

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2912-2017

Date of Decision: February 15, 2017

M/s Raglan Infrastructure Pvt.Ltd.

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Anil Kshetarpal, Sr.Advocate with
Mr.Saurabh Garg, Advocate
for the petitioner.

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SURYA KANT, J.

The petitioner is a Company involved in the business of Development of real estate and as a Builder. It has laid challenge to the Notification dated 27.07.2016 (Annexure P-8) issued in purported exercise of powers under Section 66 of the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, 'the 1995 Act'), whereby 'Land Use Plan' for Lalru town has been notified.

[2] The draft development plan was proposed to be approved by the Punjab Regional and Town Planning and Development Board (for brevity, 'the Board') in its meeting held on 08.07.2014 and after the preparation of the drawings on 24.12.2015, objections and suggestions were

invited from general public by way of notices published in newspapers on 14.01.2016.

[3] It is the conceded position that the petitioner-company in its objections entered at Sr.No.576 dated 15.02.2016 questioned the inclusion of a part of its land situated in the revenue estates of villages Sambalheri, Lehli and Dappar within the 'No Construction Zone', near the Ammunition Depot set up by the Defence Forces in village Dappar, near Lalru town. The objections filed by the petitioner are summarised in Annexure P-6 to the following effect:-

“The objector has purchased the land in village Sambalheri bearing Khasra No.578/5, 9/2, 10, 17/2, 18//1/2, 7, 472/12, 6, 534/11, 474/13, 8, 533/11, village Lehli bearing khasra numbers 391-394 and village Dappar bearing khasra no.898-900, 910-912, 1225/400, 1227/402. Accoridng to verification from the office of SDM Derabassi, the above khasra numbers are outside the 'No Construction Zone', but in the proposed land use plan Lalru the same khasra numbers are demarcated as 'No Construction Zone', which is incorrect. The objector requested that these khasra numbers not to be disturbed and kept it outside the 'No Construction Zone.'

[4] The Board considered the petitioner's objections against the proposed development plan of Lalru and disposed of the same as per the following reasons:-

“The area earmarked as 1200 yards 'No Construction Zone' around ammunition depot is based on the provisions of Ministry of Defence Act 1903 vide letter No.1301/WoDA/Adm dated 5th August, 2015. Khasra numbers of the objector falling in village Sambalheri (SIC) and village Lehli do not fall in 'No Construction Zone', but the

area of village Dappar is under 'No Construction Zone'. The list of khasra numbers supplied by Tehsildar Derabassi is not a notified list by the Government which cannot be considered for earmarking No Construction Zone around ammunition depot. Hence the objection of the objector may not be accepted.

However, it is clarified that the No Construction Zone of 1200 yards around ammunition depot is as per above said letter dated 5th August, 2015. In future if any charge happens in the distance of No Construction Zone around this depot by a revised notification then the conditions of new notification shall be applicable.”

[5] No other objection was admittedly raised and therefore in the absence of any other suggestion, the decision confined to the issue noticed above.

[6] After publication of the final 'Land Use Plan' of Lalru town vide impugned Notification dated 27.07.2016, the grievance of the petitioner is that a part of its land situated in the revenue estates of villages Sambalheri and Lehli has been included in the 'No Construction Zone'.

[7] It is in this backdrop that the issues raised on behalf of the petitioner are to be appreciated. The petitioner contends that the Board, which has approved the 'Development Plan'/ Land Use Plan is totally an unauthorised body and it lacks competence to take such decision for want of participation of the representatives of the locality, namely, Gram Panchayat or the Municipality. It is further contended that the power to prepare 'Draft Development Plan' vests in the District Planning Committee in terms of Article 243 ZD of the Constitution which provides, *inter alia*, that “*there*

Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.” The Constitutional provision further provides that not less than four-fifths of the total number of members of the Committee shall be elected by, and from amongst, the elected members of the Panchayat at the District level and of the Municipalities in the District in proportion to the ratio between the population of the rural areas and that of the urban areas in the District.

[8] The petitioner cites **Rajendra Shankar Shukla and others vs State of Chhattisgarh and others** (2015) 10 Supreme Court Cases 400, in support of its above contention.

[9] Having heard learned counsel for the petitioner at a considerable length, we do not find any merit in this writ petition, for the claim put forth by the petitioner is wholly misconceived and misdirected. Firstly, the petitioner is estopped by its act and conduct from raising a new objection which was never taken by it in response to the 'Draft Development Plan' against which objections and suggestions were invited from general public. The only plea taken by the petitioner was not to include its land in 'No Construction Zone' within a distance of 1200 yards from the outer parapet of Ammunition Depot located at village Dappar near Lalru. The authorities have disposed of that objection and rightly so with reference to the Government of India, Ministry of Defence Notification dated 05.08.2015.

[10] The distance of 'No Construction Zone' from the outer parapet

Defence authorities. Civilian authorities, who sometimes, due to their local vested interests may attempt to twist the measurement of distance, should ideally associate the local defence authorities and demarcate the prohibited area in no uncertain terms. It can not be overlooked that there are factors and serious consequences like risk to human lives and public properties. The petitioner nevertheless has no grievance so far as inclusion of part of its land in the 'No Construction Zone' within 1200 yards around the Ammunition Depot at Dappar.

[11] If the petitioner's land, which is actually beyond 1200 yards distance from the Ammunition Depot has been wrongly included in 'No Construction Zone' in the 'Final Development Plan' on the erroneous premise that such land is indeed within 1200 yards from the outer parapet of the Ammunition Depot, then it would at best be a case of clerical error for which the petitioner can always apply for necessary corrections. However, in no circumstances, the petitioner or for that matter anyone else can be permitted to raise construction within a distance of 1200 yards from the outer parapet of the Ammunition Depot.

[12] So far as the competence of the Board constituted under the 1995 Act is concerned, firstly, the petitioner has not questioned the *vires* of Punjab Regional and Town Planning and Development Act, 1995; secondly, the said Act enacted by the State legislature for better planning and regulating the development and for use of land in Planning areas delineated for that purpose for preparation of Regional Plans and Master Plans, is a complete code in itself. Section 3 of the Act provides

Establishment of the Board and its composition is given in Section 4 thereof.

A perusal of Section 4(1)(a) of the Act unfolds that amongst the *ex officio* members of the Board, there are public representatives including Minister-in-charge of Housing and Urban Development and Local Government Department. The Board has been entrusted statutory functions under different provisions of the Act. Chapter VIII of the Act deals with “**Planning Areas and Planning Agencies**”. Section 56 of the Chapter provides that the State Government may, from time to time by way of notification in the Official Gazette, declare any area in the State to be a 'Regional Planning Area', a 'Local Planning Area' or the site for a new town. As soon as the Regional Planning Area or a Local Planning Area is notified under Section 56, Section 57 of the Act enables the State Government to designate the Planning Agency for that area. Such designated Planning Agency has been entrusted the functions under Section 58 which includes the preparation of land use map etc.

[13] Chapter IX of the Act through Section 61 provides for **Preparation of Regional Plan** which shall comprise of the areas (i) demarcated for agricultural, forestry, industry or (ii) reservation of area for open spaces, recreation, reserves, animal sanctuaries, dairies and health resorts; (iii) transport and communication network such as roads, highways, railways, waterways, canals and airports including their development and (iv) reservation of site for water supply, drainage, sewerage, sewage disposal and other public utilities, amenities and services including electricity and gas.

[14] Once the Regional plan is drafted, objections are invited under

Section 63 and on consideration of the objections against the draft Regional

Plan, it becomes operational after notification.

[15] Similarly, Chapter X deals with **Preparation and approval of Master Plans**. Section 70 of the Act says that as soon as the declaration of a planning area is made and Planning Agency is designated, such planning agency shall prepare and submit a master plan for the area to the State Government for its approval. Master Plan shall specify as under:-

- “a) indicate broadly the manner in which the land in the area should be used;
- b) allocate areas or zones of land for use for different purposes;
- (c) indicate, define and provide the existing and proposed highways, roads, major streets and other lines of communication;
- [(cc) indicate areas covered under heritage site and the manner in which protection, preservation and conservation of such site including its regulation and control of development, which is either affecting the heritage site or its vicinity, shall be carried out.]
- (d) include regulations (hereinafter called “Zoning Regulations”) to regulate within each zone the location, height, number of storeys and size of buildings and other structures open spaces and the use of building, structures and land.”

[16] Sub-Section (2) of Section 70 further provides that Master Plan shall include such maps and such descriptive matters as may be necessary to explain and illustrate the proposals in the Master Plan. As per Sub Section (3) of Section 70, the Designated Planning Agency shall after getting approval of the State Government invite objections in writing from any person with respect to the 'existing land use Plan' and after considering such

objections, the final master plan shall be notified.

[17] In the instant case, we do not find any provision of the 1955 Act being deviated or breached by the authorities while preparing the 'Draft Development Plan' or notifying the 'Land Use Plan' of Lalru town. The authorities to whom specific powers have been vested under the Act have exercised such powers in accordance with the provisions of the Act. As noticed earlier, the composition of the Committees under different provisions of the Act are not under challenge, for none of the provisions of the Act are also assailed.

[18] Article 243 ZD of the Constitution relied upon by the petitioner deals with a situation where the rural as well as the municipal areas are to be developed as a composite unit by way of 'Draft Development Plan'. Since there would be different stake holders representing the interest of rural areas or the municipal areas, that the provisions contemplate constitution of a District Planning Committee consisting of the elected representatives. Suffice it would be to observe that the provisions contained in Part IXA of the Constitution are required to be given effect by the State Legislature by way of an appropriate enactment. These provisions can be given effect either by incorporating suitable provisions in the Municipal laws or by enacting a wholesome new law. State of Punjab in its wisdom has opted to legislate the Punjab Regional and Town Planning and Development Act, 1955 whereunder different statutory Agencies have been constituted by treating the entire State as one unit. There is no collision between the provisions of part IXA of the Constitution or those of the State Act of 1995.

supplementary to the objects of Chapter IXA of the Constitution.

[19] In the light of the above discussion, we do not find any merit in the petitioner's contentions.

[20] Dismissed.

(SURYA KANT)
JUDGE

February 15, 2017
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(SUDIP AHLUWALIA)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |