IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 28.01.2015

LPA No.630 of 2010

Municipal Corporation, Amritsar & another

…Appellants

Versus

M/s Alpha G. Corp. Development Private Limited & others

…Respondents

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

Present: Mr. Ashwani Chopra, Senior Advocate, with
Mr. Sandeep Khunger & Ms. Gurpreet Randhawa, Advocates,
for the appellants.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh Talwar, Advocate, for respondent No.1.

Mr. P.S.Bajwa, Additional Advocate General, Punjab,
for respondent Nos.2 to 4.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

<u>HEMANT GUPTA, J. (ORAL)</u>

The present letters patent appeal under Clause X of the Letters Patent is directed against an order passed by the learned Single Bench of this Court on 03.03.2010, whereby the writ petition filed by M/s Alpha G. Corp. Development Private Limited - respondent No.1 herein was allowed and the levy of change of land use fee was found to be illegal and the amount deposited by respondent No.1 (hereinafter to be referred as 'the writ petitioner') was ordered to be refunded along with simple interest at the rate of 9% from the date of collection till the date of payment.

The facts in brief are that the writ petitioner, a Private Limited Company being Professional Real Estate Developers, entered into Joint Venture Agreement with certain land-owners for development of about 27 Acres of land owned by them in two phases. The writ petitioner submitted its Expression of Interest for Development of Mega Projects and clearance of the same by the Empowered Committee on Mega Projects of Investments of over of Rs.100 Crores under the Mega Projects Policy announced by the Government of Punjab. The proposal of the writ petitioner for Housing Projects and Multiplex Projects was accepted by the Empowered Committee constituted under the Industrial Policy – 2003 vide communication dated 21.12.2005 (Annexure P-3). The relevant conditions for approval are as under:

> "**A. <u>CONCESSIONS GRANTED TO MULTIPLEX PROJECTS</u>:**
>
> xx xx
>
> (f) Conversion of land use from agriculture to proposed use in principle on payment of conversion charges and in accordance with the Periphery Policy, which is under finalization for projects located in periphery area.
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> xx xx
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> **B. <u>CONCESSIONS TO HOTEL PROJECT</u>:**
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> xx xx
>
> (IV) Conversion of land use from agriculture to proposed use in principle on payment of conversion charges and in

accordance with Periphery Policy approved by the Council of Ministers.

xx xx"

It was on 11.07.2006 (Annexure P-6), the building plan submitted by the petitioner was recommended by the Chief Town Planner, Punjab to the Commissioner, Municipal Corporation for sanction. It was communicated that since the project has been approved by the Empowered Committee as per the Government decision, the building plan has to be approved at the earliest and if any approval is required, ex-post facto approval of the same be taken from the Government. It is, thereafter, on 01.08.2006 (Annexure P-7), the building plan submitted by the writ petitioner was approved.

At this stage, we may notice that on 26.03.2003, the Government of Punjab, Department of Industry & Commerce, published a notification formulating 'Industrial Policy - 2003' to facilitate the development of industry in the State of Punjab. The conditions regarding 'Change of Land use' and 'development of integrated Multiplex Complexes' are contained in Clause 10.4.2 and Clause 10.5 respectively of Chapter 10 of such Policy. The relevant Clause 10.4.2 reads as under:

"**10.4.2 Change of Land use**

Change of land use will not be required anywhere in the State except in the areas falling within the municipal limits, Chandigarh Capital Periphery or planning or controlled areas and along the notified schedule roads and bye passes. However, in the case of Industries being set up in the areas other than specified above, intimation by the Industries Department about the location of the proposed unit shall be sent to Chief Town Planner, Punjab, Department of Housing & Urban Development, so as to keep the data bank regarding land use updated.

(Instructions Regarding Change of Land Use issued by Department of Housing & Urban Development)

xx xx"

In pursuance of Industrial Policy – 2003, another notification dated 08.09.2003 (Annexure P-4) to implement the scheme of Development of Multiplex Complexes was issued. The relevant extract from the notification dated 08.09.2003 reads as under:

"**1. Definition**

Multiplex complex shall mean an integrated entertainment and shopping centre/complex having at least three cinema halls with total minimum seating capacity of 1000 seats, set up in an area of 4000 sq. yards or above with minimum investment to the tune of Rs.20.00 crore including the cost of land, if owned by the developer. However, investment on items other than land would not be less than Rs.15 crore. Apart from Cinema Halls the entertainment area may have restaurant, fast food outlet, video games parlours, pubs, bowling alleys, health spa / centres and other recreational activities. The shopping centre may have retail outlets, showrooms, shopping mall, pharmacy etc.

Existing cinema halls converting to multiplexes will be covered under this scheme, if they have a plot area of 4000 sq. yards or more and the investment on modification is Rs.20.00 crores or more.

2. Land Use

Multiplexes will be permitted on land earmarked for commercial use or cinemas in any master plan or development plan prepared by the Punjab Urban Planning & Development Authority (PUDA) or any local body. They will also be permitted on land on which no land use restrictions are applicable under any law."

A clarification was issued by the Secretary to Government of Punjab, Department of Housing & Urban Development, Chandigarh on 28.03.2003 (Annexure P-42) contemplating that change of land use would be required only for the industrial units falling with the Chandigarh Periphery Control Area declared under the Punjab New Capital Periphery Control Act, Planning Area declared under the Punjab Regional and Town Planning and Development Act, 1995 and Controlled Areas declared under the erstwhile Punjab Schedule Roads and Controlled Areas (Restrictions on Unregulated Development) Act, 1963. It is admitted that the land in question is located within the limits of Municipal Corporation and none of the three Acts i.e. the Punjab New Capital Periphery Control Act; the Punjab Regional and Town Planning and Development Act, 1995; and the erstwhile Punjab Schedule Roads and Controlled Areas (Restrictions on Unregulated Development) Act, 1963 are applicable to the land in question.

On 01.09.2008 (Annexure P-30), the Municipal Corporation sought clarification from the Chief Town Planner, inter alia, on the questions, whether the Change of Land will be recommended to the Government by the C.L.U. Committee constituted as per policy framed for Change of Land use and what would be the rate of C.L.U. or the matter has to be considered by the Industry Department. The communication dated 01.09.2008 reads as under:

> "Subject: Building application GR No.730 dated 10.01.2008 of M/s Soul Space Project Ltd., through Sh. Vikas Mehra seeking approval for the construction of Multiplex.
>
> Kindly refer to your letter bearing No.CTP(LG)-2008/884 dated 18.08.2008 and in continuation of our letter bearing No.MTP/90 dated 22.04.2008, on the subject cited above.

The Municipal Corporation, Amritsar has sought the technical approval of the Government in respect of building plan submitted by the applicant vis-à-vis the guidelines on the following two points:

1. Whether the un-built area notified by the Government for proposed Town Planning Scheme No.62 (which was no actually sanctioned) will be treated as such or the same has to be dropped by way of passing a Resolution.

2. Whether the Change of Land will be recommended to the Government by the C.L.U. Committee constituted as per policy framed for Change of Land Use circulated vide Memo No.9/27/06-5LGI/6762 dated 22.08.2006 and what will be rate of C.L.U. or this case has to be considered by the Industry Department as prescribed under the guidelines for mega projects under Clause 4.4(b)(iv).

Vide your letter under reference, it has been advised to flow the precedent in this case which is prevalent to the Municipal Corporation, Amritsar. However, it is for your information that there is no precedent available within the Municipal Corporation, Amritsar in this regard. You are, therefore, requested to issue clear-cut guidelines on the issue of charging the C.L.U. fee in this case as well as the rate thereof as there is no rate prescribed under the Change of Land Use policy for converting the land from industrial to commercial use."

It is the said communication, which was challenged by the writ petitioner by way of writ petition apart from the order dated 27.03.2009 (Annexure P-35) passed by the Commissioner, Municipal Corporation to issue completion certificate after realization of Change of Land Use fee conveyed vide communication dated 01.09.2008 (Annexure P-30). The order dated 27.03.2009 reads as under:

"Subject: Issuing of the Completion Plan & Completion Certificate of Alpha City Center Multiplex & Hotel for M/s Alpha G. Corp. Private Ltd., Amritsar.

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1. Whereas you have got a building plan sanctioned from Municipal Corporation vide certificate No.3/49 dated 01.08.06 followed by the sanction of revised building plan vide certificate No.36/28 dated 20.06.2008 for the construction of Multiplex Complex and Hotel.

2. Whereas the land on which the above Multiplex complex and Hotel is being constructed falls in proposed Building Scheme No.6-B. The Municipal Corporation has since already resolved vide resolution No.7/5 dated 23.07.97 to approve the layout plan of this Building scheme and the same being sent to the Government for final approval. The Municipal Corporation has been sanctioning all the building plans within the area of this proposed Building Scheme as per the layout plan of the said scheme.

3. Whereas as the time of sanctioning of your proposed building plan, the Municipal Corporation had not realized the change of land use fee which was otherwise required to be charged as the site on which the commercial construction is being raised by you is earmarked as residential in the draft layout plan of proposed building scheme No.16-B.

4. **Whereas the Municipal Corporation vide its Memo No.C/MTP/991 dated 01.09.08 asked you to deposit Rs.14.40 Crore as change of land use fee. Instead of depositing the CLU fee you have submitted a reply vide letter dated 7th October, 2008 in which you had undertaken to comply with the decision of the Government regarding the payment of CLU fee**. (…..Emphasis supplied)

5. Whereas you have submitted the completion plans in the office of Municipal Corporation to issue completion certificate. Upon receiving the same your case was sent to the Government for technical approval of the completion plan as well as to issue guidelines for the realization of change of land use fee.

6. Whereas the Government vide its Memo bearing No.CTP(LG)-2009-330 dated 20.03.2009 has advised the Municipal Corporation to dispose of the issue of charging of Change of Land Use Fee as per the provisions of the Act, Rules, Bye Laws, Government Instructions and precedents.

7. Whereas the Municipal Corporation referred the case back to the Government vide its Memo No.MTP/209 dated 24.03.2009 and upon receiving the reference from the Principal Secretary, Local Government convened a meeting on 26.03.2009 in his office and it has been advised an appropriate speaking order on this issue.

8. Whereas since the Municipal Corporation is sanctioning all the Building Plans in the boundary of proposed Building Scheme No.16-B strictly in accordance with the Schedule of Clauses and Land Use of the Layout Plan of the said scheme. Therefore, the CLU charges are leviable for the alleged Site of M/s Alpha G. Corp. Pvt. Ltd. as the Land Use has been earmarked as Residential in the Layout Plan of proposed Building Scheme No.16-B and the demand raised by the Municipal Corporation is lawful and genuine.

In view of the above, I hereby order to issue Completion Certificate to M/s Alpha G. Corp. Pvt. Ltd. only after realization of Change of Land Use Fee which has already been conveyed vide Office Letter No.C/MTP/991 dated 01.09.2008 and all other charges applicable as per rules."

Before the learned Single Judge, the argument raised was that there was no building scheme finalized as required under Section 275 of the Punjab Municipal Corporation Act, 1976 (for short 'the Act'). Therefore, the Municipal Corporation cannot claim change of land use fee without finalization of the scheme. It is the said argument, which prevailed with the Single Bench and the writ petition was allowed. However, in the present appeal, learned counsel for the appellants has vehemently argued that it is not Section 275 of the Act, which is applicable, but it is Section 273 of the Act which restricts the user of buildings and permits change of land use of any land or building within the municipal limits. It is contended that since the land was agricultural and within the municipal limits, the same could be changed for non-agricultural purposes only after seeking permission under Section 273 of the Act. The Empowered Committee has considered the grant of waiver of the change of land use fee sought by the petitioner on 03.10.2005, but declined the same. Thus, the change of land use fee was payable in terms of the decision of the Empowered Committee dated 21.12.2005. The relevant extract has been reproduced in the earlier part of the order. It is, thus, contended that the writ petitioner is liable to pay change of land use fee in terms of Section 273 of the Act.

On the other hand, learned counsel for the writ petitioner – respondent No.1 has argued that the change of land use in terms of communication dated 28.03.2003 (Annexure P-42) in only in respect of three Acts i.e. the Punjab New Capital Periphery Control Act; the Punjab Regional and Town Planning and Development Act, 1995; and the erstwhile Punjab Schedule Roads and Controlled Areas (Restrictions on

Unregulated Development) Act, 1963 and that permission of change of land use is not required for the land situated within the municipal limits. It is contended that Clause 10.4.2 of Chapter 10 of the Industrial Policy – 2003, reproduced above, mentions about the instructions of change of land use issued by the Department of Housing & Urban Development. It is the said instructions issued on 28.03.2003 are to be read as part of the Industrial Policy.

Having heard learned counsel for the parties at length, we find that the order of the learned Single Judge proceeds on wrong assumption of law and facts. Before proceeding further, it would be expedient to extract Section 273 of the Act. The relevant provisions of Section 273 of the Act are as under:

> "**273. Restrictions on user of buildings and removal of dangerous buildings -** (1) No person shall, without the written permission of the Commissioner, or otherwise than in conformity with the conditions, if any, of such permission –
>
> (a) use or permit to be used for human habitation any part of a building not originally erected or authorised to be used for that purpose or not used for that purpose before any alteration has been made therein by any work executed in accordance with the provisions of this Act and of the bye-laws made thereunder ;
>
> (b) **change or allow the change of the use of any land or building**; (…..emphasis supplied)
>
> (c) convert or allow the conversion of one kind of tenement into another kind.
>
> (2) If it appears to the Commissioner at any time that any building is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighbourhood of such building, the Commissioner may, by order in writing, require the owner or occupier of such building to demolish, secure or repair such building or do one or more of such things within such period

> as may be specified in the order, so as to prevent all cause of danger therefrom.
>
> (3) The Commissioner may also, if he thinks fit, require such owner or occupier by the said order either forthwith or before proceeding to demolish, secure or repair the building, to set up a proper and sufficient board or fence for the protection of passers-by and other persons, with a convenient platform and hand rail wherever practicable to serve as a foot way for passengers outside of such board or fence.
>
> (4) If it appears to the Commissioner that danger from a building which is in a ruinous condition or likely to fall is imminent, he may, before making the order aforesaid, fence off, demolish, secure or repair the said building or take such steps as may be necessary to prevent the danger.
>
> (5) If the owner or occupier of the building does not comply with the order within the period specified therein, the Commissioner shall take such steps in relation to the building as to prevent all cause of danger therefrom.
>
> (6) All expenses incurred by the Commissioner in relation to any building under this section shall be recoverable from the owner or occupier thereof as an arrear of tax under this Act."

The entire arguments considered by the learned Single Bench evolve around non-finalization of the building scheme, as contemplated under Section 275 of the Act, whereas it is Section 273 of the Act, which is applicable to the land situated within the municipal limits even if there is no building scheme has been finalized in terms of Section 275 of the Act. Though Clause 10.4.2 of Schedule 10 of the Industrial Policy specifies that change of land use will not be required except in the areas falling within the municipal limits, but the fact remains that even in the absence of such clause, Section 273 of the Act mandates the permission for change of land use. The notification dated 26.03.2003 publishing Industrial Policy – 2003 is issued in exercise of the executive powers of the State. Such policy has to be subservient to the statutory provisions contained in Section 273 of the

Act. Such statutory provisions cannot be superseded by an Industrial Policy. It is well settled that if a legislative field is occupied by a Statute, then the executive powers of the State can be exercised to supplement the Statute and not to supplant the same. The instructions issued in exercise of the executive powers cannot be contradictory to statutory provisions and can only be supplementary, but cannot supplant the same. Such Industrial Policy itself stipulates that the change of land use would be required for a land situated within the municipal limits. The instructions dated 28.03.2003 issued by the Secretary to Government of Punjab, Department of Housing & Urban Development, Chandigarh again do not supersede the statutory provisions. It may be a case of omission of the municipal limits in the said instructions. The statutory restriction contained under Section 273 of the Act cannot be nullified on the basis of clarification dated 28.03.2003.

Coming to the notification dated 08.09.2003 (Annexure P-4), on which Mr. Bhan has relied upon, is again of no help to the arguments raised. The multiplexes in terms of the notification are permitted on the land earmarked for commercial use or cinemas in any master plan or development plan prepared by the Punjab Urban Planning & Development Authority (PUDA) or any local body. There is no master plan prepared in respect of area in question by the local body nor any development plan has been prepared by the Punjab Urban Planning & Development Authority, therefore, the multiplexes could not be raised without change of land use in terms of the statutory restriction contained in the Act.

Still further, the Municipal Corporation has sought clarification from the State Government regarding change of land use.

Such clarification was issued by the State Government on 29.10.2009, wherein it has been clarified that if the Municipality has fixed any land use charges fee and the permission involves such change of land use, the fee can be claimed by Municipality. The writ petitioner has undertaken to comply with the decision of the State Government as is mentioned by the Commissioner in its order dated 27.03.2009 (Annexure P-35). Since the State Government has decided after the order was passed by the Commissioner, Municipal Corporation on 27.03.2009, the petitioner is bound by the decision of the State Government of levy of change of land use fee.

In view of the above discussion, while setting aside the order passed by the learned Single Judge, we allow the present appeal and dismiss the writ petition.

At this stage, it may be clarified that while admitting the present appeal for hearing by virtue of an interim order, the order of the learned Single Bench was stayed subject to furnishing of Bank guarantee by the writ petitioner. Since the order of the learned Single Judge is found to be unsustainable, the writ petitioner shall pay the amount of change of land use fee within a period of one month from the receipt of the certified copy of the order.

(HEMANT GUPTA)
JUDGE

28.01.2015 (HARI PAL VERMA)
Vimal JUDGE