IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7984 of 2010 (O&M)
Date of decision: 25.3.2015

Parmod Sharma and another

……Petitioners

Vs.

Union of India and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjiv Bansal, Advocate
for the petitioners.

Mr. Sanjiv Sharma, Sr. Advocate with
Ms. Smriti Dhir, Advocate for UT

Mr. Sanjiv Ghai, Advocate for M.C.Chandigarh.

Mr. Onkar Singh Batalvi, Advocate for Union of India.

Ajay Kumar Mittal,J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioners pray for issuance of a writ in the nature of certiorari for quashing the Chandigarh Administration (Erection and Re-erection of Buildings) Rules, 2006 (in short, "the 2006 Rules") and also the Chandigarh Administration (Erection and Re-erection of Buildings) (Ist

Amendment) Rules, 2007 (in short, "the 2007 Rules") having been framed by the Chandigarh Administration being without any authority of law and by usurping the legislative powers vested in the Central Government by virtue of the provisions of the Punjab Reorganization Act, 1966 and the Punjab Reorganization (Chandigarh) (Adaptation of Laws on State and concurrent Subjects) Order 1968. Further prayer has been made for a direction to the respondents to consider the request of the petitioners to raise construction of a retail Mall-cum-Business Complex on plot measuring 8 bighas 14 biswas situated at Village Shahpur in view of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 which has been made applicable to the Union Territory, Chandigarh by the Central Government read with the notification dated 19.9.2006 issued by the Chandigarh Administration.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are absolute owners of the land measuring 8 bighas 14 biswas situated at Village Shahpur, Chandigarh. They purchased the land vide registered sale deeds dated 9.6.2003 and 8.2.2008 respectively for the purpose of erecting and setting up a retail Mall-cum-Business Complex. They are the Directors of M/s YKM Infrastructures Pvt. Limited. They submitted an application dated 7.4.2008 to respondent Nos. 5 and 6 for grant of permission for the above-stated purpose. Thereafter, the petitioners submitted representations and reminders to the authorities from time to time on 9.4.2008 and 9.5.2008 but they have not received any response. According to the petitioners, the respondent administration has been exceeding its powers by usurping the legislative power of the Central Government/Parliament and thereby

enacting various rules which are beyond the legislative competence of the UT Administration. Grievance of the petitioners is that the UT Administrator has no power to frame 2006 Rules nor has any power to amend the same. Once the Municipal Corporation Act, 1996 has been extended to UT Chandigarh by the Parliament, then the provisions of the said Act would apply and rules if any can also be framed by the Parliament/Central Government. Hence the instant writ petition by the petitioners.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners contended that only the Central Government is competent to frame the rules. Therefore, the 2006 and 2007 Rules framed by the Chandigarh Administration are bad. It was also urged that as Shahpur Village is falling in the Municipal area, therefore, these rules have no applicability. Further, prayer for consideration of the case of the petitioners under Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 was also made.

5. Learned counsel for the respondents at the outset submitted that the prayer made by the petitioners in the present writ petition is two-fold. It was contended that both the prayers are liable to be summarily rejected. Firstly, as regards quashing of the 2006 and 2007 Rules is concerned, in view of judgment of this Court in ***Manmohan Kumar Garg and another vs. The Assistant Estate Officer, UT Chandigarh and others,*** 2012(4) RCR (Civil) 384, the matter is covered against the petitioners. It was next contended that in so far as the prayer for consideration of the petitioners' case for grant of permission to erect retail Mall-cum-business Complex on

land measuring 8 bighas 14 biswas situated at Village Shahpur is concerned, in view of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994, the petitioners had approached this Court claiming the same relief by way of CWP No.8382 of 2008, ***Atul Mittal and another vs. Union Territory, Chandigarh and others,*** which was dismissed vide order dated 4.3.2010.

6. We find merit in the submissions made by learned counsel for the respondents. The primary grievance of the petitioners is that they have been declined permission to raise construction of a retail Mall-cum-Business Complex on plot measuring 8 bighas 14 biswas situated at Village Shahpur, Chandigarh. For seeking this relief, the petitioners had approached this Court earlier by way of CWP No.8382 of 2008 which was dismissed on 4.3.2010. The provisions of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 had also been relied upon by the petitioners. The relevant observations read thus:-

> "There is no notification extending the "Act" to the area of Village Shahpur, subject matter of the present writ petitions. Therefore, in terms of the amended provisions of Section 1 (ii) of the Periphery Act, as reproduced above, such Act extends to the Land purchased by the petitioners falling within revenue estate of village Shahpur. As a necessary consequence, it can be said that out of the bigger outer circle of Union Territory of Chandigarh, there is inner circle to which the "Act" is applicable. There is still inner circle excluding the applicability of Building Rules to which the Act is applicable. On the other hand, there is another circle within the outer circle of Union Territory, Chandigarh, which is governed by the Municipal Act. Within the boundaries of Union Territory of Chandigarh, there exists the Municipal

area of the Municipal Corporation, Chandigarh. In view of the above, the provisions of the "Act" are not applicable to the land in dispute, situated within the municipal area of village Shahpur, as area of operation of two statutes is not identical nor conceived by the legislative scheme to be same.

Part IX A of Constitution, defines the area over which the local self-Government is required to be established. The Nagar Panchayat are required to be established for a transitional area i.e. An area in transition from a rural area to a urban area; a Municipal Council for a small urban area and Municipal Corporation for a larger urban area. The transitional area or smaller urban area or a larger urban area is to be declared having regard to the population of area; density of the population therein; the revenue generated for local administration; the percentage of employment in non-agricultural activities; and the economic importance or such other factors. The fact, whether the land of village Shahpur is a abadi area or not is alien, to determine the question whether it is a transitional area or smaller urban area or larger urban area. The word 'abadi' in Rules have to be given, inter alia, prevalent meaning in the area understood in terms of the Punjab Land Revenue Act alone. Thus, we do not find any merit in the argument that the word "abadi" in Rules is, in fact, the municipal area of Municipal Corporation, Chandigarh.

The argument that since the said area is part of the municipal area of Municipal Corporation, Chandigarh by way of notification under Section 3 of the Municipal Act, therefore, by virtue of Section 424 A, the "Act" is applicable to the land, which is subject matter in the writ petitions, is misconceived. Section 3 of the Municipal Act empowers the Administrator to notify such territorial area of Union Territory of Chandigarh to be municipal area of Municipal Corporation, Chandigarh. There can be exclusions and inclusions in the said area by virtue of sub Section (ii) of Section 3 of the Act. By virtue of Section 424, the Government can withdraw the operation of the Act from any area of the City. It is not a case, where any area has been excluded from either the municipal area of Municipal Corporation of Chandigarh, or the provisions of Municipal Act has been withdrawn from the municipal area of Municipal Corporation, Chandigarh. In fact, Section 424 A gives over-riding effect to the "Act" and Periphery Act. It starts with non-obstante clause. Thus, the Municipal Act may be applicable to an area governed by either the "Act" or Periphery Act, but still the aforesaid Acts will have over-riding effect over the Municipal Act. The Municipal Act is subservient to the Act and Periphery Act.

Though by virtue of Punjab Act No.37 of 1957, certain provisions of Punjab Municipal Act, 1911 were extended to the area governed by the "Act", but none of the provisions pertain to preparation, submission and sanction of building plans. For such building plans, it is the Building Rules, which were applicable, even after insertion of second Schedule vide Act No.37 of 1957.

Rules have been framed in exercise of powers conferred by Sub-section (2) of Section 5 and read with Section 22 of the "Act". In our opinion, the Building Rules can be framed only in respect of an area, which is part of Chandigarh i.e. as defined in Section 2 (d) read with sub-Section (2) of Section 1 of the Act. Since the municipal area of Municipal Corporation, Chandigarh is not necessarily governed by the "Act", therefore, Rules in respect of the area of Chandigarh not governed by the Act, but by Municipal Act is beyond the legislative competence of the Chandigarh Administration. Rules would be applicable only in respect of an area to which Act is applicable. To an area, to which Act is not applicable, the Periphery Act comes into play. Such

Periphery Act prohibits raising of any construction without the permission of the competent authority under the aforesaid Periphery Act. Beyond the Union Territory of Chandigarh, the Punjab New Capital (Periphery) Control Act, 1952 continues to be applicable in view of the provisions of Punjab Reorganization Act, 1966 in the State of Punjab and Haryana. The long title of the Rules shows that such Rules are for the "villages in the municipal area of Municipal Corporation of Chandigarh". Such Rules would be applicable only to the villages, which are part of the municipal area of Municipal Corporation, Chandigarh and also governed by Act. Such interpretation alone would make the Rule workable, sustainable and within the competence of rule making authority. The Administrator could not frame Rules in exercise of powers conferred under sub-section (2) of Section 5 over an area, which is not governed and regulated by the Act.

The Central Government is competent to frame Rules under Section 397 of the Municipal Act. Sub-Section 2 of Section 397 as is applicable to Chandigarh provides that every Rules, Regulations and Bye-Laws made under the Municipal Act shall be laid as soon as may be after it is made, before the House of the Parliament in the manner detailed therein. On the other hand, Section 22 empowers the Central Government to make Rules for carrying out the purposes of the Act. Though, the Rule making Authority under the Municipal Act and the Act in relation to Union Territory of Chandigarh is Central Government, but the Central Government exercises different delegated legislative functions while framing Rules under the Act or the Municipal Act. Therefore, Rules framed under one Act cannot be deemed to be applicable in respect of another Act.

Since there is no notification extending the "Act" over the land purchased by the petitioners comprising in Village

> Shahpur, therefore, the Periphery Act, is applicable to such land in view of the adaptation Order issued in the year 1968. Therefore, we find that the petitioners cannot seek sanction of the building plans in terms of the "Rules" in respect of an area, which is not governed by Act as construction in such area is prohibited in terms of Periphery Act."

While declining the prayer of the petitioners for grant of permission for constructing Mall-cum-Building Complex, it was held that the petitioners cannot seek sanction of building plans in respect of an area which is not governed by Capital of Punjab (Development and Regulation) Act, 1952 as construction in such area is prohibited in terms of Punjab New Capital (Periphery) Control Act, 1952. Further, the cause of action for filing the present writ petition and approaching this Court earlier in CWP No.8382 of 2008 is similar. Therefore, even if, any claim which was available to the petitioners but had not been raised then, they would be debarred from raising the claim on the same cause of action now in view of Order 2 Rule 2 CPC which reads as under:-

> **"2. Suit to include the whole claim.-** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> (2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
>
> (3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

7. Even the prayer for quashing the 2006 and 2007 rules is concerned, the matter is no longer res integra and is covered against the petitioners by judgment of this Court in ***Manmohan Kumar Garg's*** case (supra) wherein it was concluded as follows:-

> "We do not find any merit in the first argument that the Administrator was not competent to frame the Rules in terms of Section 22 of the Act. Section 22 of the Act empowers the Central Government to frame the Rules for carrying out the purposes of the Act. Similar argument was raised before a Division Bench of this Court in Punjab Financial Corporation, Chandigarh. v. The Union Territory Chandigarh and others, (1991)1 ILR (P&H) 140. It has been held that wherever the expression "State Government" is used in relation to the Union Territory, the Central Government would be the State Government. The Administrator exercises the powers of the Central Government in relation to the Union Territory of Chandigarh. The relevant extracts from the said judgment read as under:-
>
> "(3) So far as the first aspect of the matter as highlighted by the learned counsel for the petitioners is concerned, the same, to my mind, stands conclusively answered by the latest pronouncement of the Supreme Court, reported as Goa Sampling Employees' Association v. General Superintendent Co. of India Pvt. And others, AIR 1985 SC 357. While examining the arguments that in relation to a Union Territory there is no State Government and the Central Government, if at all can be said to be one, is the only Government and in the absence of a State Government, the Central Government will

also have all the powers of the State Government, and therefore, the Central Government would be the appropriate Government for the purpose of CWP No. 23204 of 2010 (O&M) (9 making reference, their Lordships, after analysing the various provisions of the Constitution, posed the question": "Would it be constitutionally correct to describe the Administration of a Union Territory as State Government?" and answered it in the following manner. It clearly transpires that the concept of the State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an Administrator appointed by him. Administrator is the delegatee of the President. His position is wholly different from that of a Governor of a State. Therefore, at any rate the Administrator of a Union Territory does not qualify for the description of a State Government. Wherever the expression "State Government" is used in relation to the Union Territory, the Central Government would be the State Government. Therefore, the Central Government is the appropriate Government Clause (f) of Rule 2 of 1957 Rules framed under the Act further takes the matter beyond the pale of controversy when it says in relation to an industrial dispute in a Union Territory for which the appropriate Government is the Central Government reference to the Central Government or the Government of India shall be construed as reference to the Administrator of the Territory. It is thus abundantly clear that for purposes of these references, the Central Government was the State Government and in view of Section 8(b)(iii) of the General Clauses Act, the Administrator of the Union Territory has to be taken to be the Central Government if his action was otherwise within the authority given to him." (Emphasis supplied)"

Section 22 of the Act empowers the Central Government to frame rules to give effect to the purposes of the Act. The rules have been framed and notified by the Administrator appointed under Article 239 of the Constitution as an appointee of the Hon'ble President and acting as delegatee of the Central Government. This is apparent from the notification promulgated while publishing the rules. Thus, such Rules have been validly framed by the Administrator."

8. In view of the above finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

March 25, 2015 **(Rekha Mittal)**
'gs' **Judge**