202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19953 of 2013(O&M)
Date of decision : 25.05.2017

M/s Light of India Industries .... Petitioner

versus

State of Haryana and others .... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. A.P.Bhandari, Advocate for the petitioner.

Mr.Rajbir Singh, AAG, Haryana.

Mr.Vinod S.Bhardwaj, Advocate for respondents No. 2 and 3.

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AMIT RAWAL, J. (Oral)

The challenge in the present petition is to the order dated 22.05.2013 (Annexure P-40) passed by respondent No.1, order dated 20.04.2011 (Annexure P-27) passed by respondent No. 2 and order dated 21.09.2015 (Annexure P-45) passed by respondent No.3, whereby after having undertaken many rounds in this Court the application of the petitioner submitted for sanction of the building plan for the purpose of industrial activity had been rejected.

Mr.A.P.Bhandari, learned counsel appearing on behalf of the petitioner submits that both the parties are ad idem that the issue of ownership has already attained finality in a Civil Court in case No. RBT 238 of 1990 titled as **Raja Ram v. Faridabad Complex Administration**

Ballabhgarh Zone, Ballabgarh whereby an issue with regard to the ownership i.e. whether Raja Ram who happens to be plaintiff in that case is owner in possession of the building in dispute and that issue has been decided in favour of the plaintiff who happens to be the sole proprietor of the petitioner-firm and that finding has been maintained up to the Hon'ble Supreme Court. The question which is to be adjudicated upon is whether the impugned action of the respondent i.e. Faridabad Municipal Corporation in rejecting the building plan and calling upon the petitioner to pay the following charges:-

1. EDC
2. CLU
3. Partition
4. No Objection Certificate
   is legal or not

He submits that the claim as mentioned in the writ petition is that the petitioner had been carrying out the industrial activity in the plot under the name and style of M/s Light of India Industries, Ballabhgarh and on 27.3.2008 submitted a building plan for erection and re-erection of the building along with the requisite fee of Rs. 29,650/-. However, the respondent raised certain objections vide Annexure P-15 but petitioner made compliance of the same by submitting affidavit (Annexure P-16) certifying that there would be no liquid or trade waste in the premises and will use the corporation water and sewerage line only and after assembling of the unit, NOC from the Pollution Control Board shall also be taken. A series of communication exchanged between the petitioner and the Municipal Corporation, had been referred to, whereby the petitioner was called upon to pay the aforementioned charges. Resultantly on 12.08.2008 vide Annexure P-18 the respondent returned the building plan on the premise that it required proof of CLU as the land is being used for commercial purposes, therefore, no permission can be granted. However, the petitioner is stated to have made a detailed reply, vide Annexure P-19, stating that as per the provisions of Section 8 of the Punjab Scheduled Roads Act, 1963 the permission for erection or re-erection could not be refused as the premises in question was already in existence at that time. Even the factum of the building being used as commercial purposes was also apprised to the respondent, vide Annexure P-24, yet the building plan was not sanctioned. The petitioner approached this Court vide CWP No. 8505 of 2009 and vide order dated 07.02.2011 this Court disposed of the writ petition with a direction to the respondent to decide the application of the petitioner within a period of two months. However, vide Annexure P-27 dated 20.4.2011 the representation was rejected on the same points reiterating the same very objections. He submits that the controlled area has been declared in the year 1976 and the building plan under the erstwhile Faridabad Complex Administration was prepared on 17.12.1991 and the aforementioned notification does not envisage the charges as sought for. The respondents again rejected the case of the petitioner vide order dated 20.04.2011 compelling the petitioner to approach this Court by way of CWP N. 14267 of 2011 and was relegated to avail the remedy of appeal vide order dated 08.08.2011. It is in these circumstances the order Annexure P-45 i.e. the order of the Commissioner has been challenged. By giving the aforementioned facts he submits that Annexure P-40 was passed and ultimately availed the remedy of appeal which was also dismissed vide order dated 22.05.2013. Therefore, the present writ petition.

It is also a matter of fact that during the pendency of the writ petition Commissioner was directed to pass a detailed order and the Commissioner passed order dated 21.09.2015 (Annexure P-45). It is in these circumstances that the petition was amended and Annexure P-45 has been challenged. In support of his contention he has raised the following arguments:-

(i) A-17 is the Notification dated 17.12.1991 promulgated by the Local Government Department while exercising the powers under sub section (7) of Section 29 of Faridabad Complex Administration (Regulation and Development)Act, 1971. The aforementioned provisions were promulgated keeping in view the fact that the proposed authority Faridabad Ballabhgarh Complex has a compelling circumstance which necessitated the amendment. In this regard he has drawn the attention of this Court to Annexure A-17 dealing with Zoning Regulations. Clause IX and X of ANNEXURE B deal with industrial non-conforming use which reads as follows:-

IX ***Industrial Non conforming Use.*** *- With regard to the existing industries shown in zones other than Industrial Zones in the Development plan such industrial non-conforming uses may be allowed to continue for a fixed period to be determined by the Director but not exceeding ten years provided that the owner of the industry concerned:-*

(a) Undertakes to pay the Director, as determined by him

the proportionate charges towards the external development of the site as and when called upon by the Director to do so in this behalf; and

(b) During the interim period makes satisfactory arrangement for the discharge of effluent to the satisfaction of the Director,

(c) No further expansion shall be allowed within the area of the non-conforming use.

***X. Discontinuance of non-conforming use**,- (i) If a non-conforming use of land was remained discontinued continuously for a period of two years or more, it shall be deemed to have terminated and the land shall be re-developed only for conforming use.*

(ii) If a non-conforming use building is damaged to the extent of 50 per cent or more of its re-production value by fire, flood, explosion, earthquake, war, riot or any other natural calamity, it shall be allowed to be re-developed only for conforming use.

(iii) After a lapse of period fixed under clause IX the land shall be allowed to be redeveloped or used only for conforming use."

By referring to the aforementioned provisions of the Act he has also drawn the attention of this Court to Section 421 of the Haryana Municipal Corporation Act, 1973 dealing with repeal and saving all the actions and omissions taken under the erstwhile Act will continue to remain in force.

(iii) By referring to provisions of The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 there would be no construction itself on the outer sides of the boundary of any town; or in two kilo-meters on the outer sides of the boundary of any industrial or housing estate, public institution or an ancient and historical monument; in view of the provisions of Section 8 of the said Act. The aforementioned Act would not apply in the case of the petitioner. He further submits that the building plan submitted was required to be determined under chapter XIV of the Haryana Municipal Corporation Act and not to chapter II of 1994 Act.

Per contra, Mr. Vinod S.Bhardwaj, learned counsel appearing for Municipal Corporation has very vehemently argued and relied upon the provisions of Chapter XX of the Haryana Municipal Corporation Act and the provisions of Sections 344, 346, 347, 348 and 349 of the aforementioned Act which reads thus:-

> "***344.*** *No improvement scheme or rehousing scheme framed under this chapter after development plan for the Municipal area or a zonal development plan for any part thereof has been prepared in accordance with law shall be valid unless such scheme is in conformity with the provision of the development plan or the zonal development plan.*
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> ***346. Declaration of controlled Area.-*** *Notwithstanding any law for the time being in force, the Commissioner may, with the previous approval of the Government, by notification, declare the whole or any part of the area within the Corporation to be a controlled area provided that the same has not been declared as controlled area under the Punjab Scheduled Roads and Controlled Areas*

Restriction of Unregulated Development Act, 1963 (Act 41 of 1963)" (2) The Commissioner shall not later than six months from the date of declaration under sub-section (1), or within such further period as the Government may allow, prepare plans showing the controlled area and signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area and submit the plans to the Government (3) Without prejudice to the generality of the powers specified in sub-section (2) above, the plans may provide for any one or more of the following matters, namely: -

(a) the division of any site into plots for the erection or re-erection of any building and the manner in which such plots may be transferred to intending purchasers or lessees;.

(b) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, market and other public purposes;

(c) the development of any site into a colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

(d) the erection or re-erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and the height and character of buildings;

(e) the alignment of buildings on any site;

(f) the architectural features of the elevation or frontage of buildings to be build on any site;

(g) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection or re-erection of buildings on such site and the person or authority by whom such amenities are to be provided;

(h) the prohibition or restriction regarding erection or re-erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in any locality;

(i) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;

(j) the restrictions regarding the use of any site for purposes other than the erection or re-erection of buildings;

(k) any other matter which is necessary for the proper planning of any controlled area and for preventing

buildings being erected or reerected haphazardly in such area.

(4) The Government may either approve the plans without modification s or with such modifications as it may consider necessary or reject the plans with directions to the Commissioner to prepare fresh plans according to such directions.

(5) The Commissioner shall cause to be published by notification the plans approved by Government under subsection (4) for the purpose of inviting objections thereon.

(6) Any person within thirty days from the date of publication of the notification under sub-section (5) send to the Commissioner, his objections and suggestions in writing, if any, in respect of such plans and the Commissioner shall consider the same and forward them with his recommendations to the Government within a period of sixty days from the aforesaid date.

(7) After considering the objections, suggestions and representations, if any, and the recommendations of the Commissioner thereon the Government shall decide as to the final plans showing the controlled area and signifying therein the nature of restrictions and conditions applicable to the controlled area and publish the same in the Official Gazette and in such other manner as may be prescribed.

(8) Provision may be made by rules made in this behalf with respect to the form and content of the plans and with respect to the procedure to be followed, and any other matter in connection with the preparation, submission and approval of the plans.

(9) Subject to the foregoing provisions of this section, the Government may direct the Commissioner to furnish such information as the Government may require for the purpose of approving the plans submitted to it under this section.

347. *Except as provided hereinafter, no person shall erect or reerect any building or make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 346 and with the previous permission of the Commissioner.*

348. Prohibition on use of land in controlled area. *(1) No land within the controlled area shall, except with the permission of the Commissioner be used for purposes, other than those for which it was used on the date of publication of the notification under sub-section (1) of section 346 and no land within such controlled area shall be used for the purposes of a charcoal-*

kiln, pottery-kiln, lime-kiln, brick-kiln or brick-filled or for quarrying stone, bajri, kanker or manufacturing of surkhi or for crushing stone or for other similar extraction or ancillary operations except under and in accordance with the conditions of a licence to be obtained from the Commissioner on payment of such fees and under such conditions as may be prescribed.

(2) The licence so granted shall be valid for one year may be renewed annually on payment of such fees as may be prescribed.

349. Application of permission or licence and the grant or refusal thereof. *(1) Every person desiring to obtain the permission or licence referred to in sections 347 and 348 shall make an application in writing to the Commissioner in such form and containing such information in respect of the land, building, excavation or means of access to a road to which the application relates as may be prescribed.*

(2) On receipt of such application the Commissioner, after making such enquiry as he may consider necessary, shall by order in writing either-

(a) grant the permission or licence subject to such conditions, if any, as may be specified, in the order; or

(b) refuse to grant such permission or licence; provided that the order of refusal shall not be passed unless the applicant has been afforded an opportunity of being heard.

(3) If, at the expiration of a period of three months after an application under sub-section (1) has been made to the Commissioner, no order in writing has been passed by the Commissioner the permission shall be deemed to have been granted without the imposition of any conditions but subject to the restrictions and conditions signified in the plans published in the Official Gazette under section 346.

(4) The Commissioner shall maintain such registers as may be prescribed with sufficient particulars of all such cases in which permission or licence is given or deemed to have been given or refused by him under this section, and the said register shall be

available for inspection without charge by all persons interested and such persons shall be entitled to take extract therefrom."

to submit that as and when any plan is submitted for erection or re-erection of the building in any of the aforementioned areas it mandates for charges of EDC, CLU, partition and no dues certificate. He further submitted that a period of 10 years was given to the industrial town for non-conforming use provided they were given an undertaking to pay the proportionate external development charges as and when called upon by the Director to do so in this behalf as per clauses IX and X of the Notification of 1991 (Annexure A-17). The decision thus rendered by the authority is perfectly legal and justified and does not call for interference at least within the ambit of judicial review and urges for dismissal of this writ petition.

I have heard learned counsel for the parties and have perused the paper book and am of the view that there is force in the arguments of Mr. Bhandari and the orders Annexure P-40 and P-45 are not sustainable and liable to be set aside in view of my observations which are as under:-

(i) The impugned order has been passed in violation of the provisions of Section 421 of the Haryana Municipal Corporation Act which reads as follows:-

421. *(1) As from the commencement of this Act the Faridabad Complex (Regulation and Development) Act, 1971, shall stand repealed.*

(2) Notwithstanding any thing contained in sub-section (1)-(a) any appointment, notification, order, scheme, rule, form, notice, or bye-law made or issued, and any licence or permission granted under the Faridabad Complex (Regulation and Development) Act, 1971 and in force immediately before the commencement of this Act shall, in so far as it is not inconsistent with the provisions of this Act continue to be in

force and deemed to have been made, issued or granted under the provisions of this Act, unless and until it is superseded by any appointment notification, order, scheme, rule, form, notice or bye-law made or issued or any licence or permission granted under the said provisions;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by with or for the administration of the Faridabad Complex, before such commencement, shall be deemed to have been incurred, entered into or engaged to be done by with or for the Corporation;

(c) all budget estimates, assessments, valuations, measurements or divisions made by the administration of the Faridabad Complex shall, in so far they are not inconsistent with the provisions of this Act continue in force and to deemed to have been made under the provisions of this Act unless and until they are superseded by any budget estimate, assessment,valuation, measurement or division made by the Corporation under the said provisions;

(d) all properties, movable and immovable and all interests of whatsoever nature and kind therein, vested in the administration of the Faridabad Complex immediately before such commencement, shall with all rights of whatever description used, enjoyed or possessed by the administration of Faridabad Complex, vest in the Corporation;

(e) all rates, taxes, fees, rents and other sums of money due to the administration of the Faridabad Complex immediately before such commencement, shall be deemed to be due to the Corporation;

(f) all rates, taxes, fees, rents, fares and other charges shall,until and unless they are varied by the Corporation continue to be levied at the same rate at which they were being levied by the aforesaid administration of the Faridabad Complex immediately before such commencement;

(g) all suits, prosecutions, land acquisition proceedings instituted or which might have been instituted by or against the administration of the Faridabad Complex may be continued or instituted by or against Corporation; and

(h) all proceedings and appeals pending before any authority of the Faridabad Complex before such commencement, shall be deemed to have been instituted before the Commissioner and shall be continued by him of transferred to another authority under the provisions of this Act."

A plain and bare reading of the aforesaid Section leaves no manner of doubt that for any action which had been done by the Faridabad Municipal Complex under the provisions of this Act would be binding until and unless it is superseded by any appointment notification, order, scheme, rule, form, notice or bye-law made or issued or any licence or permission granted under the said provisions.

It is established on record that the area for which the building plan is required to be sanctioned is an industrial area. In other words the respondent is not liable to charge any payment on account of external development charges. No such document has been placed on record to show that Municipal Corporation has undertaken the task of developing and redeveloping of the non-conforming/conforming land use. Clause IX of 1991 Notification applies only to the industrial zones other than the zones in the development plan and a grace period of 10 years has been provided to the owner of the industry. It is the conceded position of the respondent that the petitioner was not running the industry and, therefore, was falling under the non-conforming zone. In my view the authorities of the Municipal Corporation erroneously and fallaciously applied the provisions of the Chapter XX of the 1994 Act. Thus their action in calling upon the petitioner to pay the charges as indicated above is not tenable and hereby rejected. Even the applicability of Section 8 of The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 also would not apply as the authorities have to sanction the site plan as per the provisions of Haryana Municipal Corporation Act. The question arises as to whether the applicability of the provisions of Chapter 20 shall apply or not , the answer is in affirmative. It is a case where the site plan clearly indicates that the same relates to an industry. At an earlier point of time the petitioner had given an affidavit in regard to claiming a no objection certificate for pollution and other things but the authorities in a volte face applied the provisions of Chapter 20 which already, as noticed above, was a total misconception. The authorities below in my view have not pondered upon the aforementioned aspect of the matter and the Notification of 1991. The stand of the Municipal Corporation would have been justified had they came out with a fresh claim under Chapter 20 of the Haryana Municipal Corporation Act by incorporating certain clauses which they intend to seek. So, in my view they erred in asking for the charges as indicated above.

In the circumstances the present writ petition is disposed of with a direction to the respondents to reconsider the application of the petitioners asper the provisions of 1994 Act in accordance with the aforementioned Chapter within a period of two months from the date of receipt of a certified copy of this order.

For the lapse of the authorities in not considering the claim with regard to approval of the site plan, for which the petitioners had to undergo various rounds of litigation, costs of Rs. 25,000/- is imposed upon the respondents, which shall be paid to the petitioners.

(AMIT RAWAL)
JUDGE

May 25, 2017
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No