

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
234**

CWP No. 14955 of 2014

Date of Decision : January 12, 2015

M/s Alliance Health Services

....PETITIONER

Vs.

State of Punjab and others

....RESPONDENTS

**CORAM : HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present : Mr. K.S.Sidhu, Sr. Advocate,
with Mr. Arun Bansal, Advocate,
for the petitioner.

Mr. J.S.Puri, Additional Advocate General, Punjab.

Mr. Praveen Chander Goyal, Advocate,
for respondent No. 5.

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral)

Rejoinder to the written statement filed by respondents

No. 1 to 4 is taken on record.

1. On 09.09.2011, applications were invited for setting up a Bio-Medical Waste Treatment Plant. The Pollution Control Board granted the No Objection Certificate on 08.11.2011 . On 08.12.2011, the Change of Land Use (CLU) certificate was granted by the State of Punjab.

2. The petitioners contend that pursuant to the above clearance, they started the work and have completed about 98% of the same. According to them, the impugned action, which we will shortly refer to, was only on account of the agitation by the Bharti Kisan Union.

3. On 12.04.2012, the Pollution Control Board directed the

petitioner to suspend the work for one month. As this order was not vacated or modified, the petitioner filed CWP No. 11715 of 2012 challenging the same. During the pendency of this petition, the CLU was cancelled by a letter dated 27.11.2012. The said writ petition was disposed of by an order dated 18.02.2013 as infructuous on account of the CLU itself having been cancelled. The learned Judge noted that the order dated 27.11.2012 constituted a fresh cause of action and the petitioner was at liberty to challenge the same.

4. The petitioner filed an appeal under Section 82 of the Punjab Regional and Town Planning and Development Act, 1995, which was disposed of by the Secretary, Housing and Urban Development by an order dated 10.09.2013. It was that the order dated 27.11.2012 was void as the rules of natural justice had not been followed. The matter was remitted to the District Town Planner, Bathinda with a direction to pass a speaking order. The District Town Planner, by an order dated 05.02.2014, noted that there was, in fact, no road with the width of 3 karmas. Such a road was not even shown in the revenue records. Certain other observations were also made including that a Nursing College had already started in the adjoining property. It is not necessary to go into the fact of the Nursing College having already started. It was necessary to have a road with a width of 3 Karmas to start the said plant. This is not even denied by the petitioners.

5. The petitioner challenged the order dated 05.02.2014 by filing CWP No. 9225 of 2014, which was disposed of by an order dated 22.07.2014 granting the petitioner liberty to explore the

alternative remedy under the Statute. The petitioner, however, filed the present writ petition contending that there is no remedy under the Statute.

6. There is a seriously disputed question of fact regarding the width of the road, which is essential for establishing the said plant. It must be kept in mind that the plant does not deal with the ordinary waste. It is for treatment of bio-medical waste.

7. The petitioners have relied upon the sale deed by which they acquired the said property. There is allegedly a written endorsement on the foot of the conveyance stating that the property contains such an access road. The endorsement, by itself, may not be sufficient to establish the sale. The respondents have relied upon an affidavit of the original owner. The original owner has disputed the correctness of the endorsement. The original owner has, in fact, alleged that the petitioner has cheated him. The original owner, in fact, contends that the width of the road is only 2 karmas and not 3 karmas. The correctness of the endorsement itself is, therefore, disputed.

8. Further, the District Town Planner has filed an affidavit disputing the correctness of two annexures i.e. Annexurs P-32 and P-33 relied upon by the petitioner. These have been signed by an officer of the department. However, the correctness of the same has been denied. Further, in the affidavit, the District Town Planner has expressly stated that a spot verification of the property was carried out and that there is no access road of 3 karmas.

9. It is difficult in a petition under Article 226 of the

Constitution to go into these disputed questions. The petitioner must be relegated to a civil suit where it would be more convenient to ascertain these disputed questions. It is not merely the width of the road that is important. Even the assertion of the original owner that the sale deed contains an incorrect endorsement would require consideration.

10 We appreciate the fact that the petitioner has, on the basis of the clearance, already expended large amounts of money. We do not, for a moment, suggest that the petitioner's case is incorrect. It would require consideration not merely at the final hearing but even at the interlocutory stage in a suit, if filed. The civil court, however, would be the proper court to ascertain these issues even at the interlocutory stage.

11. Though we dismiss the writ petition, we expressly clarify that in the event of the petitioners filing proceedings before a Court or Tribunal of appropriate jurisdiction, such Court or Tribunal must decide the issues on their own merits, if necessary, even at the interlocutory stage.

There shall be no order as to costs.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

**(AUGUSTINE GEORGE MASIH)
JUDGE**

January 12, 2015

pj