

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11474 of 2014 (O&M)
Date of decision: August 23, 2017

Ashok Ahuja

.. Petitioner

v.

The State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Karan Ahuja son and GPA holder of the petitioner.
Ms. Palika Monga, Deputy Advocate General, Haryana.

Rajesh Bindal J.

1. The petitioner has approached this court impugning the order dated 24.11.2016, passed by the Director, Urban Local Bodies Department, Haryana, whereby application of the petitioner for change of land use permission for Non-Agro Warehouse, was rejected.

2. Mr. Karan Ahuja, son and general power of attorney holder of the petitioner, submitted that the case has a chequered history. The petitioner had purchased 16 kanals and 4 marlas of land in village Kherki Daula, District Gurugram, vide registered sale deed dated 6.12.2004 for the purpose of construction of Non-Agro Warehouse. Immediately after purchase of the land, he applied for change of land use permission on

The application of the petitioner was in terms of notified Master Plan for District Gurugram for the year 2001. It had been notified on 8.1.1996. In terms thereof, the area falls in agricultural zone. With relaxation in conditions, permission could be granted to the petitioner, as had been granted to other landowners. As the land purchased by the petitioner had some construction thereon, vide letter dated 9.3.2005, Director General, Town and Country Planning Department, Haryana asked the petitioner to remove the construction and also submit project report for construction of Non-Agro Warehouse. The petitioner immediately complied with the requirement by demolishing the structure already existing and submitted project report for construction of Non-Agro Warehouse vide letter dated 18.4.2005. The application filed by the petitioner was kept pending for a period of more than 2 years, whereas during the interregnum, number of change of land use permissions were granted to other landowners, whose land was located adjoining to the land of the petitioner or close by in the same area. While the application filed by the petitioner was kept pending, on 5.2.2007, new Master Plan-2021 for District Gurugram was published. The purpose of use of land for the area was changed from “agricultural zone” to “open spaces”. The purposes for which open spaces could be used were enumerated in the terms and conditions notified along with the plan. The application filed by the petitioner was rejected by the Director General, Town and Country Planning Department, Haryana vide memo dated 7.8.2007 for the reason that the area falls in open spaces, where there is no provision for grant of change of land use for construction of Warehouse. The petitioner preferred appeal against the aforesaid order before the Financial Commissioner and Principal Secretary to Govt. Haryana, Town &

Country Planning Department (hereinafter referred to as 'the appellate authority'). Appeal filed by the petitioner was accepted by the appellate authority vide order dated 11.2.2010 noticing that there were number of change of land use permissions granted for the areas adjoining to the land of the petitioner and the case of the petitioner was kept pending unnecessarily for more than two years. If the same had been decided in time, the prayer of the petitioner could have been considered as per the Development Plan-2001. The petitioner referred to site plan produced at page 62 of the petition.

3. After remand, the case was again considered by the competent authority and rejected vide memo dated 27.4.2011. The reason assigned was that the conditions laid down in the policy framed by the Government for setting up of Warehouse, on 16.6.2010 are not fulfilled by the petitioner and further that Haryana Urban Development Authority is planning to acquire land in the area to prevent unauthorised colonization and construction. Again the petitioner preferred appeal before the appellate authority. The same was accepted vide order dated 10.4.2012. The appellate authority while accepting the appeal observed that the petitioner had not even been granted opportunity of hearing before passing the impugned order. The issues raised by the petitioner had not been considered, especially the observations made in the earlier order passed by the appellate authority on 11.2.2010. While setting aside the order, the matter was again remitted back. As the department was bent upon to harass the petitioner, the application filed by the petitioner was again rejected vide order dated 25.6.2012 on flimsy grounds. The issue raised by the appellate authority in the earlier order passed was not even touched. The petitioner again

preferred appeal. The order passed by the Director General, Town and Country Planning Department, Haryana was again set aside by the appellate authority vide order dated 21.12.2012 while observing that relaxation had been granted to other applicants in the area.

4. The petitioner further submitted that on 2.4.2013, Director General, Town and Country Planning Department, Haryana recommended for grant of permission for change of land use. The file went upto the Chief Minister, where the same was disposed of merely recording as “seen” and the matter was not finally decided. The process took one year. Faced with this situation, the petitioner preferred the present writ petition. The proposal for acquisition of land in the area had been dropped. This Court, vide order dated 22.8.2016, directed the competent authority to take final decision on the application filed by the petitioner. As during the interregnum, the area had been transferred to Municipal Corporation, Gurugram, the matter was taken up by Director, Urban Local Bodies, Haryana and vide order dated 24.11.2016, the application was again rejected. The writ petition was amended to challenge that order.

5. The petitioner, while impugning the aforesaid order, submitted that though personal hearing was afforded by the Director, Urban Local Bodies, Haryana to the petitioner, however, the issues raised by him were not considered. The authority has failed to appreciate the observations made by the appellate authority. In terms of earlier order remanding the case, re-consideration of the application had to be in terms of the development plan, as was existing on the date of filing of application by the petitioner. The same was not even touched by the Director, Urban Local Bodies, Haryana, as he referred to the latest development plan. The plea of

discrimination was not dealt with. Application filed by the petitioner was kept pending, whereas number of other applicants were granted permission even after relaxing the conditions. The principles of legitimate expectation are also applicable for the reason that the petitioner had purchased the land only for the purpose of construction of Non-Agro Warehouse considering the development plan existing at that time. Merely by keeping his application pending for years together, his rights cannot be frustrated merely by changing the policies in between.

6. On the other hand, learned counsel for the respondents submitted that the order passed by this court on 22.8.2016 has been complied with. The case of the petitioner was considered by the Director, Urban Local Bodies, Haryana and decided on merits. He had to consider the same in terms of the latest development plan. There was no prayer made for relaxation of any condition. Though there is power of relaxation of conditions, but this court did not permit the same. There is no vested right to claim change of land use permission. The application can be considered only if some one fulfils the conditions laid down therefor. As the land of the petitioner was falling in agriculture zone earlier, on which Warehouse for storage of other than agriculture produce was not permissible activity, no relaxation was granted to the petitioner. She did not dispute the fact that there is always power to relax the conditions laid down in the development plan. She further submitted that against the impugned order, the petitioner has remedy of appeal, which should be availed of by him. The writ petition should not be entertained by this court.

7. Controverting arguments raised by learned counsel for the State, power of attorney holder of the petitioner submitted that in number of

cases pertaining to the land located close to the land of the petitioner, relaxation was granted by the State either on the applications filed by them or *suo-motu*. In the case of the petitioner as well, proposal was made for granting relaxation *suo-motu*, however, the same was not approved finally. The case of the petitioner is of hostile discrimination. The order passed by the Director, Urban Local Bodies, Haryana deserves to be set aside with a direction to the respondents to grant change of land use permission to the petitioner.

8. Heard power of attorney holder of the petitioner and learned counsel for the State and perused the paper book.

9. The case has a chequered history. There had been three rounds of litigation before the departmental authorities with reference to the application for change of land use filed by the petitioner for construction of Non-Agro Warehouse. Finally, the application was rejected vide order dated 24.11.2016. The same has been impugned in the present petition.

10. As far as the plea of learned counsel for the State that the petitioner has effective alternative remedy of appeal to impugn the order passed by Director, Urban Local Bodies, Haryana is concerned, in our opinion, the same is mis-conceived seeing the past conduct of the authorities. Thrice earlier, the appellate authority had set aside the order passed by the competent authority and remitted the matter back for re-consideration in terms of the observations made by the appellate authority in the very first order dated 11.2.2010 but nothing has been done, hence, in our opinion, the remedy of appeal will not be efficacious for the petitioner in the facts and circumstances of the case.

11. As far as the merits of the case are concerned, the petitioner purchased 16 kanals and 4 marlas of land vide registered sale deed dated 6.12.2004. He claimed that the very purpose for purchase was construction of Non-Agro Warehouse. Immediately after purchase, vide application dated 24.12.2004, permission was sought for the purpose. It is claimed that the application of the petitioner was strictly in terms of the notified Master Plan for District Gurugram for the year 2001, which was notified on 8.1.1996. Land of the petitioner was falling in agriculture zone, where on relaxation of conditions, permission for construction of Non-Agro Warehouse could be granted to the petitioner, as was being done in the case of others. As the petitioner had purchased the land with some construction existing thereon, vide letter dated 9.3.2005, Director General, Town and Country Planning Department, Haryana asked the petitioner to remove the construction and submit project report for construction of Non-Agro Warehouse. The directions were complied with vide letter dated 18.4.2005. The application of the petitioner was kept pending, though number of other applicants, who were similarly situated, were granted permissions for change of land use. On 5.2.2007, new Master Plan-2021 for District Gurugram was published. The purpose of use of land for the area was changed from "agriculture zone" to "open spaces". The Director General, Town and Country Planning Department, Haryana vide memo dated 7.8.2007 rejected the application of the petitioner for grant of change of land use permission on the ground that the area falls in open spaces and there is no provision for grant of change of land use permission in open spaces for setting up of Warehouse. It is not in dispute that there is power to relax the conditions, as laid down in the development plan.

12. Aggrieved against the order dated 7.8.2007, passed by the Director General, Town and Country Planning Department, Haryana, the petitioner preferred appeal before the appellate authority. The same was accepted vide order dated 11.2.2010. The appellate authority observed that for no rhyme or reason, the application filed by the petitioner for grant of change of land use permission for setting up of Warehouse was kept pending, whereas number of other applicants in the neighbourhood of the petitioner were granted permissions. The petitioner made out a case of discrimination. The facts thereof were referred to in the order passed by the appellate authority. The case was remanded back to the Director General, Town and Country Planning Department, Haryana with the observation that in case the application of the petitioner had been decided before the modified development plan was notified on 5.2.2007, the activity of the petitioner was permissible one.

13. After remand, the matter was again considered by the Director General, Town and Country Planning Department, who without referring to the development plan in force when the petitioner had filed application for grant of change of land use permission, again rejected the application referring to the latest development plan and also the policy framed on 16.6.2010 regarding Warehouses. The plea of discrimination was not even touched. The petitioner again preferred appeal against the aforesaid order. The appellate authority vide order dated 10.4.2012 allowed the appeal and set aside the order passed by the Director General, Town and Country Planning Department, Haryana. It was observed that the impugned order was non-speaking and had been passed without even hearing the petitioner or addressing the issues raised by the appellate authority in the first round of

litigation. Relevant para No. 4 thereof is extracted below:

“ 4. I have gone through the order passed by my predecessor dated February 11th, 2010 and the order of the Director dated 27.4.2011 which has now been challenged. It is unfortunate that the Director has even not heard the appellant before passing the so-called order on re-consideration. The order of the Director is a non-speaking one and does not address all the issues raised by my predecessor vide order dated 11th February, 2010. For example the issue that the appellant had applied for CLU much before the new development plan came into force has not been dealt with. It is also not explained as to why various other CLUs have been granted in the vicinity of the land, while the petitioner was being refused. The order of the Director is, therefore, set aside. The Director should give an opportunity to the appellant to make a detailed representation to him and pass a detailed order on such a representation made by the appellant. The order which was reserved, has been announced today. Be conveyed to the parties.”

14. Even after remand second time by the appellate authority, Director General, Town and Country Planning Department, Haryana again rejected the application vide order dated 25.6.2012. Though development plan existing at the time when the petitioner filed application was referred to, but it was observed that in the agriculture zone, Warehouse for storage of agriculture produce could be permitted, however, not non-agriculture produce. It required relaxation of conditions in Zoning Regulations, however, the same was neither applied nor approved by the competent

authority. This time again, the petitioner being aggrieved preferred appeal. Again the order passed by Director General, Town and Country Planning Department, Haryana was set aside. It was observed that this time, Director General, Town and Country Planning Department, Haryana has come out with technicalities that the petitioner did not seek relaxation, whereas it was found that relaxation was granted to other persons in the neighbourhood of the petitioner. The appellate authority still found that Director General, Town and Country Planning Department, Haryana had not addressed the observations made by the appellate authority in the first round of litigation in the order dated 11.2.2010. The matter was again remanded back. Relevant para No. 10 thereof is extracted below:

“10. I have heard both sides and have gone through the papers available on file. The case has already come before the Appellate Authority twice. The Appellate Authority in its order dated 11.2.2010 had very clearly decided that the case should be decided by the Director, Town & Country Planning, Haryana in light of the instructions applicable at the time of filing of application by the appellant. This was not done by the Director, Town & Country Planning, Haryana and that is why the case was remanded back to the Director, Town & Country Planning, Haryana to look into the case in detail. Director, Town & Country Planning, Haryana has now come up with a technically that the appellant did not seek relaxation at that point of time. It is also comes out that such relaxations were accorded to the other persons having land in the vicinity of the land on which CLU has been sought by the appellant. I find

that the orders for rejection by the Director, Town & Country Planning, Haryana do not address even the findings of the Appellate Authority given on 11.2.2010. The map which has been presented before me and which has been agreed by the District Attorney, Haryana also shows that the so called open space of the appellant is not surrounded by the water courses and CLU regarding the same has been given around the time when the appellant appealed for the same.”

15. After remand by the appellate authority, proposal was forwarded by the District Town Planner (Headquarter) on 2.4.2013 to the Chief Town Planner. It was mentioned in the proposal that the site is surrounded by CLU granted area. The matter was referred to the higher authority for grant of change of land use permission in relaxation of the policy dated 16.6.2010 for setting up of Non-Agro Warehouse. Director General, Town and Country Planning Department, Haryana approved the proposal for granting change of land use permission with relaxation of policy dated 16.6.2010. The file went up the Chief Minister and finally closed with the remark “seen”. It was at this stage that as no final decision on the application of the petitioner was conveyed to him that the petitioner preferred the present petition. As proposal for acquisition of the land in the area had been dropped, during pendency of the present petition, on 22.8.2016, following order was passed:

“The petitioner seeks two reliefs in the instant writ petition, namely, (i) quashing of the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 whereby his land is sought to be acquired; and (ii) to grant him Change of

Land Use permission in respect of that very land.

During the pendency of this petition, the State Government has passed an order dated 8.8.2016, a copy whereof has been handed over in Court, whereby it has been decided to drop the Land Acquisition proceedings in respect of 1298.2928 acres of land which includes the petitioner's land. Thus the writ petition *qua* first relief has become infructuous. Ordered accordingly.

The State Government having decided not to acquire the petitioner's land, we see no reason for not considering his claim for the grant of CLU for the un-acquired land as the petitioner is entitled to utilize it for a purpose which is permissible as per the zoning plan of the area/law.

Since one of the major impediment against grant of CLU no longer subsists as the acquisition has been dropped, we direct the Competent Authority to re-consider the petitioner's claim for grant of CLU as per the approved zoning plan of the area; pass an appropriate order and place the same on record along with an affidavit on or before the next date of hearing.”

16. After direction by this court for re-considering the application of the petitioner and the change in circumstances during the interregnum, as the area had been transferred to Municipal Corporation, Gurugram, the application was considered by the Director, Urban Local Bodies Department, Haryana, who rejected the same vide order dated 24.11.2016. The aforesaid decision was brought to the notice of the court on 19.1.2017. Thereafter, the petitioner amended the writ petition and challenged the

aforesaid order. The reason assigned in the order again was that the site falls in “open spaces”, whereas as per the zoning regulations, warehouse is not permissible. It was in terms of the development plan of Gurugram Manesar Urban Complex 2031 AD. The reasons assigned in the order are extracted below:

“1. As per the FDP of GMUC 2031 AD, the applied site falls in the Open Space zone wherein setting up of a warehouse is not a conforming activity.

2. The applicant has not yet submitted the revenue/ownership documents showing that the land has been released from the acquisition proceedings duly recorded in the revenue record.”

17. Along with the additional affidavit dated 14/17.7.2017 filed by Manjit Kaur, Chief Town Planner, Urban Local Bodies, Haryana, final development plan for Gurugram 2001 AD, notified on 8.1.1996, final development plan Gurugram-Manesar Urban Complex 2021 AD, notified on 5.2.2007 and final development plan 2031 AD for controlled areas of Gurugram Manesar Urban Complex, as notified on 15.11.2012, were annexed.

18. It remained undisputed that in all the development plans, there is power of relaxation by the Government. In any case, when the petitioner had filed the application way back on 24.12.2004, development plan for Gurugram 2001, as notified on 8.1.1996, was in force. With relaxation in conditions, permission for construction of Non-Agro Warehouse could be granted. It was in the subsequent plans that the area was ear-marked as “open spaces”. As per the plan produced by the petitioner as Annexure P-17, site of the petitioner falls at a place where all around change of land use

permissions have been granted and in a way, it is sandwiched between them.

19. Even the appellate authority in orders passed, while setting aside the orders passed by the lower authorities while rejecting the application of the petitioner for grant of change of land use permission, observed that other applicants were granted permission with relaxation in conditions, whereas the application of the petitioner was kept pending. This fact is fortified from a list annexed as Annexure-P21, where in certain cases even after the application was filed by the petitioner, number of other applicants were granted permission for construction of warehouse, residence, school and even for industrial purpose, whereas as per the development plan, the area was ear-marked as “agricultural zone”. It was even observed with instances referred to in the order dated 11.2.2010 by the appellate authority in the first round of litigation. At that stage, development plan for Gurugram-Manesar Urban Complex-2021 AD had been notified on 5.2.2007. Considering the same, the appellate authority had set aside the order passed by the Director General, Town & Country Planning Department, Haryana rejecting the application that the area falls in “open spaces” as per the latest development plan and observed that if the application of the petitioner had been considered at that time before the new plan was notified and noticing the fact that all around the land of the petitioner, number of change of land use permissions had been granted, the petitioner's prayer could be acceded to. With strong observations, the matter was remitted back. The only question left open was as to whether there was any proposal for acquisition of land in the area. The issue was not properly appreciated by any of the authorities even in three rounds of litigation, as

even in the impugned order passed now, again the rejection is on the ground that the area falls in “open spaces”. Another strange ground mentioned for rejection was that no proof has been submitted by the petitioner that the land has been released from acquisition. This is despite the fact that when the matter was referred to the authorities for re-consideration vide order dated 22.8.2016, it was specifically noticed that the Government had decided to drop the acquisition proceedings in the area vide order dated 8.8.2016. It was also not disputed that power of relaxation of conditions in the development plan had been invoked in number of other cases with or without prayer made therefor and the petitioner was made a shuttle-cock either keeping his application pending for years together or rejecting the same repeatedly.

20. For the reasons mentioned above, in our view, the writ petition deserves to be allowed. Ordered accordingly. The order dated 24.11.2016, passed by the Director, Urban Local Bodies Department, Haryana is quashed. The petitioner be granted permission for change of land use for construction of Non-Agro Warehouse on fulfilment of other conditions and payment of requisite fee. The needful be done within three months from the date of receipt of copy of the order.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

August, 23, 2017
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

