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**C.M. No.7753 of 2015 in/and
R.A. No.277 of 2015 in
Civil Writ Petition No.12287 of 2014**

District Town Planner, Enforcement, Panipat and another

...Petitioner(s)

Versus

M/s Kadian Enterprises and others

...Respondent(s)

Present:- Mr. M.S. Sidhu, Addl.A.G., Haryana
for the petitioners.

Mr. Harkesh Manuja, Advocate
for respondents no.1 and 2.

C.M. No.7753 of 2015:

For the reasons mentioned in the application, which is supported by an affidavit, the present application is allowed and delay of 146 days in filing the present review application is condoned.

R.A. No.277 of 2015:

Petitioners have filed the instant review application under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 21.11.2014 passed by this Court, whereby this Court while setting aside the order dated 19.7.2011 passed by the Tribunal constituted under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short, “the Act of 1963”) has granted liberty to the respondents to deposit the change of land use charges within a period of two months, on the condition to pay the charges for commercial purpose i.e. Rs.565/- per square meter so as to regularize the construction.

The petitioner i.e. the Department of Town and Country Planning, vide letter dated 9.1.2004, had granted change of land use permission to respondent no.1 for construction of industrial building over an area falling in the revenue estate of Village Siwah, District Panipat under the Act of 1963. The site of respondent no.1, for which permission for change of land use was granted, falls within the controlled area of Panipat, as declared under Section 4 of the Act of 1963. As per the Draft Development Plan published vide notification dated 30.11.2004, the land in question was earmarked for industrial Sector 30 and accordingly, the respondent deposited the charges as applicable for industrial purposes. However, the respondent no.1 started using the building for commercial activities by setting up a showroom of Hero Honda Agency for sale of motorcycles and a banquet hall, which was otherwise not permissible.

Learned State counsel has argued that respondent-firm was granted the permission for change of land use for construction of industrial building over the land in question, but the same is being used for commercial activities. The site in question, for which permission for change of land use was granted falls within the controlled area of Panipat, as declared under Section 4 of the Act of 1963 and the land was earmarked for industrial Sector 30. The respondent-firm has deposited conversion charges and external development charges and accordingly, permission for change of land use was granted for industrial purpose, however, the respondent no.1 has started using the land for commercial purposes i.e. for setting up a showroom of Hero Honda Agency for sale of motorcycles and some part of the land was being used as a banquet hall. In this manner, the

respondents have violated the Rule 26(E), 44, 47 and 48 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965. Learned counsel has further submitted that the site is being used for commercial purposes and therefore, the findings recorded by the Tribunal that the building in question was being used for industrial purpose is not correct. It has been further submitted that at the time of hearing the case on 21.11.2014, it could not be brought to the notice of this Court that respondent-firm is undertaking commercial activities at the site in question and the same could not be allowed, as the land is falling within the industrial zone, as per Final Development Plan of Panipat published vide notification dated 18.12.2006 as well as Draft Development Plan of Panipat published vide notification dated 15.5.2008.

On the other hand, learned counsel for the respondents has argued that in view of notification dated 15.5.2008, certain amendments were carried out in the Draft Development Plan in Appendix B(iii), under the heading "Industrial Zone" which read as under:-

(iii) Under the heading "III INDUSTRIAL ZONE" -

(a) For the existing clause (ix), the following clause shall be substituted, namely:-

(IX). Public Utility, Community Buildings, retails shops, banks, restaurants, hotels and insurance office".

(b) After clause (xiii), the following clauses shall be added at the end, namely:-

(xiv) Health facilities like Hospital, Dispensary, Nursing Home, Clinic.

(xv) Communication Towers."

Learned counsel for respondents no.1 and 2 states that in view of the amendments, as quoted above, the review application cannot be entertained. He submits that as per the knowledge of the respondents, the applicant-petitioners have given permission for setting up three hotels, restaurants in each industrial zone and till date, the applicant-petitioners have only given permission for one in Sector 30.

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

There is no dispute that the respondents have not been able to controvert the arguments raised on behalf of the applicant-petitioners. Even before the Tribunal, respondents have never pleaded that they are carrying out commercial activities at the site in question. Having regard to the Draft Development Plan of Panipat, the site in question is earmarked for industrial Sector 30, where only industrial activities are permitted and no commercial activities can be carried out, but the record reveals that respondent-firm is carrying on commercial activities instead of industrial activities.

The fact as to whether respondent no.1 and 2 are entitled to carry on the commercial activities, particularly when the land in question falls within the industrial zone, as per the Final Development Plan of Panipat as well as Draft Development Plan of Panipat, is the moot question, which can be decided only after hearing the detailed arguments of the parties. Since the order dated 21.11.2014 was passed without taking into consideration the notification dated 15.5.2008 (Draft Development Plan of

Panipat), this Court finds that there is substance in the review application filed on behalf of the applicant-State.

Accordingly, the instant review application is accepted, order dated 21.11.2014 is recalled and the writ petition is ordered to be restored to its original number. The writ petition be set down for hearing as per roster.

(T.P.S. MANN)
JUDGE

(HARI PAL VERMA)
JUDGE

July 15, 2016
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