

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

CWP No.901 of 2016 (O&M)

Date of decision: January 31, 2017

Mrs. Suruchi

---Petitioner

Versus

State of Punjab and others

---Respondents

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

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Piyush Bansal, DAG, Punjab.

Mr. Sanjiv Soni, Advocate for respondents No.3 and 4.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash order dated 29.12.2015 (Annexure P-9) of the Improvement Trust, Kapurthala (for short “the Trust”) whereby the change of land use from residential to commercial of Plot No.4 in Model Town Scheme No. 1, Kapurthala, sanctioned by the State Government vide notification dated 10.01.2011 was cancelled. It is further prayed that the respondents be directed to allow the petitioner to raise construction as per the notification dated 10.01.2011.

Plot No.4, situated in Development Scheme No.1, Kapurthala was allotted to the husband of the petitioner by the Trust vide allotment letter dated 10.10.1983. After his death on 26.02.2002, the said plot was transferred in favour of the petitioner (his widow) vide letter dated 21.11.2003. The petitioner submitted a representation to the Chairman, of

the Trust, requesting for change of land use in respect thereof from residential to commercial. In her letter of request, she pointed out that on the back side of the plot there was a 60 ft. wide road, which proceeded to Kanjli Bridge. On the opposite side of the road, there existed shops, Chaudhary Market, Car Washing Point and Cooperative Bank. A similar request for change of land use was submitted in respect of Plot No. 5 as well. The Trust vide resolution No.349 dated 30.11.2006 (Annexure R-3/2) approved the request for change of land use in respect of Plot No. 4 and Plot No. 5. It was also resolved that the approval of the same be taken from the Government as the Trust had no right to change the land use without prior approval of the Government. Pursuant to this resolution, a letter dated 22.12.2006 (Annexure P-2) was addressed on behalf of the Trust to the Director, Local Government, Punjab, in which it was stated that the Improvement Trust has taken a decision to change the land use of plots No.4 and 5 after receiving sanction from the Government. It was pointed out that the aforesaid plots were open on two sides and in front of these plots, there was a 30 feet wide road and on the rear side, there is Kanjli Road, which is 60 feet wide and the whole of this road is commercial. It was intimated that as per the decision taken by the Trust, if the government changes the land use of the aforesaid plots, the Trust would have no objection. Resolution No.349 dated 30.11.2006 of the Trust and the report sent by the Improvement Trust was considered by the Government and order dated 17.03.2010 was issued wherein it was recorded that it had been decided to declare the 60 feet wide Kanjli Road as commercial as per Change of Land

plots situated on the 60 feet wide road, the front of the same shall be towards 60 feet wide road. The Trust was directed that before sending the case of change of land use in respect of the plots under reference to the Government for approval, the legal procedure as required by the Punjab Town Improvement Act, 1922 (for short 'the 1922 Act') read with Section 19 of the General Clause Act, 1898 be completed.

In compliance with aforesaid order, the Trust caused publications to be made in three newspapers 'Dainik Jagran' 'Akali Patrika' and 'Punjabi Tribune'. No objection/ suggestion was received within the prescribed period of 30 days. The Trust thereafter addressed communication dated 19.08.2010 to the Secretary Local Government Department, Punjab reiterating that the Trust has already granted approval for change of land use of the plots vide resolution No.349 dated 30.11.2006 and that the required procedure of publication for inviting objections to the proposed change of land use had been complied with and that no objection had been received. A draft notification was forwarded to the Government with the request that formal notification u/s 43 of the 1922 Act regarding change of land use of the said plots may be issued. Thereafter, the Government issued notification dated 10.01.2011(Annexure P-5) according sanction to the proposed change of land use of Plot No.4 measuring 276.11 Sq. Yards and Plot No.5 measuring 281.45 Sq. Yards, Model Town, Kapurthala subject to certain conditions.

It is the case of the petitioner that after the issuance of the aforesaid notification, she deposited the prescribed fee for change of land use with the Trust on 23.12.2013 and completed all other formalities.

However, the petitioner was not granted permission to raise construction. Frustrated, she submitted an application to the Director, Local Government, Department of Punjab complaining about the harassment meted out to her by the Trust in not permitting her to raise construction despite the Government sanctioning the change of land use from residential to commercial. Thereafter, the petitioner received letter dated 12.08.2014 (Annexure P-7) from the Trust calling upon her to submit an affidavit to abide by the conditions contained in the notification of the Local Government Department sanctioning change of land use. The petitioner promptly submitted affidavit dated 03.11.2014 and completed all other formalities. However instead of permitting her to start construction, the impugned order was passed stating that the case of the petitioner to accord formal approval to change of land use has been considered by the Trust in its meeting held on 06.11.2015 and after considering the same, the agenda was cancelled.

In the written statement filed on behalf of the Trust, it has been stated that the notification dated 10.01.2011 (Annexure P-5) was issued subject to formal approval by way of resolution of the Trust. In view of the conditions imposed by the Government in the notification, the matter was put up before the Trust in the meeting held on 24.02.2011 for taking formal approval. Some of the trustees demanded copy of the notification and the case was adjourned for the next meeting and no formal approval was granted for change of land use of the plot. Thereafter, the matter was considered for formal approval in the meeting of the Trust held on

29.12.2015. It was noticed that the case of the petitioner had been initially considered for change of land use from residential to commercial on sympathetic ground due to death of her husband. But thereafter, the petitioner had executed a General Power of Attorney in favour of one Sunil Rani and bequeathed all her rights of sale, mortgage, to rent , lease , gift etc. in favour of Sunil Rani, which prima facie indicated that the plot had been sold to her by the petitioner. Moreover, in the Power of Attorney it was nowhere indicated that Sunil Rani was related to the petitioner. It was inferred therefrom, that the plot had been sold by the petitioner. In view of the changed circumstances, the claim of the petitioner was rejected by the Trust.

Learned counsel for the petitioner has argued that the Improvement Trust had approved the change of land use vide its resolution No.349 dated 30.11.2006 but as the power to accord sanction for change of land use lay with the Government the case was forwarded to the Government with the request to accord the sanction. The Government vide order dated 17.03.2010 required the Trust to comply with the legal procedure as per the 1922 Act and Section 19 of the General Clauses Act, 1898 and thereafter submit the case. The Trust after compliance with the procedure forwarded the draft notification to the Government requesting that a formal notification regarding change of land use be issued. Thereafter, the notification dated 10.01.2011 sanctioning the change of land use under Section 43 of the 1922 Act was issued. The sanction for change of land use was accorded subject to certain conditions specified therein. Learned

Government on the request and in pursuance to a resolution of the Trust approving the change of land use, it was not open to the Trust to subsequently withdraw its approval and thereby negate/ nullify the effect of the sanction accorded by the Government by claiming that the Trust had cancelled earlier approval for change of land use.

Ld. Counsel for the respondents on the other hand argued that the change of land use was initially approved for the petitioner by the Trust due to sympathetic considerations, but noticing that meanwhile she had sold the plot which was evidenced by the general power of attorney executed by her in favour of one Sunil Rani, a total stranger to whom she had given all powers to sell, gift, mortgage etc. the Agenda for according formal approval for change of land use was cancelled in the meeting of the Trust held on 06.11.2015.

We have heard Ld. Counsel for the parties and perused the record. We are of the view that the petition deserves to succeed.

The facts have already been noticed above. The Trust vide resolution No.349 dated 30.11.2006 approved the request for change of land use in respect of Plot No. 4 (belonging to the petitioner) and Plot No. 5. By the same resolution it was also decided that approval be taken from the Government as the Trust had no right to change the land use. Thereafter letter dated 22.12.2006 (Annexure P-2) was addressed on behalf of the Trust to the Director, Local Government, Punjab in which it was stated that the Trust has taken a decision to change the land use of plots No.4 and 5 after receiving sanction from the Government. It was positively affirmed that it

government changes the land use of the aforesaid plots. The resolution No.349 dated 30.11.2006 of the Trust and the report sent by the Improvement Trust were considered by the Government and order dated 17.03.2010 was issued wherein it was recorded that it had been decided to declare the 60 feet wide Kanjli Road as commercial as per Change of Land Use Policy, 2006. It was also decided that for commercial purposes, the front of the same shall be towards 60 feet wide road. The Trust was directed to re-submit the case after complying with the legal procedure as per the 1922 Act read with Section 19 of the General Clause Act, 1898. The Trust caused publications to be made in three newspapers 'Dainik Jagran' 'Akali Patrika' and 'Punjabi Tribune'. No objection/ suggestion was received within the prescribed period of 30 days. The Trust then addressed communication dated 19.08.2010 to the Secretary Local Government Department, Punjab reiterating that the Trust has already granted approval for change of land use of the plots vide resolution No.349 dated 30.11.2006 and that the required procedure of publication for inviting objections to the proposed change of land use had been complied with and that no objection had been received. A draft notification was forwarded to the Government with the request that formal notification u/s 43 of the 1922 Act regarding change of land use of the said plots may be issued. Thereafter, the Government issued notification dated 10.01.2011(Annexure P-5) according sanction to the proposed change of land use of Plot No.4 measuring 276.11 Sq. Yards and Plot No.5 measuring 281.45 Sq. Yards, Model Town, Kapurthala.

The matter was put up before the Improvement Trust for taking

taken. Thereafter, the matter was considered for formal approval in the meeting of the Trust held on 06.11.2015 which agenda item was cancelled.

The aforesaid facts reveal that vide resolution No.349 dated 30.11.2006, the Trust approved the change of land use. In all its subsequent communications addressed to the Government, it has been consistently maintained by the Trust that it had already accorded approval for change of land use and Government's sanction for the same be given. The exercise culminated in the issuance of a notification dated 10.01.2011 by the Government according sanction for the change of land use. In these circumstances, it is manifestly unjust and unreasonable for the Trust to do a volte-face in its meeting on 6.11.2015, about nine years after its original resolution approving of change of land use dated 30.11.2006 and nearly five years after the sanction by the Government on 10.01.2011, on a totally untenable ground that meanwhile the petitioner has executed a general power of attorney in favour of another which tantamounts to sale. Apart from the fact that the inference by the Trust that the general power of attorney constitutes sale is wholly dubious, no condition prohibiting sale of the plot by the petitioner has been pointed out. The condition in the original allotment letter dated 10.10.1983, in the name of the husband of the petitioner restricting sale, transfer or gift of the plot except in case of death, cannot bind the petitioner, to whom the plot has been transferred on 21.11.2003, after the death of her husband. Further, it is not the Trust's case that any condition of the order sanctioning change of land use has been violated by the petitioner.

dated 10.01.2011 itself, sanction of change of land use was made subject to formal approval by way of resolution of the Trust. We have perused this notification. The notification itself records that the Trust has already passed resolution No.349 dated 30.11.2006 to change the land use of plots No.4 and 5 from residential to commercial and that after considering the recommendations of the Trust etc. it was according sanction to the proposed change of land use subject to formal approval by way of resolution of the Trust. By this notification earlier Model Town Development Scheme No.1 notified on 29.7.1976 under sub-section (1) of Section 41 and sub-section (1) of 42 bearing lay out plan drawing No.DTP (1) 8/76 dated 19.02.1976 was modified to the extent indicated in the notification. Clearly, approval by way of resolution of the Trust, at the stage after the approval of sanction of change of land use by the Government, was only a matter of form, a procedural requirement, which was to follow as matter of course. More so, in the absence of any breach on the part of the petitioner of any condition of the notification.

Resultantly, the writ petition is allowed. The order/ letter dated 29.12.2015 Annexure P-9 is quashed. The Trust is directed to allow the petitioner to raise construction, as per notification dated 10.01.2011.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 31, 2017

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No