

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

**CWP No. 2489 of 2001
Date of Decision:-30.01.2015**

Army Welfare Housing Organization

...Petitioner

Versus

Punjab Urban Planning & Development Authority and another

...Respondents

***CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. Shireesh Gupta, Advocate
for the petitioner.

Mr. Shekhar Verma, Advocate
For the respondents.

HEMANT GUPTA J.(Oral)

The petitioner is Army Welfare Housing Organization, a society, registered under the Societies Registration Act, 1860. The petitioner constructs dwelling units for serving as well as retired defence personnel on the principle of self-financing and no profit no loss basis.

The petitioner purchased the land measuring 11 acres 1 kanal and 5 marlas vide sale deed dated 7.1.1983 and was granted licence to develop a colony under Punjab Apartment and Property Regulation Act, 1995. 68 flats were constructed with further provision of addition of one more floor over the existing structure.

The grievance of the petitioner is in respect of strip of land between the boundary wall of the petitioner and Radio Station road, which is sought to be developed as commercial complex. It is alleged that in the original master plan of Phase-I, such land was to be kept as green belt as per the town planning norms but now the same is being proposed to be used as

commercial complex. The use of land for commercial purposes is resisted *inter alia* on the ground that there are many shopping complex available in the area including the shopping center available in the society and that the construction of the proposed commercial complex will be create traffic hazards to the residents of the petitioner society. It would be unhygienic, would make the place crowded and the atmosphere of the colony would be spoiled.

In reply, the stand of the respondents is that in the original lay out plan (Annexure R-1), finalized on 20.8.1970, the area in question was left as 'undetermined use'. Such area was acquired by the Punjab Urban Development Authority in the year 1971. The said area was never reserved for the purpose of green belt. It is also pointed out that though the petitioner has said that the area is 3 Kanal but actually it is 3.81 acres. It is mentioned that as per the original plan approved by the Government on 15.1.1970 followed by the drawing dated 20.8.1970 use of the land had not been determined but now it stands determined to be used for commercial purposes vide communication dated 18.8.1990. The drawing for the same was prepared on 13.09.2000. A copy of such drawing is attached with the written statement as Annexure R-2.

A perusal of the Lay Out Plan (Annexure R-1) shows that the land in question was shown as 'undetermined use'. Annexure R-1 is said to be tracing of drawing No.DTP (P) 564 dated 20.8.1970. The petitioner has purchased the land in the area in question in the year 1983 i.e. much after the preparation of the lay out plan. Therefore, the argument that the land is reserved for green belt area is not made out from the lay out plan produced on record. Since the use was undetermined, the respondent, the authority competent to develop the area has the jurisdiction and authority to determine the use thereof. It has been decided to raise a commercial complex, the drawing of which has been placed on record as Annexure R-

2 Such proposal cannot be said to be illegal or unjustified in any manner. It

does not violate any law or even the master plan. Therefore, the use of such land for commercial purposes cannot be interfered with in exercise of the writ jurisdiction of this court.

The grievance of the petitioner is that the construction of the commercial complex near the residential locality will create a traffic hazard and would be un-hygienic. It is also likely to create noise pollution. We find that the apprehension of the petitioner is not justified nor the petitioners can restrict the right of use of such land. The apprehensions of the petitioner are part of its imagination and cannot be made basis to prohibit the use of the land for the stated purpose. Still, the apprehensions can be addressed by the respondents in planning the area so as not to provide any access to the commercial complex through the land of the petitioner society. The respondent will develop the commercial complex in such a way that the traffic does not pass through the residential locality of the petitioner society. The construction shall be raised by the respondents in terms of the building norms. No new access shall be provided through the land of the society. It shall not disturb the existing roads already carved out or required to be carved out for accessing the commercial complex.

With the said directions, the writ petition is disposed of.

(HEMANT GUPTA)
JUDGE

January 30, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE