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

CWP-10423-2017

Date of decision : 15.05.2017

OHM Entertainment Private Ltd.

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

The petitioner is a limited company and running a Cinema Hall under the name and style "OHM CINE GARDEN" at Sirsa and has been issued a licence to run the same on the basis of the NOCs issued by the various Departments, which is valid upto 06.08.2017.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kulwant Singh, learned counsel appearing on behalf of the petitioner-Company submits that the impugned notice dated 04.05.2017 (Annexure P-19) is based upon the *ex parte* report dated 27.03.2017 (Annexure P-18), which is basically against the factual aspect as four reports dated 05.03.2015 (Annexure P-11), 24.12.2015 (Annexure P-12), 23.12.2015 (Annexure P-13) and 29.06.2016 (Annexure P-16) are in favour of the petitioner. Despite the aforementioned reports, there was no occasion for the Deputy Commissioner, Sirsa to issue a notice under Section 8 (2) of the Punjab Cinemas (Regulation) Act, 1952.

He further submits that the provisions of the National Building

Code in respect of the buildings constructed prior to its commencement i.e. 24.03.2009, would not apply to the instant case, as the building has been constructed much before, therefore, the provisions of the water sprinkling system, in case of an untoward incident of fire, is not required. This is what the report has been indicated with, yet there was no occasion for the Deputy Commissioner, Sirsa to rake up the issue again. The alleged whistle-blower, Dr. Chauhan had not been successful in making his complaint before the Human Rights Commission and even the Human Rights Commission, vide order dated 23.08.2016 (Annexure P-14), closed the matter. The petitioner even also submitted a complaint to the Vigilance Department against the Fire Officer, it is only under such pressure, recommended for renewal of the licence, which fact is evident from the report dated 29.06.2016 (Annexure P-16) and has drawn the attention of this Court to the relevant portion of the same which reads as under:-

"According to records and this office vide letter number FS/1146 dated 11.08.2014, the renewal of licence of this building is valid upto 12.08.2014. Because letter number OHM/PLA/August 01 dated 18.08.2016, it is mentioned in point No.3, that firm has not made any new construction. After looking into the records it is recommended to reject letter number FS 251 dated 04.08.2016 of the Fire Officer Sh. Amar Singh request you to continue OHM License. Report is submitted for your kind perusal."

He further relies upon the following judgments to contend that the writ petition is maintainable despite the fact that the petitioner has only issued a show cause notice.

i) "Dheeraj Singh V/s Commissioner of Police and another" 2016 (234) DLT 471;

- ii) ***"The Special Director and another V/s Mohd. Ghulam Ghouse and another" 2004 AIR (SC) 1467;***
- iii) ***"Union of India and another V/s Kunisetty Satyanarayana" 2007 (1) SCT 452;***
- iv) ***"Bhag Singh V/s The State of Punjab" 1987 PLJ 15;***
- v) ***"Meenakshi Yadav V/s India Oil Corporation Ltd. and another" 2014 (2) RCR (Civil) 107; and***
- vi) ***"Apeejay College of Engineering V/s State of Haryana and another" 2015 (24) RCR (Civil) 813.***

As per the contents of Show Cause Notice, reply is to be submitted by 18.05.2017, but there is a serious apprehension that the Deputy Commissioner, Sirsa, who has personally been impleaded as respondent No.2, is nursing a grudge against the petitioner and would definitely not look into all the aspects of the matter and pass an adverse order, therefore, interest of his client may be protected, in case of passing any adverse order. It is, in this aspect of the matter, the writ jurisdiction of this Court has been sought, at this point of time.

I have heard the learned Senior Counsel for the petitioner and appraised the paper book and of the view that there is some force and substance in the submissions of Mr. Aggarwal, for, there are four reports, as indicated above, are in favour of the petitioner. No doubt the report dated 27.03.2017 (Annexure P-18) is at the back of the petitioner, resulting into, issuance of the show cause notice under the provisions, aforementioned. All the contentions with regard to the non-applicability of the National Building Code, much less the provisions of the Act would be available to the petitioner, in case the petitioner responds to the show cause notice as cut of date is 18.05.2017.

Mr. Ashish Aggarwal, learned Senior Counsel submits that the present writ petition be treated a comprehensive reply to the show cause notice, provided that the Deputy Commissioner, Sirsa, gives an opportunity of hearing before passing any order, so that the petitioner is able to put across all the points in his favour, much less, with any case law, if need be.

Keeping in view the aforementioned facts, the present writ petition be treated as reply to the impugned notice dated 04.05.2017 (Annexure P-19) and the petitioner shall also be at liberty to take up all possible pleas before the Deputy Commissioner, Sirsa.

This Court is sanguine of the fact that the Deputy Commissioner, Sirsa shall decide the controversy by taking into consideration the aforementioned aspects in a most objective and pragmatic manner and pass a speaking order, in accordance with law, as expeditiously as possible preferably within a period of 15 days from the date of the certified copy of this order, by communicating the same to the petitioner, in case of passing of any adverse order, so that the petitioner is able to avail the remedy available under law.

With the aforesaid observations, the present writ petition stands disposed of.

A copy of this order be given to the learned counsel for the petitioner under the signatures of the Reader attached with this Court.

15.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**