

BHASIN INFOTECH AND INFRASTRUCTURE PRIVATE LTD. A

v.

STATE OF UTTAR PRADESH AND ANR.

(Transferred Case (Civil) No. 82 of 2022)

MARCH 17, 2023 B

[DINESH MAHESHWARI AND J. K. MAHESHWARI, JJ.]

Lease: Conversion of land from leasehold to freehold in view of policy formulated by the State – Entitlement to – On facts, allotment of commercial plots to the petitioner company by the State Industrial Development Corporation-UPSIDC, land allotted on 90 years lease basis – Building plan for construction over allotted land sanctioned – Construction completed and issuance of partial completion certificate – Thereafter, policy formulated by the respondent no. 1 for growth of tourism by setting up theme/amusements parks – Policy laid down conditions and incentives, available to theme parks – Thereafter, proposal by the petitioner for recognition of its project as a theme based mall – Petitioner then sought conversion of the subject land from leasehold to freehold – Non-acceptance of the proposal of the petitioner to convert subject land from leasehold to freehold as per the policy formulated and thereafter amended – Challenge to – Held: When the land had already been leased to the petitioner and the petitioner is also holding the same as lessee under the lease deeds executed for the purpose, no reason, justification, logic or rationale that such leasehold rights be converted into freehold rights – Amended policy relied upon by the petitioner came into existence only after second completion certificate had been issued to the petitioner and, the mall had been put into operation – No stipulation found in the original policy or its amendment that it could be applied with retrospective effect and to override the existing legal rights as also the existing legal obligations - Policy in question with its amendment is of no application whatsoever in relation to the subject land and the project – Thus, the claim of the petitioner for freehold rights in relation to the subject land cannot be accepted – Furthermore, the petitioner seems to have developed a mall on the subject land through private investment and there is no participation of the State

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- A *Government or any public sector undertaking or any instrumentality of the State therein – Thus, the claim of the petitioner to seek benefits flowing from the Office Memo is struck down.*

Disposing of the matters, the Court

- B **HELD: 1.1** The entire case of the petitioner-company, asserting its right to get the subject land converted from leasehold to freehold, is premised on the policy formulated by the respondent No. 1 on 06.11.2013 and amended on 03.05.2016. The petitioner would assume that the said policy with its amendment is applicable to its project and to the subject land.
- C This assumption is without any legal basis and the claim of the petitioner turns out to be hollow and baseless because neither the original policy formulated on 06.11.2013 nor its amendment on 03.05.2016 have any application to the subject land or to the project of the petitioner. [Para 15][1088-F-G]
- D **1.2.** The subject land was allotted to the petitioner on 05.08.2006 after acceptance of its offer of allotment of the said industrial plot by UPSIDC. Clause 14(a) of the allotment letter dated 05.08.2006 had been clear and unequivocal that land was allotted on 90 years lease basis. Further, it was provided in clause 10(b) of the allotment letter that tripartite lease deed of the built-up premises would be executed where the allottee of the developer shall be the lessee; UPSIDC shall be the lessor; and the developer (the petitioner) shall be a confirming party. The lease deed dated 23.08.2006 in relation to 37208 sq. mtrs. of the allotted land carried the covenants, *inter alia*, that the lessee (the
- E petitioner) will not, without the consent of lessor (UPSIDC), transfer, sublet, relinquish, mortgage or assign its interest in the demised premises or in the buildings standing thereon with the other requirements [vide clause 3 (j)]. It was also stipulated that the allottee shall have to abide by the general terms and conditions of allotment of UPSIDC [vide clause 13]. It appears that in this
- F lease deed dated 23.08.2006, the stipulation regarding tripartite lease deed did not as such occur but the said clause 13 made all the general conditions of allotment binding on the petitioner. Moreover, in the other lease deed dated 30.03.2009 in relation to the adjacent plot of land, this stipulation was also inserted in

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clause 3(j). The Court is not entering into the questions relating to tripartite lease deed in this matter but, this much is apparent on a comprehensive look at the terms of allotment and the covenants of lease deeds that the land was allotted to the petitioner on 90 years lease basis and further treatment of land and built-up portion thereupon were to abide by those terms and covenants. It is also clear that possession of the entire parcel of land comprising the aforesaid two lease deeds, i.e., 40505 sq. mtrs., was handed over to petitioner on 31.03.2009 and on 08.10.2009, the building plan for construction over the aforesaid allotted land was sanctioned by respondent No. 2 whereafter construction over an area of 179017.82 sq. mtrs. was completed by the petitioner for which, a partial completion certificate was issued by respondent No. 2 on 07.05.2011. Until all this time, there was nothing existing as regards the policy sought to be relied upon by the petitioner. [Para 15.1][1088-H; 1089-A-F]

1.3. The policy in question came up for the first time only on 06.11.2013 and it was formulated essentially for growth of tourism sector in the State of Uttar Pradesh by setting up theme parks/amusement parks. The said policy dated 06.11.2013 laid down conditions and incentives, including exemption from stamp duty, exemption from tax on construction goods/materials imported into the State etc., which were available to the theme parks/amusement parks with minimum area of 300 acres and minimum capital investment of Rs. 500 crores. Clause 3 of the said policy, of course, provided that a theme park/amusement park could be established and operated by private sector, public-private partnership or any authority by creating special purpose vehicle and in that situation all the decisions regarding assessment of the desired land, selection of the private investor and implementation of the project were to be taken by the concerned authority/government body/public undertaking under its own rules but the Court is unable to find any correlation whatsoever of this stipulation of the policy with the subject land that had been given on lease to the petitioner as also with the project of the petitioner which could never be termed as any theme park or amusement park. Viewed in this light, the letter dated 31.01.2015 as sent by the Managing Director of UPSIDC,

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- A recommending the case of the petitioner to declare its multiplex, hotel and commercial construction as tourist destination, turns out to be rather baseless and its accompanying document, stating the demand of the petitioner to convert the land in question to freehold, also appears to be wanting in logic. The project of the
- B petitioner cannot be correlated with this policy dated 06.11.2013, meant for theme park/amusement park and that too with involvement of a Government body or an instrumentality of the Government in selection of the private investor as also with participation by way of investment upto 20% of the cost of the land. [Para 15.2][1083-G-H; 1090-A-E]
- C 1.4. On 16.04.2015, respondent No. 2 issued second completion certificate in respect of the project of the petitioner. Even until this point of time, there was no amendment to the policy in question. As regards the amendment of the policy in question by way of Office Memo dated 03.05.2016, of course, the
- D policy to promote tourism was modified so as to grant certain other concessions and was also expanded to include theme-based mall but then, such broadening of the policy came with typical and peculiar stipulations. A Committee was put in place for giving recommendations for permissions in the matters related with theme-based mall. Significantly, clause 4 of the original policy
- E was modified in the manner that for theme-based mall, the limit of partnership of public enterprise/company of the State Government was changed from 20% of the maximum cost of land to minimum 20% of cost of land; and it was provided that the working agency will provide freehold to the SPV after acquiring
- F the land as per the rules, for which freehold charge will be payable. These stipulations occurring in the said Office Memo dated 03.05.2016 make it more than clear that as regards theme-based mall a minimum of 20% of the partnership of the State Government or its instrumentality was stipulated; and such instrumentality of the State Government was also referred to as the working agency,
- G which was to provide freehold land to the SPV to be created for the purpose. The petitioner seems to have developed a mall on the subject land and, as per the suggestions made in the referred communications, seems to have provided certain facilities to make it attractive but fact of the matter remains that the project has
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been implemented by the petitioner through private investment and there is no participation of the State Government or any public sector undertaking or any instrumentality of the State therein. That being the position, claim of the petitioner to seek benefits flowing from the Office Memo dated 03.05.2016 falls flat and is knocked to the ground. [Para 15.3 & 15.4][1090-E-H; 1091-A-C]

1.5. No SPV has been created in relation to the project of the petitioner with involvement of the State Government or any of its agencies/instrumentalities. Which particular agency is, then, to be termed as “working agency” for the purpose of the Office Memo dated 03.05.2016 remains a question inexplicable. If the stretch of arguments of the petitioner seeking freehold land is taken into consideration, only UPSIDC could be termed as “working agency” for the present purpose but then, there is no partnership of UPSIDC in this project. [Para 15.4.1][1091-D-E]

1.6. The subject land was specifically leased to the petitioner for a period of 90 years in terms of the allotment letter dated 05.08.2006 and then lease deeds were executed on 23.08.2006 and 30.03.2009. The construction was undertaken by the petitioner over part of the land in question where partial completion certificate was issued on 07.05.2011 and second completion certificate was issued on 16.04.2015. Several significant consequences follow from this status of record. In the first place, when the land had already been leased to the petitioner and the petitioner is also holding the same as lessee under the lease deeds executed for the purpose, there does not appear any reason, justification, logic or rationale that such leasehold rights be converted into freehold rights. Secondly, the amended policy which is sought to be relied upon by the petitioner came into existence only after second completion certificate had been issued to the petitioner and, as per the petitioner’s own assertions, the mall had been put into operation. No stipulation is found in the original policy or its amendment that it could be applied with retrospective effect and to override the existing legal rights as also the existing legal obligations. [Para 15.5][1091-F-H; 1092-A]

A **1.7 Viewed from any angle, even on direct construction of the relevant clauses vis-à-vis the subject-matter of the present petition, it remains beyond a shadow of doubt that the policy in question with its amendment is of no application whatsoever in relation to the project in question. Therefore, the claim of the petitioner has rightly been rejected. [Para 15.6][1092-B-C]**

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E **1.8. In relation to the relied upon letter dated 31.01.2015 sent by the Managing Director of UPSIDC, recommending the case of the petitioner to declare its multiplex, hotel and commercial construction as tourist destination, the same had been wholly baseless and rather unwarranted. Its accompanying document carrying the demands of the petitioner for various grants and exemptions as also for converting the subject land to freehold was also without any legal basis. At the relevant point of time, the policy in question only related to theme parks/ amusement parks and it is difficult to see even a logic that the said Managing Director chose to forward the proposition of the petitioner for consideration of the State Cabinet. In any case, the said letter dated 31.01.2015 was only recommendatory in nature; and even the recommendation had only been to declare the places as tourist destination and to give exemption. The Managing Director of UPSIDC could neither have recommended for converting the land to freehold nor did he do so. The said letter is of no relevance whatsoever. [Para 16][1092-C-F]**

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G **1.9. The letter/communication dated 16.09.2016, which had been a communication received by the petitioner from the Director General Tourism. The petitioner has described this letter as one of “approval” and has framed the relief in the writ petition on that basis. During the course of submissions too, substantial reliance has been placed on this letter/communication dated 16.09.2016 and the same has been termed as a letter of “approval/ qualification.” As would appear from the record, the petitioner addressed various communications on 12.12.2016, 30.05.2017 and 19.02.2018 to UPSIDC while asserting that the mall in question had already been declared as theme-based mall and the petitioner-company is entitled to get the subject land converted from leasehold to freehold. [Para 17][1092-F-H]**

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1.10. Whatsoever had been the composition of the Committee, it could have only made recommendation for final decision by the competent authority. Merely for presence of the Principal Secretaries of the Departments concerned in the Committee, it cannot be held that its recommendation itself would become a binding decision. Moreover, a close look at the said communication dated 16.09.2016 makes it evident that even the recommendation had only been to approve the proposal ‘as a theme-based mall.’ It is too far-stretched to read this communication as if the Committee had recommended for grant of freehold rights. Providing freehold land for the purpose of setting up a theme-based mall had entirely different requirements and had been of entirely different connotations under the amendment Memo dated 03.05.2016. In composition of the said Committee, there was no representative of the agency/ instrumentality directly concerned with the subject land i.e., UPSIDC. Any suggestion or recommendation in relation to the subject land as also the lease deeds already executed between the petitioner-company and UPSIDC could not have been made without taking into account the stand of UPSIDC. After passing of orders dated 20.10.2021 and 13.12.2021 by this Court in W.P. (CrI.) 242 of 2019, the matter was indeed examined by the Industrial Development Section-4 of the Government of Uttar Pradesh where the director of the petitioner-company was afforded the opportunity of personal hearing on 19.01.2022 through video conferencing and his further representation sent through email on 21.01.2022 was also taken into consideration while passing the impugned order dated 24.01.2022. [Para 17.1 & 17.2][1093-C-G]

1.11. Viewed from any angle, even on direct construction of the relevant clauses vis-à-vis the subject-matter of the present petition, it remains beyond a shadow of doubt that the policy in question with its amendment is of no application whatsoever in relation to the project in question. Therefore, the claim of the petitioner has rightly been rejected. The policy in question cannot be applied in relation to the subject land. Therefore, there is no necessity to delve further into the other issues raised on behalf of the respondent No. 2 that it has no policy to grant freehold

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A rights in its allotments. Suffice it would be to say for the present purpose that the claim of the petitioner for freehold rights in relation to the subject land cannot be accepted. [Para 15.6 and 18][1092-B-C; 1093-H; 1094-A-B]

B 1.12 The writ petition filed by the petitioner-company in the High Court is dismissed; and the first prayer in Crl. M.P. as regards directions for converting the subject land from leasehold to freehold, is also rejected. [Para 20][1094-D]

CIVIL ORIGINAL JURISDICTION: Transferred Case (Civil)
No. 82 of 2022.

C Civil Miscellaneous Writ Petition No.3790 of 2022 in the High Court of Judicature at Allahabad.

Shyam Divan, Sr. Adv., Vishal Gosain, Viresh B. Saharya, Akshat Agarwal, Ms. Rudrani Tyagi, P. Sharma, Manoj K. Mishra, Mareesh Pravir Sahay, Advs. for the Petitioner.

D K. M. Nataraj, ASG, Vinod Diwakar, AAG, A N S Nadkarni, Ravi Mehrotra, Ms. Meenakshi Arora, Devdutt Kamath, Sr. Advs., Chirag M. Shroff, Apoorv Srivastava, Ms. Ruchira Gupta, Ms. N. Shah, Ms. Deepti Arya, Ms. Harshita Sharma, Jogy Scaria, Garvesh Kabra, B. N. Dubey, Dhawan Uniyal, Ms. Ranjana Narayana, Rajan Kumar Chourasia, **E** Mohammed Akhil, Shailesh Madhiyal, Sughosh Subramanyam, Nakul Chengappa K. K., Arvind Kumar Sharma, Suryajyoti Singh Paul, Rohit Singh, Gopal Jha, Gopal Prasad, Parijat Kishore, Guntur Pramod Kumar, Prem Prakash, Arjun Nanda, Sumeer Sodhi, Ravinder Kumar Yadav, Ms. Shuchi Singh, Krishna Kant Dubey, Vivek Kumar Pandey, Rakesh Kumar Tewari, Sanjay Kumar Dubey, Binod Kumar Singh, Aman Kumar, **F** Ms. Nidhi, Sarthak Arora, Mohit Girdhar, Shree Pal Singh, Ms. Basuri Swaraj, Amit Sharma, Varun Chopra, Sriram Parakkat, Vishnu Sankar, Ms. Athira Nair, Aditya Santhosh, M/s Lawfic, Gaurav Sharma, Avinash Sharma, Abhinav Jain, Ms. Preeja Nair, Prakash Chandra Sharma, Rajeev Singh, Manoj K. Mishra, M/s. V. Maheshwari & Co., Sanjay **G** Kumar Tyagi, Hitesh Kumar Sharma, S. K. Rajora, Akhileshwar Jha, Ms. Kavya S. Lokande, Ms. Niharika Dewivedi, Narendra Pal Sharma, C. M. Jha, Ms. Manju Jetley, Mrs. Swarupama Chaturvedi, Varun K. Chopra, M/s. Vkc Law Offices, Dr. Monika Gusain, S. K. Verma, Vishal Prasad, Shree Prakash Sinha, Rakesh Mishra, Ms. Mohua Sinha,

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BHASIN INFOTECH AND INFRASTRUCTURE PRIVATE LTD. 1061
v. STATE OF UTTAR PRADESH

Nawalendra Kumar, Rishabh Gupta, Shekhar Kumar, Himanshu Bhushan, J. B. Pathak, Kumar Mihir, Ms. Garima Bajaj, Raghavendra Mohan Bajaj, Vivek Narayan Sharma, Mohit D. Ram, Anish R. Shah, Krishnamohan K., Advs. for the Respondents. A

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J. B

1. In this transferred case, registered on withdrawal of a writ petition filed by the petitioner in the High Court of Judicature at Allahabad (Writ Petition No. 3790 of 2022) to this Court, the petitioner-company has challenged the order dated 24.01.2022 issued by respondent No. 1 in not accepting its proposal to convert the subject land from leasehold to freehold as per the policy formulated on 06.11.2013 and amended on 03.05.2016. C

2. In the writ petition so filed in the High Court and transferred to this Court, the petitioner has sought the reliefs in the following terms: - D

“a. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.01.2022 passed by Respondent No.1 (**Annexure-11**) to the writ petition and directing the Respondent No.2 to grant freehold plot no. SH-3, Surajpur Site-IV in the light of approval dated 16.09.2016 extending benefits of Government Orders dated 06.11.2013 and 03.05.2016. E

b. To pass such other and further order, which this Hon’ble court may deem fit and proper in the circumstances of the present case.

c. Award the cost of the present petition to the Petitioner.” F

3. The relevant background and factual aspects leading to this writ petition and its transfer to this Court could be taken into comprehension as follows¹:

3.1. On 05.08.2006, the petitioner-company’s offer (bid) for allotment of commercial Plot No. SH-3 in Industrial Area Site-IV, Surajpur, District Gautam Budh Nagar, Uttar Pradesh with approximate G

¹ The extractions herein are essentially taken from IA No. 15392 of 2022 and IA No. 156279 of 2022 filed by the petitioner for placing on record the English translation of the documents sought to be referred, as also from the documents filed with the writ petition. H

(b) The Lease Deed will be executed by the corporation directly with the various persons on the recommendation made by you without any transfer charges. On the subsequent transfer of the premises/plot, levy as per the prevailing rules of the corporation at that time will be charged.

3.2. It appears that the actual measurement of the land so allotted stood at 37208 sq. mtrs. and lease deed was executed in favour of the petitioner on 23.08.2006 with reference to this actual measurement. A few relevant clauses of this lease deed dated 23.08.2006 could be usefully reproduced as under: -

“3. AND THE LESSEE DOTTH HEREBY COVENANTS WITH THE LESSOR AS UNDER:

.....

(j) That the Lessee will not without the previous consent in writing of the Lessor, transfer, sublet, relinquish mortgage or assign its interest in the demised premises or buildings standing thereon or both as a whole and every such-transfer, assignment, relinquishment mortgage or subletting or both shall be subject to and the transferees or assigns shall be bound by all the covenants and conditions herein contained and be answerable to the Lessor in all respects therefore, and the Lessee will in no case assign, relinquish, mortgage, sublet, transfer or part with the possession of any portion less than the whole of the demised premises or cause any sub-division thereof by metes and bound or otherwise.

Provided that the joint possession or transfer of possession of demised premises or any part thereof by the Lessee shall be deemed to be sub-letting for the purpose of this clause.

8. (a) The Allottee shall have to get building approved from UPSIDC Ltd. and development works have to be undertaking as per approved plan.

(b) The FAR and ground coverage shall be allowed as per the rules and bye-laws of the UPSIDC Ltd.

- A whose prior sanction on Building Plan shall be sought by allottee at its own cost before making any construction.
- (c) The land shall be allotted on “as it where it is” UPSIDC will not responsible for carrying out any development at any stage except existing development like Roads and Strom water drainage.
- B (d) All works shall be completed in 05 years from the date of allotment. Any further extension shall be as per terms decided by MD, UPSIDC.
- C (e) The allottee will have to pay Lease Rent from the date of Allotment.
9. The allottee shall have to right to sell of the built portion to any person for its choice for first such transfer no levy shall be charged by UPSIDC.
- D 10. In case of any dispute between Corporation and Allottee/ Developer, the decision of Managing Director, UPSIDC Ltd., shall be final and binding on both the parties.
11. The Corporation will have no objection on the request made by Bidder Company for allowing them 1.8 FAR with 60% ground coverage subject to the approval of the same by UPSIDC Ltd.
- E 12. The allottee shall obtain completion certificate from UPSIDC.
13. Allottee will have to abide by general terms and conditions of Allotment of UPSIDC and also to observe the laws & other rules and regulation carry out any specific activity from appropriate Govt. bodies before undertaking such activities. Failure to do so may result in Cancellation of allotment of the whole plot or part thereof as UPSIDC deems fit.”
- F 3.3. In addition to the aforesaid allotted parcel of land, another adjacent plot admeasuring 3297 sq. mtrs. was also allotted in favour of the petitioner, and another lease deed for this additional parcel of land was executed on 30.03.2009. The relevant clause of the said lease deed reads as under: -
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A policy of the respondent No. 1, essentially to promote tourism in the State, as spelt out in the communication dated 06.11.2013 from the Secretary concerned to all the Principal Secretaries and other officers of the Government of Uttar Pradesh, reads as under: -

“Subject: To promote tourism in the state To decide the policy for setting up theme park/amusement park etc.

Sir, tourism industry is not covered by the State’s Establishment and Industrial Investment Policy-2012. In this sequence, I have been directed to say that in view of the need to set up an amusement park in the state for the purpose of Encourage the Tourism, a policy has been laid down for the establishment of theme park/amusement park etc. after due consideration, It has been decided. The above policy is as follows:

1. Theme Park / Amusement Park etc. will be set up under the Uttar Pradesh Town Planning and Development Act, 1973 and various planning Acts in accordance with the prescribed procedure for agricultural land use. For this, necessary provisions/amendments will be made in the Zoning Regulations for the establishment of theme parks / amusement parks in the proposed agricultural land use in the master plans of the notified areas under various planning acts.

2. Large projects like theme parks/amusement parks have high initial capital investment and become profitable only after a long period of time and a large number of local people are employed in such projects, so incentives are given to encourage such projects, decision has been taken. In the light of the above, the following incentives are allowed in respect of large projects of theme park /amusement park etc.:

(1) Purchase or lease of land for the project from the State/ Central Government or its owned corporation, council, company, institution 100% exemption in stamp duty will be given on taking it.

(2) For the construction period or 10 years (whichever is less) for the establishment of the project, 100% exemption will be given in the tax on the construction goods/materials imported into the state.

(3) From the date of operation of the project, 100% exemption in entertainment tax will be provided for 10 years.

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(4) For the year from the date of operation of the project, 100% exemption will be given in the pleasure tax. A

The above incentives will be admissible to only those theme park/ amusement park projects, whose minimum area is 300 acres and in which the minimum capital investment is Rs. 500.00 crores.

3. Theme Park/Amusement Park can be established and operated by private sector, PPP or any authority by creating an S.P.V. In such a situation, all the decisions regarding the assessment of the desired land, the selection of the private investor and the implementation of the project after the selection will be taken by the concerned authority/government body/public undertaking under its own rules. B C

4. Participation in such a scheme can be done by any public undertaking of the state government/S.P.V. or company. This participation will be limited to a maximum of 20 percent of the cost of the land required for the project of Theme Park/ Amusement Park, which will continue till the completion of the project. The concerned government body/establishment/ public undertaking will spend its share capital (20 percent) as a partner of SPV, first on land acquisition, so that the investor can be assured of the availability of land. Only after that Capital investment will be decided. After the completion of the project, the disinvestment will be done as per the pre-determined agreement. D E

5. Under the proposed theme park/amusement park, all the development, display, buildings and activities, etc. will be based on a central theme or theme, and depending on the theme, there should be different types of theme parks at different places. Theme Park/Amusement Park will have a minimum area of 300 acres and can be established at such sites, where there is a facility of access from major roads (such as national highways, expressways, etc.) and water supply, drainage, 'solid waste disposal' for the selected site. And proper arrangement of power supply should be available. F G

(a) Under the theme park/amusement park, in addition to the basic works related to the theme park, other activities such as convention center, hotel, shopping complex, restaurant, film studio, multiplex, senior shop, workshop, accommodation H

- A for employees etc. will be included. The permission for theme park/amusement park will be normally payable in the proposed agricultural land use in the master plans of the notified areas under various planning acts in the state, for which necessary provision/ amendment will be made in the master plan, zoning regulations of urban areas and industrial areas. Theme Park/Amusement Park can also be established in the agricultural area outside the Master Plan Notified Area, for which there will be UPSIDC Regulatory Authority.
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- C (b) Under Theme Park/Amusement Park, activities related to theme park/entertainment will be allowed in minimum 75 percent area, while mixed use (such as residential, commercial, institutional, community and public facilities, etc.) will be allowed on maximum 25 percent part. The average FAR for the theme park is 0.5 over the entire plan area. And 20 percent ground coverage will be admissible.
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- E (c) DPR of Theme Park/Amusement Park. And the integrated layout plan will be approved by the concerned government agency. The internal and external development work of the project will be done by the developer himself. In view of the above, development fee will not be payable by the developer to the government agency.
- F 6. In the event of the implementation of the theme park project being done through the process of PPP/SPV, application for approval of the layout of the theme park project and building plan etc. For the construction and operation of the theme park, S.P.V. or P.P.P. will be done with the prior permission of the government partner.
- G 7. The said policy of theme park will be applicable in the entire state. Development Authorities have been established under the Uttar Pradesh Town Planning and Development Act-1973 and Uttar Pradesh Industrial Area Development Act-1976. Therefore, instructions will be issued to the subordinate development authorities and public undertakings by the Housing and Urban Planning Department and the Department of Infrastructure and Industrial Development to implement the policy of the above theme
- H park/amusement park.

8. Hon'ble Chief Minister has been authorized to take necessary decisions to implement the above proposed policy." A

3.6. In view of the aforesaid policy dated 06.11.2013, petitioner made a request to respondent No. 2 to recognise the project land as tourist destination whereupon, the Managing Director of UPSIDC wrote a letter dated 31.01.2015 to Principal Secretary (Tourism), Government of Uttar Pradesh, recommending that the said project of the petitioner be declared as tourist destination and be provided with necessary exemption. It was further stated that probably, the final decision on the subject shall be taken by the State Cabinet and hence, the necessary material for its consideration was also enclosed. The said letter dated 31.01.2015 reads as follows: - B C

"Investment of about Rs. 800 crores by Bhasin Infotech & Infrastructure Pvt Ltd on Plot No. SH-2 of Surajpur Site-4 Greater Noida, Industrial Area of Corporation while doing the construction of a multiplex commercial and hotel in the name of Grand Venice, which has been greatly appreciated by the tourism point of view. On the request of the developer company, investment of more than Rs. 500 crores and employment availability and for the purpose of promoting tourism and in order to make their project run smoothly, it is recommended to declare the place as a tourist destination, to give exemption to them. Possibly the level of the above decision will be of the State Cabinet, so the necessary material is being enclosed for the cabinet note. D E

Therefore, it is kindly requested to take necessary action on the above." F

3.6.1. We may also take note of a document placed on record with IA No. 156279 of 2022, said to be the part of material sent with the aforesaid letter dated 31.01.2015. It seems to be the justification in making the recommendations aforesaid and reads as under: -

"IN CONNECTION WITH DECLARING THE GRAND VENICE (GREATER NOIDA, GAUTAM BUDDHA NAGAR) AS A TOURIST DESTINATION, G

A commercial plot allotted by Uttar Pradesh State Industrial Development Corporation to M/s Bhasin Infotech & Infrastructure Pvt. Ltd. Multiplex, Commercial and Hotel has been constructed H

A by investing about Rs. 800.00 crores, which will provide employment to about 5000 people. The Grand Venice is a very timely and convenient place from the point of view of tourism. The Grand Venice has been developed by the developer to attract international and domestic tourists in such a way that its unique architecture, entertainment and geography and community will be the only place to visit. It is conveniently located near Greater Noida Express Way and due to its special location, it will also become a suitable destination for tourists going from Delhi to Agra. In this project, special care has been taken for educational tourism while presenting something to the tourists of all age groups and preferences. An attempt has been made by the developer to embellish the grandeur and elegance of the famous Italian city of Venice in The Grand Venice. This Venetian themed remoteness hub will prove to be a center of special attraction with stunning structures and sculptures. A ride on the

D Gondola in the water canals built inside Mall will provide a real experience of doing the traditional Gondola fanciers walking along the beautiful waterways of the city of Venice. Similarly, through Magic Sky, an attempt has been made to provide the experience of walking under the virtual sky giving a glimpse of the environment and weather and the unique environment. In The Grand Venice, the famous unique feature of Venice is the Fountain de Trevi, Julius Caesar's Statue, Light House, Pisa's Tower and other art forms of Italy have been presented. Along with this, the Indian Sea world has also been displayed in an area of about 100000 square feet and for the convenience of the tourists, the five-star deluxe Sheraton Hotel with 270 rooms has also been included in this complex. Places have been identified for setting up of outlets to display the heritage and handicrafts of Uttar Pradesh, along with the above features, the project like promotion of tourism and providing employment to 5000 people along with capital investment of more than 500 crore rupees. Special benefits such as tax exemption, grant, establishment of electric friendly metro station, freehold without fee and suggestions for setting up of outlets for displaying the heritage and handicrafts of Uttar Pradesh and declaring tourist places by the developer to operate as demand is being made. Under which

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Freehold: The plot has been allotted on lease by the corporation. The developer has demanded convert this land to freehold without any charges. A

TAX Exemption: The developer of the Mall demanded exemption from entertainment tax and GST in this project which is applicable to Hotel, Aquarium, Retail etc. B

Grant The developer has invested more than Rs. 500.00 crore in the tourism sector in this project, so a demand for a grant of 5 percent interest has been made. C

Electricity: The developer has demanded to provide the additional power required in the project without any load. C

Metro Station: There has been a demand to extend the proposed Pari Chowk metro station to the project site by the developer, whose distance is only 1.5 km. D

Time Extension Fee: The developer has demanded to waive off the time extension fee charged by UPSIDC due to delay in the project. It is recommended to accept the demands being made by the developer due to the project being Ideal for benefits like regional development, promotion of tourism and providing more number of jobs. As above, the proposal is placed before the Cabinet Committee for perusal and approval.” E

3.7. Subsequently, on 16.04.2015, respondent No. 2 issued second completion certificate in respect of the project of the petitioner.

3.8. Later, respondent No. 1 issued one Office Memo dated 03.05.2016, making a few alterations in the aforesaid policy dated 06.11.2013, including that theme-based mall was also included in the extensive scheme and UPSIDC was appointed as the nodal agency for implementation of the policy in the State. However, various other stipulations were also provided, which were significantly different than the stipulations in the original policy. The relevant contents of the said Office Memo dated 03.05.2016, useful for the present purpose, are as follows: - G

“OFFICE MEMO

That with regard to promote the tourism, to increase the investment of funds and in view of importance of the extensive schemes H

- A related with the establishment of theme park/amusement park, the policy has been proclaimed for establishment of theme park/amusement park vide Office Memo No.3150/41-2013-37 Y0/2012 dated 06.11.2013. For implementation of the abovesaid policy, for implementation of theme park in Agra, UPSIDC has been nominated as Nodal Agency.
- B
- C 2. That the following amendments are being made in Para No.2 of the abovesaid extensive policy in view of relevant amendments for successful implementation of the policy and proposed amendments vide Letter No.5257 /P.S.M.S./JAIN/2015 dated 20.05.2015 of the Hotel and Restaurants Owners Association, Agra and vide Letter No.318-319, SIDC dated 02.12.2015 of the Nodal Agency UPSIDC for further proceedings in the Theme Park in Agra:
- D A(1) That hundred percent concession in stamp duty shall be kept as it is in respect of transfer of land related with the project either purchased or taken on lease from State/Central Government or from the Corporation, Council, Company under their ownership.
- E (2) That hundred percent concession will be provided for building material/items imported in the state for 10 years or the construction period (whichever is less) to be used for construction and establishment of the project.
- F (3) That hundred percent concession will be granted in entertainment tax for implementation of the project for 15 years from the date of operation of the project.
- G (4) That hundred percent concession will be provided in the facilities for 15 years from the date of operation of the project.
- H (5) Theme based Mall is also included in the extensive scheme and relaxation is given in respect of limitation of 300 Acres of minimum land as mentioned in Para No.2 for the matter related with the theme-based Mall. For giving recommendations to the permissions in the matter related with the theme-based Mall, a Committee will be formed as follows in the leadership of the Principal Secretary, Tourism.
1. Principal Secretary/Secretary Tourism Department, President.

2. Principal Secretary/Secretary, Cultural Department, Member. A
3. Principal Secretary, Secretary, Housing and Town Planning Department, Member.
4. Director General, Tourism, U.P., Member, Convener. B
5. Managing Director, U.P.S. Tourism Development Corporation Limited, Member. B

B. That in Para No.4 of the extensive policy for above mentioned project, the limit of partnership of public enterprise/SPB or company of the State Government is changed from 20 percent of the maximum cost of land to minimum 20 percent of cost of land which is relevant for the project. C

C. That the working agency will impose amount of 1 percent charge on the entire expenses (alongwith cost of land) while doing assessment of cost of the land for establishment of theme park. D

D. The working agency will provide freehold land to the S.P.V. after acquiring the land as per the rules, for which the freehold charge will be payable as per the rules.

E. That if the abovesaid project is implemented by any such public enterprise which is covered under some other Act, then in that event the related terms and conditions mentioned in the said Act will apply to the said project. E

3. That the Official Order No.3150/41-2013-37 /Y0/2012, dated 06.11.2013 issued for the establishment of theme park/amusement park shall be assumed amended till the abovesaid limits. The terms and conditions and contract mentioned in the above Official Order shall remain as it is.” F

3.9. It appears that the petitioner, after taking note of the amendments so brought about to the original policy, put forward a proposal for recognition of its project as a theme-based mall, and for benefits, under the said policy. The proposal so made by the petitioner was duly considered by the Committee constituted in terms of the said amendment Memo dated 03.05.2016 and recommendations were made for approval of the petitioner’s proposal. Accordingly, a letter dated 16.09.2016 was sent by the Director General Tourism, Uttar Pradesh, Lucknow informing H

A the recommendation of the Committee. This letter/communication dated 16.09.2016 reads as under: -

B “This is to inform you about the above subject that in relation to construction of Theme Based Mall, the committee constituted for grant of permission under the policy promulgated by the Government of Uttar Pradesh, Tourism Division, Government Order No- 56/2016/ 691/41- 2016 -337 Sa/15 dt 03-5-2016, a proposal was considered by the committee in their meeting convened on 23.08.2016 under the chairmanship of Principal Secretary Tourism, Government of Uttar Pradesh.

C In the recommendation meeting, a recommendation has been made by the committee to approve your proposal as a theme-based mall as per the policy promulgated.

Sent for information and necessary action.”

D 4. Acting on and relying upon the letter aforesaid, the petitioner appears to have addressed various communications on 12.12.2016, 30.05.2017 and 19.02.2018 to UPSIDC for conversion of the subject land from leasehold to freehold but, all these communications were of no avail.

E 5. In the backdrop of events as aforesaid, it shall now be apposite to refer to the other writ petition pending in this Court, which has been filed by the director of petitioner-company, Satinder Singh Bhasin, being W.P. (Crl.) 242 of 2019, and wherein the order came to be passed for transfer of the present writ petition to this Court.

F 5.1. Shorn of unnecessary details, it appears that various persons were allotted commercial spaces in the mall and the commercial tower by the petitioner-company and its directors but, in due course of time, several FIRs were registered against them, alleging fraud, failure to give assured returns, non-completion of project on time, and siphoning of money and using it for advertising and procuring other projects. The allegations in those FIRs and refutation thereof are not of much relevance
G for the present purpose and do not require dilation herein.

H 5.2. The relevant aspect of the matter is that the petitioner of W.P. (Crl.) No. 242 of 2019, director of the present petitioner-company, with reference to the position that several FIRs had been registered in the State of Uttar Pradesh and NCT of Delhi, has made the prayer in

the said writ petition, *inter alia*, for consolidation of investigation and trial against him. While entertaining that writ petition, this Court, by the order dated 06.11.2019, granted the concession of bail to the petitioner in relation to all the FIRs referred to in prayer clause (c) and concerning the project “Grand Venice” in NCR. While laying down conditions for bail, this Court also expressed hope that the petitioner therein (director of the present petitioner-company) shall be making all possible attempts to settle the claims of complainants concerned. Again, by order dated 24.01.2020, it was clarified that the parties were free to approach Delhi High Court Mediation Centre for resolution of disputes inter-se through mediation process. Thereafter, in the order dated 20.08.2020, willingness of the said petitioner was recorded to offer possession as also to facilitate execution of necessary agreement/sub-lease in favour of the complainants.

5.3. Thereafter, an application (I.A. No. 124952 of 2021), came to be filed in W.P. (Crl.) 242 of 2019 for cancellation of bail granted to the said petitioner on the ground that he was not facilitating execution of tripartite agreement amongst the builder, unit buyers and UPSIDA. During the course of consideration of the said application, this Court took note of the submissions of learned counsel for the petitioner that the apprehension, which formed the basis for filing the application, could be dispelled by calling upon the State of Uttar Pradesh to decide the proposal for converting the user of subject land to freehold, particularly when the Committee concerned had already recommended so. In view of the submission so made and in the given set of circumstances, this Court, while observing that there was no reason to entertain the prayer for cancellation of bail, issued directions to the Secretary of the Department concerned to take decision expeditiously on the pending proposal and to submit appropriate report in that behalf. The relevant part of the order so passed by this Court on 20.10.2021 reads as under:

“This application (I.A. No.124952/2021), is filed for cancellation of bail granted by this Court vide order dated 06.11.2019.

The grievance of the applicant(s) is that the builder (Satinder Singh Bhasin) is not facilitating execution of tripartite agreement between the builder, unit buyers and UPSIDA.

In our opinion, that cannot be the basis to entertain the prayer for cancellation of bail.

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A Mr. Shyam Divan, learned counsel appearing for the Builder
(Satinder Singh Bhasin), on the other hand submits that the
apprehension entertained by the applicant(s) that the property
(Grand Venice) in which the applicants have invested and portion
of which is likely to be demolished by the Commissioner, Meerut
B Division, Uttar Pradesh can be redressed by calling upon the State
to consider the proposal submitted by the builder for converting
the user of land in question as freehold. That proposal has been
favourably recommended by the concerned Committees and the
State Government needs to now quantify the amount payable by
the Builder for availing of the Scheme of conversion as freehold
C land.

In light of this submission, we direct the Secretary of the
concerned Department of the State of Uttar Pradesh to take
expeditious decision on the proposal already submitted for
converting the land in question as freehold land and submit
D appropriate report in this Court in that behalf before the next date
of hearing. If there is any further formality to be complied with by
the builder, the builder can be called upon to do so and if the
proposal cannot be accepted in law, that position be made amply
clear in the decision to be taken by the authority concerned by
E recording reasons in that regard. To enable the State to submit
the report, we defer the hearing of these matters till 23.11.2021,
when appropriate orders will be passed on the proposal submitted
by the builder and the submissions made on his behalf.

****”

F 5.4. On 13.12.2021, this Court once again impressed upon the
Secretary of the Department concerned to take expeditious decision on
the proposal regarding conversion of the subject land as freehold, as
observed in the order dated 20.10.2021.

G 6. Pursuant to the direction so issued in the above-referred orders
of this Court, respondent No. 1 considered the matter relating to the
prayer of the petitioner for conversion of the subject land as freehold;
and, by way of the impugned order dated 24.01.2022, declined to accede
to the proposal and prayer of the petitioner for conversion of the subject
land from leasehold to freehold under the said policy and the stipulations
therein.

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6.1. In the impugned order dated 24.01.2022, it was reasoned that the policy came into existence for the first time in the year 2013 and theme-based malls were included in the year 2016, whereas the allotment of the subject land was made on 05.08.2006; the subject land was given under the lease deed for a period of 90 years; and partial completion certificate was issued on 07.05.2011. Thus, developers and buyers were aware about land being taken on lease and investment had been made in those terms. Further, the planning and construction of plot had not been under the provisions of policy in question.

6.2. In continuation, it was also reasoned that there was no participation of any State Government PSU/SPV as required in the relevant clauses of the amended policy; the land could be made freehold as per rules after its acquisition by executing agency only if there was minimum 20% participation of any PSU/SPV of the State Government. It was also observed that as per the terms of allotment, conditions of regulating authority would be applicable and there was no provision in the existing policies of respondent No. 2 to give developed land for freehold.

6.3. While rejecting the contention of the petitioner that theme park/amusement park could be established by any private sector, PPP or any authority creating SPV, it was held that its assessment, selection and implementation is subject to the decision of authority concerned under its own rules; and since there was no policy of the authority concerned for giving the land as freehold, the request was liable to be rejected.

6.4. In relation to the other contention that respondent No. 2 should allow execution of bipartite sub-lease if the land was not made freehold in absence of any condition of tripartite sub-lease in the lease deed dated 23.08.2006, it was observed that although, the said lease deed did not explicitly mention the execution of tripartite sub-lease but, the allotment letter did so and point No. 13 of the said lease deed also made it clear that the allottees have to abide by general terms and conditions of allotment. In addition, it was also observed that the other lease deed dated 30.03.2009 explicitly mentioned such a condition and the integrated map of both parcels of land for total area of 40505 sq. mtrs. was approved on 08.10.2009. It was also observed that since the question as to the execution of tripartite sub-lease was *sub judice* before the High Court, it was not proper to take any final decision in that regard.

A 6.5. The relevant passages of the impugned order dated 24.01.2022 could be reproduced as under: -

B “(1) In continuation of the request, point No. 1 submitted by Shri SS Bhasin, it is to be informed that allotment of plot for commercial, multiplex, hotel, shopping etc. has been issued on 05.08.2006 and map dated 08.10.2009 and partial completion certificate on 07.05.2011. In the allotment letter/lease deed also, the land is on lease hold for 90 years, it is clearly mentioned. It is also known that the space created in the said project has been booked by the promoter in favour of different persons and institutions. At the time of booking, the developers and the buyer were certainly aware that the said land is leasehold in nature and the investment would have been made by the investors on the above basis. Since the policy of the Department of Tourism came into existence for the first time in 2013, and theme-based malls were included in it in the year 2016. Therefore, the argument presented in point number-1 does not seem to be justified.

D (2) In response to the request expressed in point no. 2 by Shri SS Bhasin, after perusing all the facts and the mandate issued by the tourism department dated **06.11.2013 and 03.05.2016**, it was found that the government order issued by the tourism department, Uttar Pradesh in November 2013 and all the provisions of the amendment dated 03.05.2016 are effective only from the date of 06.11.2013. As mentioned in these provisions, assessment of land for projects for construction and operation of theme park/ amusement park/theme-based mall, selection of investor, approval of layout plan, building plan etc., is to be approved by the government partner on the basis of the standards mentioned in the mandates, from which it is clear that in the projects completed or partially **completed before the year 2013, the provisions of the said mandates will not be effective**, rather, these provisions have been implemented to encourage the establishment of such new schemes in the state. In the case in question, the proposed building map was approved by UPSIDA on 08.10.2009 as per the norms applicable for the time being. According to the above approved map by the petitioner, on the basis of construction, the first partial completion certificate was issued by UPSIDA on 07.05.2011 in respect of commercial area of 179017 sq. mts. On the basis of further construction done by the petitioner, second

partial Completion Certificate was issued by UPSIDA on 16.04.2015. Theme based mall was included under the scheme on 03.05.2016. From this it is clear that the planning and construction of the plot in question by the petitioner has not been done under the provisions of the above referenced mandates issued by the Tourism Department for the establishment of theme park/amusement park/theme-based mall. Therefore, the provisions of the said orders are not effective on the plot in question.

In the case in question, the project has been implemented by the petitioner through private investment and there is no participation of any State Government PSU/SPV or company in the project. As per paragraph d above, a provision has been made to make the land available as free hold as per rules after the acquisition of land by the executing agency only if there is minimum 20 percent participation of any public sector undertaking/SPV of the state government. It is also clear from para g of the mandate dated 03.05.2016 that the Act and the conditions of the authority related to the project will be considered as applicable. The plot in question is located in Surajpur Site-4, notified industrial development area of UPSIDA, which is regulated by the regulations of UPSIDA. In the existing policies of UPSIDA, there is a provision to give developed plots on lease hold only, there is no provision for freehold. In this context, the request of the petitioner regarding freehold of the land in question is not covered by the above mandates issued by the Tourism Department, Uttar Pradesh. Its analysis has been done in detail in Para-12 of Office Order No.- 6009/77-4-21-77 SIDC/18 dated 19.11.2021 issued on 19.11.2021.

The petitioner, vide his representation dated 21.01.2022, has been requested to read the provisions mentioned in para-3 of mandate dated 06.11.2013 by linking it with para-4. The following is mentioned in Para-3 of the mandate dated 06.11.2013 'The establishment and operation of theme park/amusement park can be done by private sector, PPP or any authority by creating an APV. In such situation,

A **all the decisions regarding the assessment of the desired land, the selection of the private investor and the implementation of the project after the selection will be taken by the concerned authority/government body/public undertaking under its own rules.**

B **It is clear in Para-3 that all the decisions regarding ‘establishment and operation of theme park/amusement park and project implementation’ will be taken by the concerned authority under its own rules. Since there is no policy of the authority for freehold, hence the request is not acceptable.**

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D 4. Due perusal of records was done in the context of the facts mentioned/reported in point no. 4 by Shri SS Bhasin and it was found that although the lease deed executed on 23.08.2006 does not directly describe or mention the tripartite sublease deed but Para 10(b) of the allotment letter dated 05.08.2006 clearly mentions to execute tripartite sub-lease deed.

E **10 (b). The Tripartite Lease Deed of the built-up premises shall be executed by UPSIDC. Ltd., with the ultimate allottee of Developer on the request of the developer in writing. In tripartite lease deed, the allottee of developer shall be the lessee, the UPSIDC Ltd., will be the lessor and the developer shall be a confirmation party. The UPSIDC will be transferring the proportionate undelivered interest in the land while the developer will be transferring the interest in the built-up space.**

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In addition to the above, it is clearly mentioned in the point no. 13 (page 13) of the lease deed executed on 23.08.2006 that the compliance of the conditions mentioned in the **allotment** will also be ensured:

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13. The Allottee will have to abide by general terms and conditions of Allotment of UPSIDC and also to observe the laws & other rules and regulation carry out any specific activity from appropriate Govt. bodies before undertaking such activities. Failure to do so may result in cancellation

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**of allotment of the whole plot or part thereof as UPSIDC A
deems fit.**

Therefore, to say that the condition of tripartite sublease deed does not apply to them is not legal. Apart from this, the lease deed executed on 30.03.2009 mentions the execution of tripartite sublease deed. Since in the lease deed executed on 23.08.2006 the area is 37208.00 and the area mentioned in the lease deed executed on 30.03.2009 is 3297.00 square meters, the integrated map of the total area of 40505.00 square meters has been approved on 08.10.2009. Therefore, in the above circumstances also the execution of tripartite sub-lease deed is justified under the rules of the Authority. B C

Should the tripartite sub-lease deed be executed at present or not? Regarding the above, Writ Petition No. 1821/2021 is pending before the Hon'ble High Court of Allahabad, due to which the Authority has received a stay order on 11.10.2021 in the ongoing case No. 257/2018 issued by the Hon'ble ACJ (SD) Gautam Budh Nagar. Since the matter in question is sub-judice in the Hon'ble High Court, it is not appropriate to take any final decision on it. D

As per above it is clear that the leasehold plot number- SH-3, Industrial area Surajpur site-4 in question was requested by Shri SS Bhasin to be freehold in accordance with the mandate issued by the tourism department for the year 2013 and 2016 under the terms of allotment letter and lease deed and due to non-compliance and in the light of the opinion made available by the Justice Department in the past, due to the lack of legality and the provisions mentioned in the Government Order dated 06.11.2013 and 03.05.2016 issued by the Department of Tourism. There is no free-hold policy in respect of the Industrial Development Authority's land. In view of the provisions of the mandate dated 06.11.2013 and 03.05.2016, the plot No. SH-3, Industrial Area, Surajpur Site-4, District- Gautam Budh Nagar in question of the petitioner is not legal to be freehold. E F G

Therefore, in the above case, regarding the fee-holding of plot no. SH-03, Industrial Area Surajpur site-4, the request and representation of Shri SS Bhasin, director of the allottee company M/s Bhasin Infotech and Infrastructure Pvt Ltd, was submitted H

A to the Hon'ble Supreme Court on 21.01.2022. In compliance with the order dated 13.12.2021, it is hereby disposed of as above."

(emphasis in bold as in original)

B 7. As noticed, being aggrieved by the aforesaid order dated 24.01.2022, petitioner filed the present writ petition in the High Court. During the pendency of this writ petition in the High Court, an I.A. No. 99514 of 2021 came to be filed in W.P. (Crl.) 242 of 2019 pending before this Court and after examining the matter, by the order dated 28.07.2022, W.P. No. 3790 of 2022 pending before the High Court of Allahabad was withdrawn to this Court in the interest of justice. The relevant part of the order dated 28.07.2022 withdrawing the writ petition to this Court reads as under: -

D "After hearing learned counsel for the parties for some time, in our opinion, to do substantial justice to the parties, it may be appropriate to hear the issues raised in Writ Petition No.3790/2022 filed before the High Court of Judicature at Allahabad, Bench at Allahabad, along with Writ Petition (Crl.) No.242 of 2019 pending in this Court.

E Accordingly, we direct withdrawal of the stated Writ Petition No.3790/2022, which is pending in the High Court of Judicature at Allahabad, and to be heard along with Writ Petition (Crl.) No.242/2019.

F The Registrar (Judl.) of this Court may ensure that papers of the stated writ petition are made available and placed before the Court on the next date of hearing along with Writ Petition (Crl.) No.242/2019 by requesting the High Court to forward the papers through Special Messenger, if necessary.

List this application along with main matter on 22nd August, 2022."

G 8. Therefore, and in compliance of the aforesaid order dated 28.07.2022, the writ petition filed by the petitioner-company has been withdrawn to this Court and has been placed for consideration alongwith the main matter, being W.P. (Crl.) No. 242 of 2019. On 07.09.2022, after having heard learned counsel for the parties preliminarily, we found it just and appropriate to consider this transferred case before entering into the remaining issues in the connected matters. Accordingly, the parties

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were granted time to complete the record with translated copies of the relevant documents and short notes on their proposed submissions. A

8.1. After completion of the record, we have heard Mr. Shyam Divan, learned senior counsel for the petitioner, Mr. K.M. Nataraj, learned Additional Solicitor General for respondent No. 1, and Mr. A.N.S. Nadkarni, learned senior counsel for respondent No. 2 in relation to this transferred case, T. C. (C) No. 82 of 2022. B

9. It may be pointed out at this juncture that in W.P. (Crl.) No. 242 of 2019, two applications, being Crl. M.P. Nos. 99512 of 2021 and 99514 of 2021, have been filed by director of the present petitioner-company, respectively for impleadment of Uttar Pradesh State Industrial Development Authority in the said writ petition filed in this Court; and for directions to respondents concerned, to convert the subject land from leasehold to freehold as also for other directions to UPSIDC to not interfere in execution of sub-lease deed by the petitioner-company for transfer of the built-up portion of its project in the name of allottees or in the alternative for directions to UPSIDC to enter into tripartite sub-lease deed for transfer of the built-up portion in the name of allottees. C D

9.1. In regard to the aforesaid applications, Crl. M.P. Nos. 99512 of 2021 and 99514 of 2021, we deem it appropriate to observe that so far as the prayers for impleadment in W.P. (Crl.) No. 242 of 2019 and for directions to the UPSIDC as regards execution of sub-lease deed or tripartite sub-lease deed are concerned, the same being not directly the subject-matter of this transferred case [T. C. (C) No. 82 of 2022], we would prefer leaving those aspects open for consideration at the appropriate stage in the appropriate proceedings. It may, however, be observed that the first prayer in Crl. M.P. No. 99514 of 2021, seeking directions for converting the subject land from leasehold to freehold, is essentially the relief claimed in this transferred case and shall stand covered by this judgment. In the given status of record, we have, of course, taken into consideration a few documents filed along with these applications, particularly the communications of the petitioner to UPSIDC for conversion of land from leasehold to freehold. E F G

10. While challenging the impugned rejection order dated 24.01.2022, learned senior counsel for the petitioner has referred to the background features relating to the project undertaken by the petitioner on the subject land and has asserted on the rights of the petitioner to get H

A the benefits ensuing from the said policy of the State Government, including conversion of the subject land from leasehold to freehold.

10.1. With reference to the background facts about two contiguous pieces of land, admeasuring 40505 sq. mtrs. having been leased out to the petitioner under the aforesaid two separate lease deeds dated 23.08.2006 and dated 30.03.2009, it has been submitted that the petitioner
B has made operational one combined project, on one part of the subject land, i.e., the portion leased out under the lease deed dated 23.08.2006, in the name and style “Grand Venice Mall”, which is housing several high-end brands. It has also been submitted that the said project is
C operational since the mid of 2016 inasmuch as undisputed possession has already been taken by 301 buyers; and out of 220 allottees who have disputes with the petitioner, 97 have settled and the vacant units are awaiting possession by the remaining buyers/investors.

10.2. While assailing the impugned order dated 24.01.2022, it has been strenuously argued by the learned senior counsel for petitioner that
D the order so passed by the Additional Chief Secretary/Principal Secretary Industrial Development Section-4, Uttar Pradesh is devoid of any merit and is contrary to the stand taken by the respondents earlier and, therefore, suffers from grave infirmity and deserves to be set aside.

10.3. With reference to the terms of the policy formulated by the
E Government of Uttar Pradesh in the year 2013 for promotion of tourism in the State, it has been submitted that clause 3 of the said policy clearly states that ‘*Theme Park/Amusement Park can be established and operated by private sector, PPP or any authority by creating an S.P.V. In such a situation, all the decisions regarding the assessment of the desired land, the selection of the private investor and the*
F *implementation of the project after the selection will be taken by the concerned authority/government body/public undertaking under its own rules.*’ Therefore, the mall in question, which is a theme-based mall, is entitled to the benefits ensuing from the said policy for conversion of the land from leasehold to freehold; and the recommendation letter
G dated 31.01.2015, was rightly issued by UPSIDC to the Department of Tourism of the Government of Uttar Pradesh, that the project in question be recognized as a tourist destination.

10.4. Learned senior counsel for the petitioner has further referred to the amendment of the said policy by the Memo dated 03.05.2016, and
H with particular emphasis on clause 5 thereof, has contended that theme-

based mall has also been included in the policy with relaxation as regards minimum of 300 acres of area in case of theme-based malls. With further emphasis on clause 5 (d) which stipulates that '*The working agency will provide freehold land to the S.P.V. after acquiring the land as per the rules, for which the freehold charge will be payable as per the rules*', it has been argued that in view of the aforesaid amendments, the petitioner is entitled to the benefit of getting the subject land converted from leasehold to freehold.

10.5. It has been, thus, contended that in view of eligibility and entitlement of the petitioner for the benefits under the policy in question as amended, the approval/qualification letter dated 16.09.2016 was rightly issued by the Director General Tourism of the State of Uttar Pradesh, pursuant to the recommendation of the Committee constituted under the amended policy, permitting the project situated at the plot in question to be recognized as a "theme-based mall" and also recognising that the petitioner would be entitled to the benefits ensuing from the Memo dated 03.05.2016. Learned senior counsel would submit that in terms of the amended policy and also on account of the project in question having been recognised as a theme-based mall, the petitioner is entitled to get the subject land converted from leasehold to freehold and denial of this right of the petitioner under the impugned order dated 24.01.2022 deserves to be disapproved.

10.6. It has also been submitted on behalf of the petitioner that resolution of the aforesaid issue will not only add value to the investment of the buyers but will also generate employment opportunities; revenue for the State and Central Government; and entertainment/recreational opportunities for the people from all walks of life. Further to this, learned senior counsel for the petitioner has submitted that non-grant of freehold would adversely impede investment in the mall since expected foreign investment would fall through and Indian investors would refuse to execute the lease deeds.

10.7. In the other limb of submissions and prayers, learned senior counsel for the petitioner has submitted that the petitioner should be allowed to enter into bipartite agreements with the investors, since clause 9 of the lease deed dated 23.08.2006 provides for an absolute right of the allottee to sell the built-up portion of the land to any person of his choice; and if at all permission is required in terms of clause 3 of the aforesaid lease deed, the same is with respect to the transfer of a portion

- A of land, which is not the case in the present scenario. In this regard, reference has also been made to the facts concerning a civil suit filed by the petitioner wherein, the Additional Civil Judge (SD), Gautam Budh Nagar, by the order dated 11.10.2021, had restrained respondent No. 2 from implementing clauses 3(e), (i), (j) and 5 of the aforesaid lease deed; and, therefore, it has been argued that the petitioner-company is within
- B its rights to enter into bipartite agreements. It has also been pointed out that an *ex parte* stay was granted by the Allahabad High Court over the said order dated 11.10.2021, which was vacated by this Court after a petition for special leave to appeal was filed by the petitioner, while continuing with the interim relief granted by the Trial Court.
- C 10.7.1. Learned senior counsel for the petitioner has highlighted the practical difficulties of entering into tripartite sub-lease agreements with the tenants in a tenancy structure; and has submitted that clarification is required that no tripartite lease deed is required for sub-letting the built-up space; that clause 3(j) of the lease deed dated 23.08.2006 is
- D inapplicable for transfer of built-up portion; and that the right under clause 9 of the said lease is absolute.

11. *Per contra*, learned ASG and learned senior counsel for UPSIDC have duly supported the order impugned and have submitted that no case for issuance of any writ, order or direction in terms of the

E prayers of the petitioner is made out.

11.1. While refuting the case of the petitioner, it has been submitted on behalf of the respondents that the amended policy would not be applicable to the petitioner for four primary reasons. *First*, that as per the lease deed, the subject land has been leased to the petitioner, with 90

F years being the term of the lease. *Secondly*, the policy stipulates that there must be partnership with State Government/PSU/Government Company, who must have minimum 20% stake/investment but then, there is no such investment of the State Government or PSU or Government Company in the project in question. *Thirdly*, the policy is applicable to projects having an average Floor Area Ratio⁴ of 0.5 whereas FAR of

G the subject project is 4.0. *Fourthly*, the policy stipulates that the acquired land is to be made available to the SPV as freehold, for the sole purpose of construction of theme-based mall; and there is nothing within the policy that provides for conversion of the land from leasehold to freehold.

H ⁴ 'FAR' for short.

11.1.1. Apart from the above, it has also been submitted that since the policy was prospective in nature, it would not be applicable to the petitioner since allotment of leasehold land was made and even the first partial completion certificate was also issued much before issuance of policy. A

11.2. It has further been contended on behalf of the respondents that the petitioner cannot place reliance on the two letters/communication dated 31.01.2015 and 16.09.2016 since both were merely recommendatory in nature where, in the first letter, the only recommendation was that the subject mall be recognised as a tourist destination and even in the second letter, the recommendation had essentially been to the effect that the subject mall be approved as a theme-based mall under the amended policy dated 03.05.2016. However, there had not been any recommendation for conversion of the land from leasehold to freehold; and there was no provision for any such conversion in the allotment letters or the lease deeds. Apart from this, a letter dated 14.01.2016 sent by the Principal Secretary to the State Government to UPSIDC has also been referred to stating that no transfer of the land allotted to UPSIDC would be permitted except by lease. B
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11.3. Learned counsel for the respondents have also submitted that the prevailing policy of UPSIDC and other industrial development authorities of the State with respect to allotment or transfer of plots is on leasehold basis. Given that there has been no conversion of leasehold to freehold as regards nearly 6000 allotments of land by UPSIDC in the subject area, if the petitioner is granted this benefit, the other lessees may also claim the same which would be highly prejudicial to the Government, as also contrary to the rules and regulations of UPSIDC. E

11.4. As regards other submissions on behalf of the petitioner for allowing bipartite sub-leases, learned counsel for the respondent UPSIDC has referred to the stipulation of the allotment letter dated 05.08.2006, including clause 10 that in relation to the allottees of the petitioner, a tripartite lease deed has to be executed with allottee of the developer to be the lessee, UPSIDC to be the lessor and the developer to be a confirming party. Further, clause 13 of the lease deeds dated 23.08.2006 and 30.03.2009 makes it clear that the lessee has to abide by the terms and conditions of allotment, leaving no room of doubt that the subject property is a leasehold property. It has also been submitted that the petitioner never sought execution of tripartite lease deeds from UPSIDC, F
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A and the original suit filed by the petitioner, being CS No. 257 of 2018, seeking declaration and permanent injunction against respondent No. 2 from enforcing clauses 3(e), (i) and (j) of the lease deed dated 23.08.2006, remains pending before the Trial Court.

12. We have given anxious consideration to the rival submissions
B and have perused the material placed on record.

13. As noticed hereinabove, a few contentions have been urged in this matter on behalf of the petitioner as regards the questions relating to the execution of sub-lease deed or against execution of tripartite sub-lease deed and such contentions have been refuted/contested on behalf
C of the respondents. We have only taken note of the rival contentions in regard to these questions but, for the reason that these aspects are not forming the part of principal prayer in T. C. (C) No. 82 of 2022 and even other litigations remain pending, we would leave the same at that only and for determination at the appropriate stage in the appropriate proceedings.
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14. The principal question arising for determination in the present matter is whether the petitioner is entitled to seek conversion of the subject land from leasehold to freehold in view of the policy formulated by the respondent No. 1 State on 06.11.2013, as amended on 03.05.2016. Having examined the matter in its totality, we are clearly of the view
E that answer to this question could only be in the negative for more than one reason.

15. A comprehension of the factual aspects and the rival submissions makes it clear that the entire case of the petitioner-company, asserting its right to get the subject land converted from leasehold to
F freehold, is premised on the policy formulated by the respondent No. 1 on 06.11.2013 and amended on 03.05.2016. The petitioner would assume that the said policy with its amendment is applicable to its project and to the subject land. This assumption is without any legal basis and the claim of the petitioner turns out to be hollow and baseless because neither the
G original policy formulated on 06.11.2013 nor its amendment on 03.05.2016 have any application to the subject land or to the project of the petitioner.

15.1. A look at the background aspects makes it clear that the subject land was allotted to the petitioner on 05.08.2006 after acceptance of its offer of allotment of the said industrial plot by UPSIDC. Clause
H 14(a) of the allotment letter dated 05.08.2006 had been clear and

unequivocal that land was allotted on 90 years lease basis. Further, it was provided in clause 10(b) of the allotment letter that tripartite lease deed of the built-up premises would be executed where the allottee of the developer shall be the lessee; UPSIDC shall be the lessor; and the developer (the petitioner) shall be a confirming party. The lease deed dated 23.08.2006 in relation to 37208 sq. mtrs. of the allotted land carried the covenants, *inter alia*, that the lessee (the petitioner) will not, without the consent of lessor (UPSIDC), transfer, sublet, relinquish, mortgage or assign its interest in the demised premises or in the buildings standing thereon with the other requirements [vide clause 3 (j)]. It was also stipulated that the allottee shall have to abide by the general terms and conditions of allotment of UPSIDC [vide clause 13]. It appears that in this lease deed dated 23.08.2006, the stipulation regarding tripartite lease deed did not as such occur but the said clause 13 made all the general conditions of allotment binding on the petitioner. Moreover, in the other lease deed dated 30.03.2009 in relation to the adjacent plot of land, this stipulation was also inserted in clause 3(j). We are not entering into the questions relating to tripartite lease deed in this matter but, this much is apparent on a comprehensive look at the terms of allotment and the covenants of lease deeds that the land was allotted to the petitioner on 90 years lease basis and further treatment of land and built-up portion thereupon were to abide by those terms and covenants. It is also clear that possession of the entire parcel of land comprising the aforesaid two lease deeds, i.e., 40505 sq. mtrs., was handed over to petitioner on 31.03.2009 and on 08.10.2009, the building plan for construction over the aforesaid allotted land was sanctioned by respondent No. 2 whereafter construction over an area of 179017.82 sq. mtrs. was completed by the petitioner for which, a partial completion certificate was issued by respondent No. 2 on 07.05.2011. Until all this time, there was nothing existing as regards the policy sought to be relied upon by the petitioner.

15.2. The policy in question came up for the first time only on 06.11.2013 and it was formulated essentially for growth of tourism sector in the State of Uttar Pradesh by setting up theme parks/amusement parks. The aforesaid policy dated 06.11.2013 laid down conditions and incentives, including exemption from stamp duty, exemption from tax on construction goods/materials imported into the State etc., which were available to the theme parks/amusement parks with minimum area of 300 acres and minimum capital investment of Rs. 500 crores. Clause 3

A of the said policy, of course, provided that a theme park/amusement park could be established and operated by private sector, public-private partnership or any authority by creating special purpose vehicle and in that situation all the decisions regarding assessment of the desired land, selection of the private investor and implementation of the project were to be taken by the concerned authority/government body/public undertaking under its own rules but we are unable to find any correlation whatsoever of this stipulation of the policy with the subject land that had been given on lease to the petitioner as also with the project of the petitioner which could never be termed as any theme park or amusement park. Viewed in this light, the letter dated 31.01.2015 as sent by the Managing Director of UPSIDC, recommending the case of the petitioner to declare its multiplex, hotel and commercial construction as tourist destination, turns out to be rather baseless and its accompanying document, stating the demand of the petitioner to convert the land in question to freehold, also appears to be wanting in logic. We shall deal with this letter dated 31.01.2015 in a little more detail hereafter. Suffice it to observe at this juncture that the project of the petitioner cannot be correlated with this policy dated 06.11.2013, meant for theme park/amusement park and that too with involvement of a Government body or an instrumentality of the Government in selection of the private investor as also with participation by way of investment upto 20% of the cost of the land.

15.3. As noticed, on 16.04.2015, respondent No. 2 issued second completion certificate in respect of the project of the petitioner. Even until this point of time, there was no amendment to the policy in question.

F 15.4. Now, switching over to the amendment of the policy in question by way of Office Memo dated 03.05.2016, of course, the policy to promote tourism was modified so as to grant certain other concessions and was also expanded to include theme-based mall but then, such broadening of the policy came with typical and peculiar stipulations. A Committee was put in place for giving recommendations for permissions in the matters related with theme-based mall. Significantly, clause 4 of the original policy was modified in the manner that for theme-based mall, the limit of partnership of public enterprise/company of the State Government was changed from 20% of the maximum cost of land to minimum 20% of cost of land; and it was provided that the working agency will provide freehold to the SPV after acquiring the land as per

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the rules, for which freehold charge will be payable. These stipulations occurring in the said Office Memo dated 03.05.2016 make it more than clear that as regards theme-based mall a minimum of 20% of the partnership of the State Government or its instrumentality was stipulated; and such instrumentality of the State Government was also referred to as the working agency, which was to provide freehold land to the SPV to be created for the purpose. The petitioner seems to have developed a mall on the subject land and, as per the suggestions made in the referred communications, seems to have provided certain facilities to make it attractive but fact of the matter remains that the project has been implemented by the petitioner through private investment and there is no participation of the State Government or any public sector undertaking or any instrumentality of the State therein. That being the position, claim of the petitioner to seek benefits flowing from the Office Memo dated 03.05.2016 falls flat and is knocked to the ground.

15.4.1. It is also noteworthy that no SPV has been created in relation to the project of the petitioner with involvement of the State Government or any of its agencies/instrumentalities. Which particular agency is, then, to be termed as “working agency” for the purpose of the Office Memo dated 03.05.2016 remains a question inexplicable. If the stretch of arguments of the petitioner seeking freehold land is taken into consideration, only UPSIDC could be termed as “working agency” for the present purpose but then, there is no partnership of UPSIDC in this project.

15.5. Apart from the above, it is also noteworthy that the subject land was specifically leased to the petitioner for a period of 90 years in terms of the allotment letter dated 05.08.2006 and then lease deeds were executed on 23.08.2006 and 30.03.2009. The construction was undertaken by the petitioner over part of the land in question where partial completion certificate was issued on 07.05.2011 and second completion certificate was issued on 16.04.2015. Several significant consequences follow from this status of record. In the first place, when the land had already been leased to the petitioner and the petitioner is also holding the same as lessee under the lease deeds executed for the purpose, there does not appear any reason, justification, logic or rationale that such leasehold rights be converted into freehold rights. Secondly, the amended policy which is sought to be relied upon by the petitioner came into existence only after second completion certificate had been

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- A issued to the petitioner and, as per the petitioner’s own assertions, the mall had been put into operation. We are unable to find any stipulation in the original policy or its amendment that it could be applied with retrospective effect and to override the existing legal rights as also the existing legal obligations.
- B 15.6. Viewed from any angle, even on direct construction of the relevant clauses vis-à-vis the subject-matter of the present petition, it remains beyond a shadow of doubt that the policy in question with its amendment is of no application whatsoever in relation to the project in question. Therefore, the claim of the petitioner has rightly been rejected.
- C 16. In relation to the relied upon letter dated 31.01.2015 sent by the Managing Director of UPSIDC, recommending the case of the petitioner to declare its multiplex, hotel and commercial construction as tourist destination, as observed hereinabove, the same had been wholly baseless and rather unwarranted. Its accompanying document carrying the demands of the petitioner for various grants and exemptions as also
- D for converting the subject land to freehold was also without any legal basis. As noticed, at the relevant point of time, the policy in question only related to theme parks/amusement parks and it is difficult to see even a logic that the said Managing Director chose to forward the proposition of the petitioner for consideration of the State Cabinet. In any case, the
- E said letter dated 31.01.2015 was only recommendatory in nature; and even the recommendation had only been to declare the places as tourist destination and to give exemption. The Managing Director of UPSIDC could neither have recommended for converting the land to freehold nor did he do so. The said letter is of no relevance whatsoever.
- F 17. Strong reliance, however, has been placed on behalf of the petitioner on the letter/communication dated 16.09.2016, which had been a communication received by the petitioner from the Director General Tourism. The petitioner has described this letter as one of “approval” and has framed the relief in the writ petition on that basis. During the course of submissions too, substantial reliance has been placed on this
- G letter/communication dated 16.09.2016 and the same has been termed as a letter of “approval/qualification.” As would appear from the record, the petitioner addressed various communications on 12.12.2016, 30.05.2017 and 19.02.2018 to UPSIDC while asserting that the mall in question had already been declared as theme-based mall and the
- H petitioner-company is entitled to get the subject land converted from

leasehold to freehold. Learned counsel for the petitioner has highlighted the composition of Committee that had made the recommendation and submitted that when the high-ranking officers including Principal Secretaries of Tourism Department, Cultural Department, and Housing and Town Planning Department of the State Government had been the members of this Committee, its recommendations partake the character of approval/qualification and cannot be ignored. The assertions of the petitioner and the submissions made in that behalf carry their own shortcomings.

17.1. Whatsoever had been the composition of the Committee, it could have only made recommendation for final decision by the competent authority. Merely for presence of the Principal Secretaries of the Departments concerned in the Committee, it cannot be held that its recommendation itself would become a binding decision. Moreover, a close look at the said communication dated 16.09.2016 makes it evident that even the recommendation had only been to approve the proposal 'as a theme-based mall.' It is too far-stretched to read this communication as if the Committee had recommended for grant of freehold rights. As noticed, providing freehold land for the purpose of setting up a theme-based mall had entirely different requirements and had been of entirely different connotations under the amendment Memo dated 03.05.2016.

17.2. It is also noticed that in composition of the said Committee, there was no representative of the agency/instrumentality directly concerned with the subject land i.e., UPSIDC. Any suggestion or recommendation in relation to the subject land as also the lease deeds already executed between the petitioner-company and UPSIDC could not have been made without taking into account the stand of UPSIDC. Noteworthy it is that after passing of orders dated 20.10.2021 and 13.12.2021 by this Court in W.P. (Crl.) 242 of 2019, the matter was indeed examined by the Industrial Development Section-4 of the Government of Uttar Pradesh where the director of the petitioner-company was afforded the opportunity of personal hearing on 19.01.2022 through video conferencing and his further representation sent through email on 21.01.2022 was also taken into consideration while passing the impugned order dated 24.01.2022.

18. For what has been discussed hereinabove, we are satisfied that the policy in question cannot be applied in relation to the subject land. Therefore, we find no necessity to delve further into the other

A issues raised on behalf of the respondent No. 2 that it has no policy to grant freehold rights in its allotments. Suffice it would be to say for the present purpose that the claim of the petitioner for freehold rights in relation to the subject land cannot be accepted.

B 19. In an overall comprehension of the matter, we are satisfied that the impugned order dated 24.01.2022, insofar as it relates to the prayer of the petitioner for grant of freehold rights on the subject land, does not suffer from any infirmity and calls for no interference for the basic reason that the policy in question cannot be applied in relation to the subject land and, in any case, prayer of the petitioner for grant of freehold rights cannot be granted contrary to the terms of allotment and covenants of lease deeds.

D 20. In view of the above and subject to the observations foregoing, writ petition filed by the petitioner-company [Writ Petition No. 3790 of 2022 in the High Court - T. C. (C) No. 82 of 2022 in this Court] is dismissed; and the first prayer in CrI. M.P. No. 99514 of 2021 in W.P. (CrI.) No. 242 of 2019, as regards directions for converting the subject land from leasehold to freehold, is also rejected. However, we make it clear that this judgment shall otherwise be of no bearing on the other issues pending or arising between the parties. In other words, this judgment shall be relevant only to the extent of rejection of the prayer of the petitioner-company for converting the subject land from leasehold to freehold and not beyond.

E 20.1. There shall be no order as to costs.

F 21. All pending applications relating to T. C. (C) No. 82 of 2022 also stand disposed of, accordingly.