

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

CWP No.13557 of 2015 (O&M)

Date of decision : 25.04.2017

Inderjit Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Swaran Tiwana, Advocate for the petitioners.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. G.S. Attariwala, Advocate for respondent No.3.

Mr. Munish Jolly, Advocate for respondent Nos.5 to 18.

AMIT RAWAL, J. (Oral)

The petitioners have knocked the door of this Court with following relief:-

“For issuance of appropriate writ, order or direction especially in the nature of writ of mandamus thereby directing the official respondents to remove/shift all the industrial projects/factories which are currently working in the residential area in Mandi Gobindgarh.

For quashing the resolution proposing to give the ownership rights to the parties.”

Learned counsel appearing on behalf of petitioners submits that the petitioners are resident of Sector-21 and Sector-22 of Mandi Gobindgarh

and have approached this Court that certain people and private respondents are in occupation of the land belonging to the Municipal Council on the basis of lease.

Mr. G.S. Attariwala, Advocate has filed written statement on behalf of respondent No.3-President, Municipal Council, Mandi Gobindgarh to contend that parts of Sectors-1, 22 and 23 have now been declared as Industrial Mix Zone as per the Land Use Plan 2010-2031 (Annexure R-3/1). The private respondents are carrying out the industrial activity since long as earlier before the vesting of the land belonging to the Gram Panchayat, Municipal Council, Gram Panchayat has been leasing out the land to the private respondents. State Government, Department of Town and Country Planning vide notification dated 06.12.2010 made zoning regulation as part of the Master Plan aforementioned i.e. for Local Planning Area, Gobindgarh (Annexure R-3/2).

He submits that notification, aforementioned, reveals that it extends the whole of the local planning area of Gobindgarh, in essence, whole of the Mandi Gobindgarh was divided into different land use zones i.e. (i) Residential, (ii) Commercial, (iii) Industrial, (iv) Industrial Mix, (v) Ware Housing and Godowns/Logistic Park. The factories and the place where the respondents were/are carrying on the activity falls within the Industrial Mix Zone. He has drawn the attention of this Court to the definition of Industrial Mix Zone, which reads as under:-

“Industrial Mix Zone

The mixed industrial land use has been proposed in the master plan only for the area where no. of industries and no. of residential developments already exist. This

mixed use area of 137.13 acres is mainly within the M.C. Limits and thus this mixed industrial use shall be permissible in the areas earmarked in the master plan as industrial mixed use.”

He further submits that the petitioners have not come to this Court with clean hands and stated the fact that the factories of private respondents are situated in Sector-21, whereas the factories of the private respondents are situated in parts of Sector-22 and 23 and falls within the aforementioned zone. The factum of filing of proceedings under the Public Premises Act is not denied, in essence, it has been stated to be pending. However, resolution No.42 sent to the Government for the purpose of leasing out the land to the private respondents has though been stayed by this Court but the fact remains that land of the Municipal Council cannot remain unused/unutilized as Municipal Council is always having financial crunch and can earn income by leasing out the land and through other purposes. However, during the pendency of the proceedings initiated under the Public Premises Act, the private respondents have submitted a request for issuance of fresh lease deed on terms and conditions as per the letter of the State Government, Department of Local Government dated 26.11.1998 and aforementioned request was considered by Agenda No.21, whereby Resolution No.47 dated 29.05.2015 was passed resolving that since P.P. proceedings have been initiated, therefore, legal opinion was sought and Legal Advisor opined that Municipal Council can lease out the property with the prior permission of the Government.

Written statement on behalf of Punjab Pollution Control Board-respondent No.4 has been filed with the status report that any activity or no

other activity being carried out by the lessees , which reads as under:-

“2. That the answering respondent had visited at the industrial units on 05.08.2015 and 31.08.2015 before filing of the reply and its status is being reproduced as under:-

M/s Kumar Engineering Corporation Respondent No.5:-

The industry had already removed its big industrial hammer from the site and presently there is only one hammer of capacity 1 tonne which is not in operation for almost 2 years. Only machining work with the help of lathe and drilling is being carried out. The other plant and machinery like, one boiler, and 2 nos. reheating furnaces are not in operation. The 2 (nos.) Annealing furnaces are only operated as and when required to anneal the machined material.

M/s Joginder Singh Kalsi Respondent No.6.

The rolling mill at this place was dismantled many years back. Presently, there is no industrial activity being carried out except one nos. car washing station which is running on part of some land under the name of J.H. Washing centre and is also in the business of wheel alignment and balancing. Action under the provision of Water Act, 1974 and Air Act 1981 is under process.

National Iron and Steel industry respondent No.7

This unit was having 2 nos. cupola furnaces out of which 1 no. cupola furnace is not in operation since long time and 2nd cupola furnace is not in operation since April, 2015. Only machining work of rolls is being carried out with the help of lathe machines and boring machines.

Steel and Allied Industries respondent No.8.

This unit is simply a godown for the storage of iron material and is not having any plant and machinery for carrying out any manufacturing activity.

Indian Agro and Allied Industries respondent No.9

This unit is simply a godown for the storage of iron material and is not having any plant and machinery for carrying out any manufacturing activity.

Royal steel Rolling Mill respondent No.10.

This unit is a re-rolling mill and is engaged in the business of manufacturing of MS Bars by using billets as raw material. The industry is being monitored by respondent No.4 from time to time and is found complying with the provisions of Water Act, 1974 and Air Act, 1981.

Service Iron and Steel Rolling Mill respondent No.11

This industry was also a re-rolling mill and closed its operation from 13.2.2015 and has also dismantled its plant and machinery.

Calcutta Steel Industry respondent No.12.

The industry is a re-rolling mill and is in operation for the manufacturing of Harrow parts by using scrap, billets and ingots as raw material. The industry is being monitored by respondent No.4 and is complying with the provisions of Water Act, 1974 and Air Act, 1981.

Nar Singh Steel Rolling Corporation respondent No.13

The industry was a re-rolling mill and has closed its operations many years back. Presently one small Kothali furnace is in operation for the manufacture of aluminum bricks by using aluminum powder as raw material. Action under the Water and Air Act is under process.

Kirpal Steel and Agro Industry respondent No.14.

This place was earlier being used as godown and is adjoining the land of respondent No.12 and now no activity is being carried out. Respondent No.12 and 14 are having common land with no separation wall.

J.S. Lotte Steel Rolling Mills respondent No.15.

Earlier there was a Rolling Mill and it got dismantled many years ago. Presently this land is divided into 4 parts out of

which one is Gupta Palace, one in Jagdamba Machine Tools, One is Bhwar Agro and Allied. Industry and J.C. Steel products. Gupta palace is a marriage palace and other three industries are engaged in the business of machining work and are of non-polluting nature.”

Mr. Munish Jolly, learned counsel appearing on behalf of respondent Nos.5 to 18 has filed the written statement taking various preliminary objections qua its maintainability, concealment and other aspects, much less, the locus standi of the petitioner Nos.1 and 2 to contend that they are not even residents of the area except petitioner Nos.3 and 4.

He submits that in view of the reply of the Punjab Pollution Control Board, the activity of the private respondent(s) do not fall within the red zone whereas the activity i.e. green and low air polluting industry is permissible in a mixed industrial zone and, therefore, the respondents be take up all the defences in the pending petition filed under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 and thus urges this Court for dismissal of the writ petition.

He has also relied upon the contents of letter dated 26.11.1998 whereby Government of Punjab, Department of Local Government vide letter ibid had communicated to the Municipal Council, Municipal Committee to lease out the land belonging to them on periodical lease at the rate of rent.

I have heard learned counsel for the parties and appraised the paper book.

On perusal of the extract of the notification notifying the zoning regulations (Annexure R-3/2) after the definition of the Industrial

Mix Zone, it also envisages the general terms and conditions governing the Industrial Mix Zone, which reads as under:-

“General Terms and Conditions Governing Industrial Mix Use

Mixed land use shall be permissible subject to the following terms and conditions:

The existing red category industries shall continue subject to approval of competent authority and provisions in the Act. Any change over to environment friendly technology shall be permissible subject to approval of PPCB and any other competent authority.

No new industry other than green and low air polluting industry as specified by Punjab Pollution Control Board shall be permissible in this zone.

Parking shall be provided within the premises as per State Govt.'s prescribed norms.

The existing obnoxious, hazardous, inflammable, non-compatible and polluting industries who voluntarily shift within 5 years to the designated industrial zones, the owner shall be eligible to put his/her plot, so vacated, to any other compatible use (including commercial use) subject to the provision of building bye laws and master plan conditions applicable for that particular land use in that particular area without paying conversion charges otherwise section 79 of the Punjab Regional Town Planning and Development (Amendment) Act, 2006 will be applicable.”

On co-joint reading of the aforementioned regulations and as well as reply of the Punjab Pollution Control Board, it reveals that private respondents had been carrying out the activity in a residential zone by installing either hammers or furnaces, car washing and by changing the

nature of the business from industrial, car washing, re-rolling, godowns but the fact remains that once this area has merged into an residential zone, even if the notification/regulation permit the Industrial Mix Zone, it has to be only with regard to the activity strictly envisage regulation i.e. green and non polluted. Pollution does not mean only the air, water or noise as well. The using of hammer or furnaces definitely would fall within the expression of air and water pollution particularly when the writ petition has vehemently been opposed by the aforementioned private respondents.

At one point of time, this Court had thought of issuing direction to the private respondents to produce the income tax returns and other documents, realizing that running of the activity and their income may be sufficient, much less, they may have already availed the alternative arrangement by shifting to dedicated industrial zone, but dropped the idea. Municipal Council can always incur the income on the aforementioned land in case they are able to succeed in a petition filed under P.P. Act, through many modes and means which this Court need not to advise them appropriately.

Citizen of India, much less, of any part of the State have to adopt the habit of responsibility to accommodate and adjust according to the change of circumstances and should not insist upon carrying out the activity in the area which is predominately is a residential one.

I am deeply sad that Officers at the helm of the affairs of Municipal Council or the Municipal Committee are not alive to the situation and rather should address such issues which is always for the betterment of the inhabitant and the residents of the locality. Young children which are yet to

born or in the womb or born and are being imparted education with regard to the cleanliness, but owing to such situation would totally in doldrums as what to follow or not.

Resultantly, I feel that it is a fit case where following appropriate directions are required to be issued to the respondents:-

- i) Direction is issued to the Municipal Council to pursue the P.P. Act proceedings initiated at their behest on seeking the eviction of the unauthorized occupant by placing on record all material and documents, much less, use and occupation charges at the market rate.
- ii) Municipal Council will not seek approval of the Government for leasing out the land for carrying out the industrial activity which may according to them fall under the mixed zone as inhabitants are residents. There may not spread of any diseases causing the air pollution, infection in the throat, allergy reaction, much less, spread of any pulmonary diseases.
- iii) The private respondents shall take up all possible defences in the pending petition and lead evidence. Any findings of mine shall not come in their way, in essence, authorities deciding the aforementioned petition shall not be prejudiced, much less, influenced with the findings arrived at and shall decide the same uninfluenced.
- iv) Resultantly, Resolution dated 26.05.2015 (Annexure P-3) is hereby set aside.

Liberty is granted to the petitioners to move any application

seeking implementation of the order in case at any point of time, it is found that direction of this Court is not complied with in its letter and spirit.

Writ petition stands disposed of, in aforesaid terms.

25.04.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No