IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.26981 of 2014

Date of Decision: 12.01.2015

M/s Sandwoods Infratech Projects Pvt. Ltd. …Petitioner

Versus

State of Punjab & others …Respondents

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

Present: Mr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Suvir Sidhu, Advocate, for the petitioner.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the notification dated 06.05.2013 (Annexure P-11) fixing the rates for External Development Charges (EDC); Change of Land Use (CLU); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) zone wise in the State of Punjab and the demand raised by the respondents on 18.09.2013 (Annexure P-6) based upon the said notification.

The petitioner, as owner of land measuring 6.45 acres situated at Village Bhago Majra, District SAS Nagar, applied for the change of land use from agricultural to flatted and cluster housing on 08.11.2011. The petitioner was granted permission on 23.12.2011. The zoning plan was approved on 25.04.2012. Thereafter, the petitioner applied for the grant of license for setting up of a residential colony under the Punjab Apartment and Property Regulation Act, 1995 on 18.06.2012. On deposit of requisite External Development Charges (EDC) and Social Infrastructure Fund (SIF) etc., the petitioner was granted license on 06.05.2013. Thereafter, the petitioner was served with a demand notice dated 18.09.2013 to make the deficiency in External Development Charges (EDC); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) consequent to the revision of rates vide notification dated 06.05.2013 (Annexure P-11). After the petitioner submitted reply to the said notice and disputed levy of the charges under the notification dated 06.05.2013, but having remained unsuccessful, the petitioner invoked the writ jurisdiction of this Court.

Learned counsel for the petitioner has vehemently argued that the External Development Charges are exorbitant, arbitrary and has no reasonable nexus with the objective to be achieved. It is pointed out that in terms of the note appended to the notification, the duty has been cast on the colonizers to make the deficiency in the External Development Charges (EDC); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) etc., but on the other hand, the State Government has been absolved to refund the amount of External Development Charges already collected at the higher rate before the revision of the rates on 06.05.2013. It is contended that such action is not sustainable, as the State cannot be given benefit of retaining the higher charges of external development. Learned counsel for the petitioner relies upon a judgment of Hon'ble Supreme Court in Brij Mohan Lal Vs. Union of India (2012) 6 SCC 502 as well as a judgment of Division Bench of this Court in Punjab Marriage Palace and Resorts Association Vs. State of Punjab & others 2014 (3) RCR (Civil) 674.

We have heard learned counsel for the petitioner at length and find no merit in the present writ petition.

A perusal of the notification dated 06.05.2013 (Annexure P-11) shows that in order to give a boost to the real estate sector, the State felt necessity to redefine the various potential zones in the State of Punjab on the basis of economic and social potential of the area to make it more realistic, simpler and functional. Nine potential zones in the Punjab were defined.

Different rates for External Development Charges (EDC); Change of Land Use (CLU); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) were prescribed in respect of each of the zones. The offending note as per the petitioner reads as under:

> "**Note:**
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> xx xx
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> - In case the promoter/land owner has already paid CLU, EDC, License/Permission Fee, SIF etc. and got approval for setting up a particular project and later on he/she wants to further change the nature of the project at any stage, for such a purpose for which the CLU, EDC, License/Permission Fee, SIF charges are higher than the already paid charges, then he/she has to pay the difference of these charges to the Government/Urban Development Authority, but in case the said charges are less than the already paid charges, then the difference shall not be payable by the Government/Urban Development Authority."

The decision of the State Government to revise the External Development Charges (EDC); Change of Land Use (CLU); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) charges is in exercise of the executive powers of the State. What should be the External Development Charges (EDC); Change of Land Use (CLU); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) charges falls within the executive domain of the State. It is a matter of policy, which cannot be interfered with only for an argument that charges are exorbitant.

In Brij Mohan Lal's case (supra), the Hon'ble Supreme Court examined the scope of judicial review of the policy decision of the State. It was held that the Court would examine any element of arbitrariness, unreasonableness in interfering in policy decision of the State. It has been held to the following effect:

> "75. The correct approach in relation to the scope of judicial review of policy decisions of the State can hardly be stated in absolute terms. It will always depend upon the facts and circumstances of a given case. Furthermore, the Court would have to examine any elements of arbitrariness, unreasonableness and other constitutional facets in the policy decision of the State before it can step in to interfere and pass effective orders in such cases. A challenge to the formation of a State policy or its subsequent alterations may be raised on very limited grounds. Again, the scope of judicial review in such matters is a very limited one. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic Rule of Law or the statutory law in force. This is what has been termed by the courts as the philosophy of law, which must be adhered to by valid policy decisions."

The Division Bench of this Court in Punjab Marriage Palace and Resorts Association case (supra), examined the issue, whether the rates of various charges and fee levied under the policy have been prescribed arbitrarily and irrationally. The Bench was considering the fee for regularization of existing marriage palaces and setting up of new marriage palaces in the State of Punjab. Considering the said issue and an argument that the charges fixed under the impugned policy are highly exorbitant, the Bench held as under:

> "16. The petitioners in this regard have made two-fold complaint. Firstly, it was urged that the rates of charges/fee prescribed under the impugned Policy are highly exorbitant and if not rationalized, most of the marriage palaces would crumble under their weight. Secondly, the differentiation in rates from one zone to another is also irrational, unguided and *per se* arbitrary. Having pondered over both the submissions, we do not find any substance therein. We say so for the reason that firstly the CLU and EDC charges have been prescribed after due deliberations and keeping in view the relevant factors like the Collector rates, the value of land and its potentiality etc. These charges have been increased wherever the proportionately higher FAR has been allowed. Secondly, the record produced before us does indicate that the relevant information was called for and the rates were recommended on the basis of a uniform criteria which

were finally approved by the Council of Ministers. Thirdly, the prescription of rate(s) of statutory charges or fee is essentially a policy matter where the Court would be wisely reluctant to interfere. Fourthly, the information given by the District Town Planner (HQ) suggests that most of the marriage palaces have accepted the notified rates and have applied for regularization. Fifthly, the Government of Punjab has vide notification dated 6th May, 2013 partially modified its previous policy decisions including the impugned one dated 16th November, 2012 and the rates of EDC, CLU, PF/LF/SIF have been suitably reduced. The grievance of the petitioners with regard to the alleged excessive rates of EDC/CLU etc. has thus been partially redressed in some of the zones. Sixthly, the remedy against the rates of development charges, if any, lies by way of an appeal under Section 142(1) of the 1995 Act."

The Court also held that there is a clear distinction between a law being enforced retrospectively and a law that operates retroactively, when it observed as under:

"21. There is a clear distinction between a law being enforced retrospectively and a law that operates retroactively. Such a distinction has been explained and illustrated by Supreme Court in a catena of decisions including *NK Bajpai vs. Union of India (2012) 4 SCC 653* holding that where a restriction has the effect of relating back to a date prior to the *praesenti*, the law *stricto sensu* would not be retrospective but would be retroactive and that it is not for the Court to interfere with the implementation of a restriction, "*which is otherwise valid in law, only on the ground that it has the effect of restricting the rights of the people who attain that status prior to the introduction of the restriction*"."

In view of the above judgments, the policy decision of the State Government to charge an amount in respect of External Development Charges (EDC); Change of Land Use (CLU); Permission Fee/License Fee (PF/LF) and Social Infrastructure Fund (SIF) charges cannot be interfered with only for the reason that the same is said to be exorbitant.

The note in the notification is again a matter of policy of the State Government. The External Development Charges, if deposited in excess than the rates fixed in the said notification, have been ordered to be retained by the State Government. Such decision does not offend the equality clause, as the action of the State is for the public good.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

12.01.2015
Vimal

(HARI PAL VERMA)
JUDGE