neutralizing the effect of all consequential orders passed in pursuance of the interim orders passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits.

216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is

not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while 155

rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

218. This court in a very recent case *Ramrameshwari Devi and Others v. Nirmala Devi and Others* 2011(6) Scale 677 had an occasion to deal with similar questions of law regarding imposition of realistic costs and restitution. One of us (Bhandari, J.) was the author of the judgment. It was observed in that case as under:

“While imposing costs we have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

The other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various courts. The appellants in the instant case have harassed the respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts.

The appellants have also wasted judicial time of the various courts for the last 40 years.:

94. For the aforesaid reasons, we do not find any substance in the prayers made in **Writ Petition No. 254 of 2009** filed by M/s Ansal Properties & Infrastructure Ltd; **Writ Petition No. 59514 of 2009** filed by Crossing Infrastructure Pvt. Ltd; **Writ Petition No. 39389 of 2009** filed by Shri Anil Kumar Tyagi; **Writ Petition No.64043 of 2009** filed by Ash Mohammad; **Writ Petition No.64347 of 2009** filed by Suresh Kumar Sharma; **Writ Petition No. 64348 of 2009** filed by Vijay Singh and **Writ Petition No. 68558 of 2009** filed by Shri Gaurav Garg and others. All these writ petitions are accordingly **dismissed**.

95. The **Writ Petition No. 1836 of 2011** (Ram Bhul and others vs. State of UP and others) is **allowed**. The notification under Section 4 (1) read with Section 17 (1) and (4) of the Land Acquisition Act dated 9.7.2010 and the Notification under Section 6 read with Section 17 (1) dated 10.11.2010 acquiring 34.213 hec. of land in village Galand, Tehsil Hapur, District Ghaziabad for construction of dumping yard for solid waste management without specifying the acquiring body and on deposit of estimated compensation by private companies, proposing change of site are set aside both on the grounds that the acquisition is for ulterior purposes at the instances of the private builders for changing the land site from Dundahera, to Dasna in colourable exercise of powers, and also on the ground that for the purposes of dumping yard for solid waste management the provisions of Section 17 (1) of the Act could not be used dispensing with right of hearing under Section 5A of the Act.

96. In Writ Petition No. 254 of 2009 (M/s Ansal Properties & Infrastructure Ltd. vs. State of UP and others); Writ Petition No.59514 of 2009 (Crossing Infrastructure Private Ltd & another vs.

State of UP and others) and Writ Petition No. 39389 of 2009 (Anil Kumar Tyagi vs. State of UP and others) the Court finds it necessary on the principles of restitution to neutralise the undeserved and unfair advantage gained by them by invoking the jurisdiction of the Courts. They misled the Court in believing that the construction of SWMP was against public interest, and connived with GDA to include the land in village Dundahera in the DPR and lay out plan. Even after the land use was changed they managed to get the land included in their DPR and lay out plan as if the land belonging to Nagar Nigam was transferred to them. M/s APIL also allotted the land to private persons creating third party interest. The filing of the repeated writ petitions beginning from March, 2006, in which interim orders were passed by this Court, delayed the construction of SWMP for more than five years and on which about 50% of the total grants of Rs. 12.76 crores was utilised. We thus find it appropriate to direct M/s APIL and Crossing Infrastructure Pvt. Ltd to bear the escalated cost of the project. The Nagar Nigam will set up a Committee to calculate the additional costs of completion of the project due to escalation of the cost of the project. By any conservative estimate, the escalation would not be less than 20% of the original cost of the project. We, therefore, direct M/s APIL and Crossing Infrastructure Pvt. Limited to deposit Rs. One crore each with Nagar Nigam, Ghaziabad to be spent by it in the increased cost of the project. If the Committee set up by the Nagar Nigam, in which the representations of M/s APIL and M/s Crossing Infrastructure Pvt Limited will be considered, finds that the cost escalation is more than Rs. Two crores, the entire escalated cost, so determined, will be shared by M/s APIL and Crossing Infrastructure Pvt Limited.

97. We also direct M/s APIL and Crossing Infrastructure Private Limited to deposit Rs. 10 lacs (Rupees Ten lacs only) each as cost of

vexatious litigation initiated with ulterior motives, to be deposited with the Nagar Nigam, Ghaziabad. Shri Anil Kumar Tyagi will also pay cost of Rs. One lac to Nagar Nigam for filing repeated frivolous writ petitions stalling the environmental project of public importance for the citizens of Ghaziabad. The amount of Rs. Two crores as directed above and the entire costs will be deposited with Nagar Nigam within one month from today.

Dt.30.8.2011

RKP/