

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

**CWP No.6777 of 2013 (O&M)
Date of decision: 7.4.2015**

Vijay Pal Singh and others

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

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

Present: Mr. H.C.Arora, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana.

Mr. Vikas Bahl, Senior Advocate with
Mr. Arjun Kundra, Advocate for respondent No.5.

Ajay Kumar Mittal,J.

1. The petitioners are citizens of India and are residents of Sector 7, Urban Estate, Panchkula. They have approached this Court through the present writ petition under Articles 226/227 of the Constitution of India inter alia stating that having their residence near or around the site of the school being run by respondent No.5 - Ajay Memorial Education Society (Regd.), Panchkula, which is in half portion of the park, construction of

huge building in the institutional category at Plot No.1, Sector 7, Urban Estate Panchkula is resulting into a lot of environmental/noise pollution and has also become a potential traffic hazard for the residents of the locality, particularly for the children and the aged persons. Further prayer has also been made directing respondent No.3 – Secretary, Haryana Urban Development Authority (HUDA), Panchkula to initiate resumption proceedings against respondent No.5.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are the residents of Sector 7, Urban Estate, Panchkula. They have their residence near or around the site of the school being run by respondent No.5 in half portion of the park which was initially allotted to the said respondent for running the Nursery School. The entire locality is facing hazard of traffic and environmental/noise pollution on account of the school buses and private cars carrying the students. According to the petitioners, about 20 years ago, one Mr. Anand, a local resident of Sector 7, Panchkula had been running a nursery school at his residence when his son Mr. Ajay expired. Thereafter, Mr. Anand submitted an application for opening a nursery school in the memory of his son. The said application was accepted by the Administration and vide letter dated 8.12.1988, Annexure P.1, respondent No.4 allotted a piece of land measuring 3203 square meters for a tentative price of ₹ 2,03,193/-. The location of the plot was described as facing Plot No.557 to Plot No.561 on north side and Plot No.517 to Plot No.523 on south side. The residents of the locality including the petitioners had no objection to the running of a nursery school at the said plot although the said plot was carved out of the area earmarked for a common park. In May

2011, the respondent No.5 demolished the building of the nursery school and started constructing a huge building alongwith an equally huge basement for the proposed High School at the place where it was originally granted sanction for running a nursery school. The petitioners approached various authorities for persuading them to stop the construction. They submitted applications under Right to Information Act, 2005. Ultimately respondent No.2 vide letter dated 14.9.2011 (Annexure P.4) informed that land was allotted for nursery school to respondent No.5 in the year 1988. Subsequently vide sanction letter dated 16.9.2010 (Annexure P.3), respondent No.4 had approved revised building plan of respondent No.5 for construction of a building in the institutional category at Plot No.1, Sector 7, Urban Estate, Panchkula. Perusal of sanction letter Annexure P.3 dated 16.9.2010 shows that earlier plan sanctioned on 6.1.2009 was cancelled. According to the petitioners, running of a High School in the midst of the residential houses and in one half of the park would be a great deal of nuisance for the residents of the area. The petitioners submitted representation to respondent No.2 on 23.8.2011, Annexure P.8 against upgradation of the nursery school to High School. They also submitted a representation dated 25.7.2011, Annexure P.9 to the Administrator, HUDA, Panchkula against sanctioning the revised building plan of respondent No.5. Having received no response, the petitioners filed CWP No.18833 of 2011 (***Vijay Pal Singh and others vs. State of Haryana and others***) in this Court seeking writ of prohibition for restraining respondent No.5 from running the High School at the site. The said writ petition was disposed of by this court vide order dated 16.12.2011, Annexure P.11 with a direction to the competent authority to pass order after taking into consideration the various

factors including whether upgradation of the school from nursery to 5th standard would cause serious inconvenience or prejudice to the residents of the locality due to substantial increase in the strength of the children or it will require additional construction at the site. They filed application for review of the order Annexure P.11 which was withdrawn by the petitioners on 24.02.2012. Even thereafter, respondent No.5 opened the school upto Class 5th standard at the site. The petitioners submitted representations dated 23.12.2011 and 20.1.2012, Annexures P.12/1 and P.12/2 respectively to the Director, Haryana School Education Board Panchkula. However, respondent No.3 did not pass any speaking order inspite of the directions issued by this Court in CWP No.18833 of 2011. Some of the present petitioners also filed COCP No.826 of 2012 (***Vijay Pal Singh and others vs. Harish Gupta and others***). During the pendency of the said petition, respondent No.3 passed the impugned order dated 11.1.2013, Annexure P.13 granting permanent recognition to Tulips World School, Sector 7 Panchkula for Class I to 5 w.e.f 1.4.2012 to the Managing Committee of respondent No.5 on certain terms and conditions mentioned therein. In view of the said order, even the contempt petition was rendered infructuous vide order dated 11.1.2013, Annexure P.14 passed by this Court. According to the petitioners, they were given liberty to file separate writ petition in case they were aggrieved by the order dated 11.1.2013, Annexure P.13. During the pendency of the contempt petition, short affidavit dated 1.5.2012, Annexure P.15 was filed on behalf of the Chief Administrator, HUDA, Panchkula stating that HUDA had not given any permission to respondent No.5 to run a school beyond nursery standard. The petitioners also filed CWP No.3718 of 2013 (***Vijay Pal Singh and others vs. State of Haryana***

and others) which was dismissed by this court vide order dated 20.2.2013, Annexure P.16 holding that the petitioners had personal interest in the case and, thus, it could not be treated as PIL. The court gave them liberty to file a separate petition seeking the relief prayed for therein in their personal capacity if they so desired. Hence the present writ petition.

3. Separate replies have been filed on behalf of respondent Nos. 1 & 2, 3 & 4 and 5 controverting the averments made in the writ petition.

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

5. The petitioners had made claim primarily on the basis of order passed by this Court in CWP No.18833 of 2011 which was filed by way of Public Interest Litigation, decided on 16.12.2011. It has been urged by the learned counsel for the petitioners that in terms of para 13 of the said order, respondent No.2 – Director General, School Education, Panchkula, Haryana was directed to decide the issue with regard to upgradation of the school from Nursery to 5th standard by examining whether the same would cause serious inconvenience or prejudice to the residents of the locality due to substantial increase in the strength of the children or it will require additional construction at the site. It was further submitted that there was reference to several factors which were required to be kept in view by the competent authority before taking final decision in the matter. It was contended that the direction given by the Division Bench has not been complied with by the respondent-authorities while passing the impugned order dated 11.1.2013, Annexure P.13, which is legally unsustainable.

6. Opposing the prayer made by learned counsel for the petitioners, learned counsel for the respondents vehemently submitted that

in so far as requirement of passing a detailed order by considering upgradation of the school from Nursery to 5th standard by examining whether the same would cause serious inconvenience or prejudice to the residents of the locality due to substantial increase in the strength of the children or it will require additional construction at the site, is concerned, there was no dispute that the same has not been discussed in detail by the competent authority in the impugned order. However, it was submitted that the matter may be sent to respondent No.2 to pass a fresh order after hearing both the sides in accordance with law expeditiously. The objection with regard to raising of any other plea was seriously opposed with reference to para 12 of the order passed in the earlier writ petition.

7. It would be expedient to reproduce paras 12 and 13 of the said order at this stage, which read thus:-

“12. The aforesaid grievance of the petitioners, in our considered view, stands substantially redressed in view of the categoric stand taken by the respondents to the effect that no recognition to run a High School has been granted to respondent No.5 nor the said society intends to establish a High School at the subject site. As regards to the guidelines contained in the National Building Code of India, 2005, reproduced above, it is apparent that construction of a three-storey building for such like school is permissible even under those guidelines. It is not necessary that the tiny tots would compulsorily be taken to the first or second floor of the building as the class rooms can be housed on the ground floor and the upper floors can be used as Administrative Blocks or for other ancillary activities.

13. The question as to whether respondent No.5 society is to be permitted to run a school upto 5th standard or not, would depend upon the terms & conditions laid down in the Haryana School Education Rules, 2003, as amended from time to time, and it

may not be expedient for us to express any views in relation thereto. The Nursery School, if upgraded upto 5th standard, whether would cause serious inconvenience or prejudice to the residents of the locality due to substantial increase in the strength of the children or it may require additional construction at the site etc., are several factors which shall have to be kept in view by the Competent Authority before taking any final decision in this regard in accordance with the policy and the Rules on the subject. The plot size, however, shall remain the same without affecting the remaining area of the adjoining public park.”

8. A perusal of para 12 quoted above shows that the earlier Division Bench while disposing of CWP No.18833 of 2011 had noticed that as regards to the guidelines contained in the National Building Code of India, 2005, it was apparent that construction of a three storey building for such like school was permissible even under those guidelines. In such a situation, it cannot be said that construction of the building was in violation of any of the bye-laws or the regulations. However, we find force in the submission of learned counsel for the petitioners that the order dated 11.1.2013, Annexure P.13 is not in consonance with the directions contained in para 13 of CWP No.18833 of 2011 in so far as it does not examine the issue with regard to causing of inconvenience or prejudice to the residents due to substantial increase in the strength of the children or additional construction at the site. Accordingly, the order dated 11.1.2013, Annexure P.13 is set aside and the matter is remanded to respondent No.2 to pass a fresh speaking order in terms of para 13 of the order reproduced above after affording an opportunity of hearing to both the sides in accordance with law.

The needful shall be done within two weeks from today. The parties shall

appear before respondent No.2 on 13.4.2015 for further proceedings.

Needless to say, it shall be open to the aggrieved party to seek its remedies in accordance with law. The affidavit dated 1.4.2015 on behalf of respondent No.5 filed alongwith the application (CM No.4481 of 2015) is taken on record subject to all just exceptions.

9. With the above observations, the writ petition stands disposed of.

(Ajay Kumar Mittal)
Judge

April 07, 2015
'gs'

(Rekha Mittal)
Judge