IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23484 of 2013 O&M)
Date of Decision: August 18, 2017

Er. Girish Anand ---Petitioner

Versus

The State of Punjab and others ---Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Ajaivir Singh, Advocate
for the petitioner.

Ms. Munisha Gandhi, Addl. A.G., Punjab with
Mr. Sandeep Kumar Bansal, AAG, Punjab.

Mr. Balwinder Singh, Advocate
for respondent No.2.

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HARINDER SINGH SIDHU, J.

1. This writ petition has been filed praying for directions to set aside orders dated 22.02.2013 (Annexure P-4), 14.03.2013 (Annexure P-5) and 12.09.2013 (Annexure P-6), whereby, the application of the petitioner for grant of CLU for marriage palace has been declined.

2. Order dated 22.02.2013 has been passed by the Senior Town Planner, Department of Town and Country Planning, Punjab. Order dated 14.03.2013 has been passed by the Chief Administrator GMADA, Ajitgarh. Order dated 12.09.2013 is of the Appellate Authority-cum-Secretary, Housing, Government of Punjab.

3. It has further been prayed that the respondent be directed to grant permission for establishment of marriage palace in accordance with law and as per the policy notified by the State of Punjab.

4. The petitioner is an Engineer. He owns 3 acres 1 marla of land

in Village Saneta, SAS Nagar, Mohali. He submitted application dated 24.12.2012 for grant of permission to set up a new marriage palace on his land. Along with the application, he submitted a location map, details of ownership and deposited the requisite fee. He was informed by the Senior Town Planner vide his letter dated 22.02.2013, that the land where the petitioner proposed to set up his marriage palace falls in the Wholesale Centre as per the Master Plan, SAS Nagar. The case could only be considered after the permission for amendment of the Master Plan by the Punjab Regional Town and Development Board (for short 'the Board'). Hence, the case could not be considered for CLU at that stage. Thereafter, the Chief Administrator, GMADA, vide his letter dated 14.03.2013, taking note of the letter of the Senior Town Planner dated 22.02.2013 as per which the land falls under the Wholesale Centre where a marriage palace is not permitted as per the Master Plan of SAS Nagar, rejected the application for permission to establish the marriage palace. The petitioner preferred appeal under Section 82 (1) of the Punjab Regional and Town Planning and Development Act, 1995 (for short "1995 Act") which was rejected vide order dated 12.09.2013. It was noted that amendments to the Master Plan, SAS Nagar had been considered by the Board in its meeting held on 28.05.2013 and it was decided that the marriage palace will be permitted in mix land use, commercial, industrial and agricultural zone of the Master Plan, SAS Nagar provided the minimum area of the site is 5 acres. As the petitioner did not fulfil the aforesaid criteria, the appeal was dismissed.

5. Learned counsel for the petitioner argued that the State Government had notified `Policy Guidelines and Building Norms for Regularization of Existing Marriage Palace and Setting Up of New Marriage Palaces in the State of Punjab' on 16.11.2012 (for short the "policy"). As per this policy Marriage Palaces shall be permissible in the Residential,

Commercial, Industrial, Mixed land use and Rural and Agricultural zones of the Master Plans. The Schedule of Area and other norms for setting up new marriage palaces have also been specified therein. Norms have been provided separately in respect marriage palaces having area of 2000 to 4000 sq. metres and those with area more than 4001 sq. metres. He argued a marriage palace could be set with an area of 2000 sq. metres. The petitioner's area is much more than that. He further argued that in the Master Plan no `Wholesale zone' has been demarcated, nor are the permissible uses thereof specified. Further, the requirement of 5 acres was notified on 28.02.2014 much after the application of the petitioner for establishment of marriage palace dated 24.12.2012 and hence that condition would not apply in the case of the petitioner. In fact, even the proposal for the 5 acre requirement was made much later in the meeting of the Board on 28.05.2013. He argued that as per information received under the RTI, a number of marriage palaces having area less than 5 acres which had submitted applications after or around the time when the petitioner applied, have been granted CLU. Reference in this connection was made to Annexure P-10. Responding to the respondents' assertion that no new marriage palace having less than five acres has been granted permission and it is only existing marriage palaces having less than 5 acres have been regularized, Ld. Counsel argued that if this is so, the action would be plainly discriminatory.

6. Learned counsel appearing on behalf of the State argued that the document Annexure P-10 was not supplied under the RTI, hence it cannot be considered as authentic. With reference to another list, which the petitioner has annexed as Annexure A-2, which was stated to have been supplied under the RTI, learned State Counsel stated that this is a list of marriage palaces existing before 2012, which were regularized in terms of Policy of 2012.

She argued that the policy regarding setting up of Marriage Palaces dated 16.11.2012 was not incorporated in the Master Plan for which the amendment of Master Plan was required. Hence, the petitioner was informed that his case could only be considered after the amendment in the Master Plan by the Board. The Board in its 26th meeting held on 28.05.2013 decided that minimum 5 acres is required for setting up of new marriage palaces in areas within SAS Nagar Master Plan and that the palaces would be permitted in mixed land use, commercial, industrial and agricultural zones of Master Plan. This decision was notified on 04.03.2014. It was argued that a simple policy cannot supersede the statutory provisions of Master Plan, which have been duly approved and notified under the 1995 Act. Minimum area requirement of marriage palace has been kept at 5 acres in order to check haphazard growth, parking and traffic problems which are counter productive to the objective of planned land development.

7. As Ld. Counsel for the petitioners had argued that nowhere in the Master Plan it had been explained as to what are the permissible uses in the Wholesale zone. Order 24.08.2015 was passed, whereby, the respondents were asked to explain this and as to how a Marriage Palace in such land is not permissible. The respondents were asked to explain as to how the Master Plan and policy dated 16.11.2012, could be reconciled. In response to that affidavit dated 14.12.2015 of the District Town Planner, SAS Nagar, Mohali was filed. Therein, it has been explained that the setting up of marriage palaces has deliberately not been allowed in the residential zone of Master Plan, SAS Nagar so that the residential area can be kept away from the noise and chaos of marriage palaces. Minimum area requirement for new marriage palaces has been kept as 5 acres so that the owners of the marriage palaces can comply with the conditions for parking, open spaces and other safety norms as also to check haphazard growth etc.

It was explained that SAS Nagar is a planned city, which has been planned in continuity with and on the pattern of Chandigarh. It has a Zonal Plan and Sectoral Grid. Therefore, SAS Nagar is unique in its character and is different from the rest of Punjab. It was for this reason that the provisions of the policy dated 16.11.2012 were not incorporated in totality in the Master Plan of SAS Nagar. It was explained that there are only two small pockets in Master Plan, SAS Nagar, which are designated Wholesale Centre Zones. One pocket with an area of approximately 122 acres is situated in Village Saneta. The other pocket is situated near the Airport and has an area of approximately 185 acres. These Wholesale Centre Zones will cater to the needs of the residents of SAS Nagar for various consumer goods. Their location has been kept close to residential areas and all major roads to ensure easy access for the residents. Allowing any other type of land use in these pockets other than the Wholesale Centre will reduce the area earmarked under these pockets for wholesale activities, which will be detrimental to the very purpose and objectives of Master Plan. As the very term Wholesale Centre indicates the nature of activities permitted therein consists of retail and Wholesale Centres in various products such as food, Timber, Consumer Goods etc. Nature of these activities is very different from the activities of marriage palace. Moreover, as the Wholesale Centre Zones are located in close proximity to the residential zone allowing marriage palace to operate in these zones will create noise and chaos for the nearby residential areas.

8. Heard learned counsel for the parties.

9. We do not agree with the argument of the Ld. Counsel for the petitioner that the application for permission to set up a marriage palace having been submitted on 24.12.2012 the permission had to be granted as per the policy/ criteria applicable then and the subsequent condition notified on 04.03.2014 on the basis of the decision of Board in its 26th meeting held

on 28.05.2013 that minimum 5 acres is required for setting up of new marriage palaces in SAS Nagar Master Plan and that the palaces would be permitted in mixed land use, commercial, industrial and agricultural zones of Master Plan would not apply. This is for the reason that on mere submission of application for permission to set up the marriage palace, no accrued right had come to vest in the petitioner which could not be subsequently changed to his detriment.

10. In ***Kuldeep Singh v. Govt. of NCT of Delhi, (2006) 5 SCC 702*** the Supreme Court considered the question in the context of grant of liquor licences.

11. The Court held that where the application required processing and verification the policy that would be applicable would not be the policy applicable at the time of grant and not the policy at the time of application.

12. The Court referred to a number of earlier cases and observed as under:

> *“**31.** What would be an acquired or accrued right in the present situation is the question.*
> ***32.** In Director of Public Works v. Ho Po Sang the Privy Council considered the said question having regard to the repealing provisions of the Landlord and Tenant Ordinance, 1947 as amended on 9-4-1957. It was held that having regard to the repeal of Sections 3-A to 3-E, when applications remained pending, no accrued or vested right was derived stating:*
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> > *“In summary, the application of the second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of Sections 3-A to 3-E, but merely conferred hope or expectation that the Governor-in-Council would exercise his executive or ministerial discretion in his favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor-in-Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been referred by petition to the Governor-in-Council but had not been determined by the Governor.”*
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> > *(See also Lakshmi Amma v. Devassy.)*

33. *The question again came up for consideration in Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. wherein this Court categorically held: (SCC p. 680, para 37)*

> *"The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such 'settled expectation' has been rendered impossible of fulfilment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a 'settled expectation' or the so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."*

34. *In Union of India v. Indian Charge Chrome again this Court emphasised: (SCC p. 327, para 17)*

> *"The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration."*

35. *In S.B. International Ltd. v. Asstt. Director General of Foreign Trade this Court repelled a contention that the authorities cannot take advantage of their own wrong viz. delay in issuing the advance licence stating: (SCC p. 446, para 12)*

> *"We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with all the relevant provisions."*

36. *In a case of this nature where the State has the exclusive*

> *privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16-9-2005 not to grant L-52 licence, no licence could have been granted after the said date."*

13. There can be no doubt that in areas where a Master Plan is in operation the development has to be in conformity with the Master Plan. The respondents have explained that setting up a Marriage Palace is not a permissible activity in the Wholesale Centre Zone. The respondents have also explained that within the area of SAS Nagar Master Plan, in no case setting up of a new Marriage Palace has been permitted for less than 5 acres of land. All cases referred to by the petitioner are cases of regularization of already existing Marriage Palaces. It may be open for the State to fix different norms for regularizing the existing marriage palaces than those for setting up new ones. Anyhow there is no specific challenge by the petitioner of any such norm or policy on this ground.

14. Thus, there is no merit in the petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 18, 2017
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Whether speaking/ reasoned:	*Yes/No*
Whether Reportable:	*Yes/No*