

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.11211 of 2012 (O&M)

RESERVED ON:27.08.2015

DATE OF DECISION:01.09.2015

Kirpal Singh

....Petitioner

versus

Union Territory, Chandigarh and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr. Vikas Behl, Senior Advocate with
Mr. Varun Issar, Advocate for the petitioner

Mr. Vishal Sodhi, Advocate for the respondents

..

S. J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner has challenged the order of the official respondents refusing his application for constructing a basement under the office block for workshop; constructing a showroom on the ground floor for display of wooden items being manufactured; a first floor on the same block for office and a shed with basement as godown on the other side of the plot to stack wood/timber for safety from rain.

2. We have no option but to set aside the order and remand the matter for a fresh consideration as there are several issues which remain to be considered. These issues require the production of evidence and further documents. It is necessary, therefore, for the official respondents, in the first instance, to consider the same.

3. The petitioner drew a comparison between timber site Nos. 31 to 45 on the one hand and timber site Nos.1 to 30 in which his premises are situate on the other. The Court indeed cannot take up the task of town planning. It must, however, be satisfied that

the relevant material has been considered and that the right questions have been raised.

4. Firstly, as regards the basement for the office block for workshop, it was held that the aspect had already been examined as per an order dated 12.12.2001 and under that order basement sites were not allowed. Mr. Behl, however, submitted that this office order was superseded by a notification dated 16.10.2008 (Annexure P/9) which provides that a basement can be allowed up to the entire zoned area for exclusive purpose of parking and service/storage in a non-residential building. The effect of this notification must be considered.

5. As far as the application for showroom on the ground floor for display of wooden items being manufactured is concerned, it was held that the sites were allotted for timber market and, therefore, the provision of showroom for display of furniture was not justified. The effect, however, of the allotment letter (Annexure P/1) was not considered. Paragraph-9 of the allotment letter stated that the site shall not be used for any purpose other than for which it was allotted i.e. timber depot for manufacture, display and sale of furniture and wood products. Here again, the ambit of paragraph-9 of the allotment letter ought to have been considered.

6. As far as the first floor on the same block for the office is concerned, the order states that the office area is already at par in both the controls and that there was no justification for giving an increased area for the office. Mr. Behl, however, relied upon the fact that the size of the plot of the petitioner is larger than the sizes of plots in Sectors 31 to 45. The order is not clear. It is difficult to understand what is

meant by the finding that the office area is already at par in both the controls. It will be necessary to pass a reasoned order in this regard as well.

7. Lastly, so far as the shed with basement as godown is concerned, it was held that the basement under the shed is not permissible. Before us it was contended that it would be hazardous as timber is inflammable. Mr. Behl contended that permission is being given for similar constructions even where the material involved is paper and sawdust. He also contended that the timber is not inflammable. It is necessary for the official respondents, in the first instance, to decide these issues. This objection is not in the impugned order. It was taken only in the written statement. The petitioner must have an opportunity of meeting the same.

8. In the written statement, the respondents raised various other contentions to oppose the petitioner's application. Mr. Vishal Sodhi, the learned counsel appearing on behalf of the respondents, raised various contentions even across the bar in this regard. It is only fair that the petitioner is afforded an opportunity of meeting these grounds as well.

9. In the circumstances, the impugned order is quashed and set aside. The matter is remanded to the respondents for consideration afresh after affording the petitioner an opportunity of meeting the additional contentions/grounds for refusal of his application and a personal hearing.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

01.09.2015
parkash*

(TEJINDER SINGH DHINDSA)
JUDGE