

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

**Civil Writ Petition No. 14556 of 2016
Date of Decision: 25.7.2016**

Shree Gowshala committee (Regd), Jagadhri

.....Petitioner

Vs.

Municipal Corporation, Yamuna Nagar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Avnish Mittal, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the orders dated 16.6.2016 (Annexure P-11) and 23.6.2016 (Annexure P-12) passed by the respondent authorities, thereby declining sanction of building plan and drawing dated 15.7.2015 of the petitioner, asking the petitioner to get licence under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 ('the Act of 1975' for short) or permission for TP Scheme under the Haryana Municipal Corporation Act, 1994 ('the Act of 1994' for short).

Learned counsel for the petitioner submits that so far as TP Scheme under the Act of 1994 is concerned, same does not apply to the

petitioner, because any such town planing scheme can be granted only in favour a government agency. So far as obtaining licence under Section 3 of the Act of 1975 is concerned, he submits that since these very respondent authorities have earlier granted sanction to the building plan of petitioner vide communication dated 5.8.1999 (Annexure P-3) sanctioning the building plan Annexure P-4, they proceeded on a misconceived approach, while passing the impugned orders which are patently illegal. He further submits that requirement for obtaining the licence under Section 3 of the Act of 1975 would not be applicable qua the petitioner because he applied for sanction of building plan only for an area measuring 982.91 sq. mtrs (1176 sq. yards) which does not exceed the statutory limit of 1000 sq. meters.

He would next contend that ownership of the petitioner for total area of 5211 sq. mtrs (6230 sq. yards), would be wholly immaterial and of no consequence. He also refers to receipt No. 40 (Annexure P-6), whereby the petitioner deposited an amount of ₹47,33,613/- with the respondent authorities towards fees for getting the building plan sanctioned, at an earlier point of time, which was for an area of about 5000 sq. meters and the said amount is still being retained by the respondent authorities. In fact, this receipt has been referred by learned counsel for the petitioner in support of his alternative prayer, for refund of said amount to the petitioner alongwith interest. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of this Court in **Telu Ram Vs. State of Haryana 1994 (2) RRR 665**. He prays for setting aside the impugned orders, by allowing the present writ petition.

Before proceeding further, it is necessary to refer to Sections 2

(c) and 2 (d) of the Act of 1975 which provide definition of colony and coloniser and the same read as under:-

“(c) Colony means an area of land divided or proposed to be divided into plots or flats for residential, commercial, industrial, cyber city or cyber park purposes or for the construction of flats in the form of group housing or for the construction of integrated commercial complexes, but an area of land divided or proposed to be divided-

(i) for the purpose or agriculture; or

(ii) as a result of family partition, inheritance, succession or partition of joint holding not with the motive or earning profit; or

(iii) in furtherance of any scheme sanction under any other law; or

(iv) by the owner of a factory for setting up a housing colony for the labour or the employees working in the factory; provided there is no profit motive; or

(v) when it does not exceed one thousand square metres or such less area as may be decided from time to time in an urban area to be notified by Government for the purposes of this sub-clause, shall not be a colony;

(d) colonizer means an individual, company or association, body of individuals whether incorporated or not, owing land for converting it into a colony and to whom a licence has been granted under this Act”

Section 3 of the Act of 1975 deals with an application for licence which reads as under:-

3. Application for licence-

1[(1) Any owner desiring to convert his land into a colony shall, unless exempted under section 9, make an application to the Director, for the grant of a license to develop a colony

in the prescribed form and pay for it such fee and conversion charges as may be prescribed. The application shall be accompanied by an income-tax clearance certificate;

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section.

(2) On receipt of the application under sub-section (1), the Director shall, among other things, enquire into the following matters, namely :—

- (a) title to the land ;
- (b) extent and situation of the land ;
- (c) capacity to develop a colony ;
- (d) the layout of a colony ;
- (e) plan regarding the development works to be executed in a colony ; and
- (f) conformity of the development schemes of the colony land to those of the neighbouring areas.

(3) After the enquiry under sub-section

(2), the Director, by an order in writing, shall—

- (a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty-five per centum of the estimated cost of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case of cyber city or cyber park purposes as certified by the director and has undertaken—

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with the licence granted ;

[(ii) to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the government or any other local authority. The proportion in which and the time within which, such payment is to be made shall be determined by the Director ;]

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government of the local authority, as the case may be ;

(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, or to transfer to the Government at any time, if so desired by the Government, free of cost the land set apart for schools, hospitals, community centres and community buildings, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit ;

(v) to permit the Director or any other officer authorised by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted :

Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the

locality, is of the opinion that it is not necessary or possible to provide one.

(vi) To fulfill such terms and conditions as may be specified by the director at the time of grant of license through bilateral agreement as may be prescribed

(b) refuse to grant a licence, by means of a speaking order, after affording the applicant an opportunity of being heard.

(4) The licence so granted shall be valid for a period of two years, and will be renewable from time to time for a period of one year, on payment of prescribed fee :

Provided that in the licensed colony permitted as a special project by the Government, the license shall be valid for a maximum period of five years and shall be renewable for a period as decided by the Government.

(5) A separate licence shall be required for each colony.

It has gone undisputed on record that petitioner is owning land measuring 5211 sq. mtrs (6230 sq. yards). It seems that earlier, petitioner applied for sanction of building plan which might have been erroneously granted in favour of the petitioner vide communication dated 5.8.1999 (Annexure P-3). Even if one bonafide mistake was committed by the respondent-Municipal Corporation authorities, ignoring the provisions of Sections 2 and 3 of the Act of 1975, it would not mean that the said mistake shall operate as estoppel against them. It is so said because there cannot be any estoppel against law.

When the petitioner applied for sanction of building plan for an area of about 5000 sq. meters, it was declined by the respondent authorities having been found for an area of more than 1000 sq. meters. Thereafter, petitioner sought sanction of building plan for an area measuring 982.91 sq. meters (1176 sq. yards), so as to bring it less than 1000 sq. meters. However, the fact remains that if the petitioner is permitted to seek piece

meal sanction of building plan in the manner it has been sought, it will certainly defeat the very object of the Act of 1975. Since the respondent authorities have only asked the petitioner to obtain a licence under the Act of 1975 by issuing the impugned communications, they committed no error of law.

It is so said because the object of the Act of 1975 is to regulate the development in the urban areas. If any person, like the petitioner herein, is granted sanction of building plan for an area slightly less than 1000 sq. meters every time and such sanctions are granted more than once, in a piece meal manner regarding out of same integrated piece of land, provisions of Sections 2 and 3 and also object of Act of 1975 will be defeated, which cannot be permitted. This is what the whole case of the petitioner. In view of this undisputed fact situation, this Court would be exceeding its writ jurisdiction, while issuing directions, sought by the petitioner granting sanction to building plan.

So far as the judgment relied upon by the learned counsel for the petitioner is concerned, there is no dispute about the law laid down and observations made therein. However, on perusal of the cited judgment, same has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

A bare reading of the definition of colony would show that since

the petitioner was admittedly owning land measuring more than 5000 sq. meters and was intending to raise construction in the form of shops and other commercial buildings, such an activity clearly comes within the ambit and scope of word “Colony”, as defined under Section 2 (c) of the Act of 1975. In such a situation, petitioner would be under legal obligation to obtain a licence under Section 3 of the Act of 1975 which he had admittedly not applied. Any other interpretation of Section 2 and 3 of the Act of 1975 would run counter to the legislative intent and also the object of the Act. The respondent authorities have only requested the petitioner to obtain the requisite licence under Section 3 of the Act of 1975. By doing so, the respondent authorities committed no error of law, while issuing the impugned communications and the same deserve to be upheld for this reason as well.

Another argument raised by learned counsel for the petitioner on the basis of Section 255 of the Act of 1994 is also not available to the petitioner for the reason that the authorities would be exceeding their jurisdiction while ignoring the provisions contained in Sections 2 and 3 of the Act of 1975. In fact, in the given circumstances of the case, petitioner has not been found entitled to invoke the provisions contained in Section 255 of the Act of 1994.

No other argument was raised.

However, alternative argument raised by learned counsel for the petitioner deserves to be accepted. Once the respondent authorities have received an amount of ₹47,33,613/- vide receipt Annexure P-6 from the petitioner, they are liable to return the said amount alongwith interest.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that so far as impugned orders are concerned, same have not been found suffering from any patent illegality or perversity. The writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

However, before parting with the order, it is deemed appropriate to direct the respondent authorities to refund the amount of the petitioner as recorded in Annexure P-6, in case the said amount is undisputed between the parties. If the account is to be adjusted, respondent authorities would be at liberty to do so but the undisputed amount shall be refunded to the petitioner alongwith interest @ 9% from the date of receipt till the date of payment. Let the respondent authorities pay the undisputed amount of the petitioner within the period of three months alongwith interest, as indicated above.

With the abovesaid observations made and directions issued, present writ petition stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

25.7.2016
Ak Sharma

Whether speaking/reasoned/non-speaking

Whether reportable: Yes/No