

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

C.R. No.3850 of 2018

Date of Decision.06.07.2018

Haryana Urban Development Authority now (H.S.V.P) and another
.....Petitioners

Vs

Satish Kumar Dubey and another
.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lokesh Sinhal, Advocate
for the petitioners.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate
for the respondents/caveators.

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AMIT RAWAL J.

The present revision petition is directed at the instance of the defendants-Haryana Urban Development Authority (hereinafter called as “HUDA”) against the order dated 05.05.2018 whereby the misc. appeal preferred by the contesting respondent-plaintiff against the order dated 12.04.2018 passed by the Civil Judge (Senior Division), Gurugram dismissing the ad interim application filed by the respondent-plaintiff, has been allowed.

Before I could advert to the arguments of Mr. Sinhal in detail, it would be apt to refer few facts, resulting into passing of the impugned order.

Respondent No.1-plaintiff instituted the suit dated 07.02.2018 seeking decree of permanent injunction against the defendants restraining them from relocating/establishing/developing or permitting the relocation/establishment/ development of retail

diesel/petrol outlet over the Taxi Stand site shown in red colour in the site plan annexed with the suit marked by letters ABC adjacent to the Licenced Commercial Building (Ameya One), located on the 60 mts. wide sector road (Golf Course Road) forming part of Sector 42, DLF 5 (formerly known as DLF City Phase-V, Gurugram) and by further restraining from uprooting the plants/grass in existence over the aforesaid Taxi Stand and by utilizing the Taxi Stand site for any other purpose except as Taxi Stand as per the demarcation plan of Sector 42, Gurugram, *inter alia*, on the premise that the respondent-plaintiff/DLF Utilities Ltd. was owner of land measuring 0.525 acres approximately 2124.6 sq. mts. Situated in Sector 42, DLF (formerly known as DLF City Phase-V, Gurugram) earmarked for the purpose of establishment of commercial building.

A Licence bearing No.3 dated 30.01.2002 was granted by Town and Country Planning Department, Haryana for development of commercial building on the plot referred to above. On completion of the construction of the aforesaid building, an Occupation Certificate dated 15.01.2013 was issued by the Directorate of Town & Country Planning, Haryana. A conveyance deed vide Vasika No.2808 dated 06.05.2014 was executed by DLF Utilities Ltd. in favour of M/s Ameya Commercial Projects Pvt. Ltd. along with construction existing thereupon measuring 19,500 square feet with all rights appurtenant thereto.

The Licensed Commercial Building (Ameya One) consists of various commercial units. Commercial space bearing No.G-04 measuring 912 square feet situated on the ground floor of

the Licensed Commercial Building had been purchased by the plaintiff from M/s Ameya Commercial Projects Pvt. Ltd. vide registered sale deed bearing vasika number 411 dated 05.04.2016 for a valuable consideration. The aforementioned building is situated on a 60 mts wide sector road popularly known as Golf Course Road. There is a taxi stand site, which is duly sanctioned and had been shown in red colour in the site plan attached with the plaint as Annexure P-5. When the construction of the Licensed Commercial Building was completed, the Taxi Stand site was lying barren at the spot as no development whatsoever of any nature was undertaken by any statutory authority/defendants and the people had been throwing waste in the aforementioned site which affected the visual appeal of the Licensed Commercial Building.

A request was submitted to the concerned Department for development of the site. The official of the defendants granted permission to M/s Ameya Commercial Projects Pvt. Ltd. to undertake plantation activity over the Taxi Stand site, in essence, to maintain the site as a green area. However, in the month of February, 2018, plaintiff was utterly shocked when it found that officials of defendant No.1 starting taking measurement of the spot and on enquiry, it surfaced that Retail Diesel/Petrol Outlet was intended to be established on the Taxi Stand site. On making further enquiry, it was revealed that Retail Diesel/Petrol Outlet had already been indicated in the demarcation plan of Sector 42, Gurugram, which was lying unallotted/unutilized at the spot. However, defendants intended to establish Retail Diesel/Petrol Outlet at the site because earlier

Hindustan Petroleum Corporation Ltd./M/s Karan Filling Station, Sector 25, Gurugram was allotted a petrol pump site in Sector 25, Gurugram but since that petrol pump site was falling in the middle of alignment of underpass at IFFCO Chowk, which was under construction, the afore-mentioned petrol pump was being shifted to the Taxi Stand site. It is in this background, the injunction aforementioned was sought.

The suit aforementioned was contested by defendants (petitioners herein) by filing joint written statement raising numerous preliminary objections *vis-à-vis* maintainability of the suit, locus standi on the ground that the Principal Secretary to Government of Haryana, Town & Country Planning Department has approved the policy vide Circular dated 03.06.2013, Annexure D-1, pertaining to the revision of Norms/Guidelines/Parameters for grant of permission for setting up of retail outlet for Compressed Natural Gas/Petroleum/Natural Gas Station/Petrol Pump/Fuel Filling Station in the State of Haryana.

It was further averred that earlier the site in dispute was approved for taxi stand but the same has now been approved for petrol pump by the Chief Administrator, HUDA vide letter dated 12.02.2018, for, the petrol pump scheme can be varied to meet the changing need of the public, in view of the decision rendered by this Court in CWP No.5340 of 2014 titled as "*Neeraj Kumar Vs. State of Haryana*". HUDA had the ownership of the land and therefore, could deal with the property in any manner it wanted to. The existing petrol pump situated at IFFCO Chowk had been falling in the middle

of the alignment of under-pass, therefore, necessity arose for shifting of the petrol pump by changing the site meant for taxi stand into petrol pump.

Both the parties attached numerous documents along with the plaint and the written statement.

The trial Court vide order dated 12.04.2018 dismissed the interim application on the premise that no irreparable loss and injury would be caused, if the taxi stand site is converted into petrol pump site in such a manner that the visibility of the Commercial Building is not hampered. However, the misc. appeal filed before the lower Appellate Court against the aforementioned order as noted above, has been allowed by the lower Appellate Court vide order dated 05.05.2018.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the petitioners-defendant No.1 and 2 submitted that the order under challenge is not only perverse but illegal as there is gross misreading of the provisions of Section 79 of the Haryana Urban Development Authority Act, 1977 and various other Regulations and provisions as the said change is applicable only where the area has been declared as Local Development Area (hereinafter called as "LDA") as per the provisions of Section 62 of the 1977 Act. In fact, the area in question has not been declared as LDA. The plaintiff had no right as the land admittedly is owned by HUDA and competent to utilize and dispose of the same the way it wants to.

The First Appellate Court has also erred in not

considering that the Chief Administrator, HUDA is competent under the Haryana Urban Development (Erection of Building) Regulations, 1979 and Haryana Building Code 2016-2017 to prepare/approve the Layout Plans regarding the usage of the land in a sector in consonance with the development plan made by the Town and Country Planning Department. The First Appellate Court has also misconstrued the expression/term “obnoxious trade” as per the Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978.

The petitioners’ land and the property of the plaintiff situated in licensed area are entirely different and situated at distance, therefore, the licensee of the adjoining land has no locus standi to plant grass or plants over the acquired land of the petitioners. The suit is not maintainable as per the provisions of Section 50 of the 1977 Act.

The first Appellate Court did not have the power to allow the appeal preferred against the order of the Civil Judge as the duty was cast upon to take into consideration the material placed on record, particularly, the provisions of Order 39 Rule 1 and 2 CPC, which were conspicuously wanting. The power of the Chief Administrator, HUDA to change the land use has already been upheld by this Court in CWP No.17979 of 2011 titled as “*Jagtar Singh and others Vs. State of Punjab and others*” and CWP No.5340 of 2014 titled as “*Neeraj Kumar Vs. State of Haryana*”. The first Appellate Court has failed to appreciate that the user of the site to establish petrol pump has not been changed in normal circumstances but

otherwise, as existing petrol pump *ibid* was falling within the ongoing construction of under-pass at the Iffco Cowk.

The trial Court while dismissing the application has already protected the interest of the plaintiff by issuing direction that the petrol pump should be constructed in such a manner that the visibility of the building be not diminished. The petitioners undertake to abide by the aforementioned provisions, thus, urges this Court for setting aside the finding under challenge.

Per contra, Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Mukul Aggarwal appearing for the respondent No.1-caveator in support of the averments made in the plaint as well as the findings under challenge made the following submissions:-

- (i) The area in dispute falls within the Municipal area, therefore, the Chief Administrator, HUDA did not have any power as it was the domain of the Commissioner, Municipal Corporation, Gurugram. In support of the aforementioned contention, referred to judgment of Division Bench of this Court rendered in **Rajat Kuchhal and others Vs. State of Haryana and others 2012(11) RCR (Civil) 297.**
- (ii) The Chief Administrator, HUDA did not have any power to change user of the land, owing to the promulgation of the Gurugram

Metropolitan Development Authority Act, 2017 published in the Haryana Government Gazette on 05.12.2017. As per the aforementioned provisions of the Act, the Chief Executive Officer has been defined to be an authority appointed under sub-section 1 of Section 9, which will not be below the rank of Principal Secretary. As per the definition clause, “Infrastructure Development Plan” has been defined under Section 2(h) as infrastructure plan published under sub-section (5) of Section 17 and “Internal Development Work” has been defined under Section 2(j) which provides for development of roads etc. or such other urban facilities or urban amenities within a sector, colony, municipal colony or abadi deh areas of villages located in the notified area. The urban amenities has also been defined under Section 2(x), which includes playgrounds, green spaces, parking facilities, public bus transport, bus shelters, taxi and rickshaw stands. The State Government has been empowered to promulgate a notification for declaring any area falling within the limits of controlled areas in Gurugram district to be notified area having

the potential for urban expansion. As per Section 4 of the aforementioned Act, the State Government by notification and with effect from such date, as may be specified in the notification, establish, for the purpose of this Act, an Authority to be called the Gurugram Metropolitan Development Authority consisting of 18 members. Section 8 of the Act empowers the Authority to delegate any of its powers other than the powers in sub-section (2) to an executive committee constituted from amongst its members as the Chairperson but the Authority shall not delegate to the executive committee powers with regard to approval of infrastructure development plan, mobility management plan, sustainable management of the urban environment, approving the budget of the authority and making, amending or repealing any regulation.

- (iii) No objection had been invited from the public for changing the use of the land from taxi stand to petrol pump. Section 16 deals with the powers, functions and duties of the Authority, which provides for preparation, sanction, implementation of the plans and provisions for

urban amenities. The Authority has also the powers to perform function of purchase, exchange, transfer, hold, lease, manage and dispose of the land in such manner as may be specified by regulations. Section 17 provides that the Chief Executive Officer shall, within a period of four months from the commencement of this Act and at such intervals thereafter, as may be prescribed, after such consultations as may be specified by regulations, prepare an infrastructure development plan for the notified area with a proviso that such development plan shall be in conformity with the final plans published under sub-section (7) of Section 5 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter called as Act No.44 of 1963) and for any change objections have to be invited from the public including the members of the Residents Advisory Council within a period of 30 days from the date of publication of the plan. Section 17 and 18 deal with the procedure for calling objections but no adherence has been made to the aforementioned provisions of the Act.

(iv) In order to buttress his arguments that whether

such Act had been implemented or not, placed on record certain documents with copy to the opposite counsel i.e. Tender and Contract document dated 05.02.2018 pertaining to construction of 164 bus queue shelters in Gurguram Metropolitan Area invited by the Advisor (Engineering) for and on behalf of Chief Executive Officer, Gurugram Metropolitan Development Authority and also the bid document with regard to Design, Development, Implementation, Operations and Maintenance of Integrated Command and Control Centre (ICCC) and Integration with various Smart City Applications. In support of the aforementioned submissions, he relied upon the following case laws:-

(a) **Purshottam Vs. State of Karnataka and others (2014) 3 SCC 721** wherein the question with regard to interpretation of the provisions of Bangalore Development Authority Act, 1976 came to be debated upon and in an identical situation, the Hon'ble Supreme Court held that the site expressly earmarked for use as bank could not have been allotted for use as a petrol pump.

(b) **Haryana Urban Development Authority**

and others Vs. M/s Coral Realtors Pvt. Ltd.

2016(5) RCR (Civil) 23 wherein question was whether the Floor Area Ratio (FAR) of the multiplex can be increased by the Chief Administrator, HUDA or not and by noticing the provisions of the Haryana Urban Development Authority (Erection of Building) Regulations, 1979, it was held that procedure relating to amendment of zoning plan was not followed by the competent authority and the action of the HUDA was struck down. It was also held that zoning plan is part of statute and such statutory zoning plan cannot be changed on the basis of objections raised by the bidders and the communication made by the Chief Administrator.

- (v) Another compendium of photographs and policy dated 29.07.2013 regarding revision of norms/guidelines/parameters for grant of change of land use permission for setting up of retail outlet for Compressed Natural Gas/Petroleum/Natural Gas Station/Petrol Pump/Fuel Filling Station in the State of Haryana along with certain site plans copies thereof handed over to the learned counsel appearing for the petitioners. By

drawing attention of this Court to the photographs, it was argued that at the site which has now been converted into petrol pump, there is already a high pressure petroleum product pipeline of Bharat Petroleum and there is a sign board affixed on the site by giving toll free numbers for Mumbai, Manglya and Bijwasan to contact in case of any excavation or in emergency. It was also mentioned that maximum area for the petrol pump is not as per the Policy and therefore, the impugned action of the HUDA, particularly, the Chief Administrator in converting the site for taxi stand was wholly erroneous and fallacious.

(vi) Attention of this Court has further been drawn to the site plan to reflect that there is already area dedicated for petrol pump where there is a 30 mtr wide road, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book, case laws cited at bar and the documents handed over during the course of hearing and of the view that the revision petition is liable to be dismissed as the order under challenge does not call for interference, for, the lower Appellate Court found the ingredients of

Order 39 Rule 1 and 2 CPC i.e. prima facie case, balance of convenience and irreparable loss in favour of respondent No.1-plaintiff and the reason is not one but many.

- (i) The lower Appellate Court has, in my view, not committed any illegality in interpreting the provisions of Section 79 of the 1977 Act, which has already been referred to in paragraph 13 of the impugned order. Section 79 of 1977 Act provides that the Local Development Authority may make any amendment on the master plan or the sectoral/zonal/development plan, which it thinks fit and does not effect important alterations in the character of the plan and do not relate to the extent of land uses or standards of population density. But before making any amendment in the plan, the Local Development Authority or as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the LDA by inviting objections. The full particulars of such amendments shall be reported to the State Government within 30 days of the date on which such amendments came into operation. However, in the instant case, no such procedure has been followed by

the Chief Administrator, HUDA as vide letter dated 12.02.2018, had passed the following order:-

“The proposal for carving out alternate petrol pump site in place of taxi stand at Sector 42, Gurugram, received vide letter under reference, has been approved by Chief Administrator, HUDA. A part showing the duly approved site is enclosed herewith for information and further necessary action. Zoning plan of the approved site may also be got finalized and send to this office for approval on priority.

It is also requested to provide some other site for Taxi Stand in near vicinity.”

- (ii) During the course of hearing, provisions of Rule 2 (d) pertaining to definitions of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1963 was referred to demonstrate that 'development plan' would mean the final plan notified in the official Gazette under sub-section 7 of Section 5 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and the 'Sector' would be any part of the controlled

area indicated as such in the Development Plan and as well as the provisions of Section 4 of the 1963 Act, which deals with the power of the Government to publish by notification the plans approved by it under sub-section (4) for the purpose of inviting objections. For the sake of brevity, sub-section 4 & 5 of Section 5 of the 1963 Act are reproduced as under:-

“(4) The Government shall cause to be published by notification the plans approved by it under sub-section (3) for the purpose of inviting objections thereon.

(5) Any person may, within thirty days from the date of publication of the notification under sub-section (4), send to the Director his objection and suggestion in writing, if any, in respect of such plans and the Director shall consider the same and forward them with his recommendations to the government within a period of sixty days from the aforesaid date.”

- (iii) A perusal of the aforementioned provisions reveals that same procedure has been prescribed in the Gurugram Metropolitan Development Authority Act, 2017. It is yet to be decided whether the Chief Administrator had the power *vis-a-vis* the change of use of

the land after promulgation of GMDA Act, 2017, for, the said Act has already been implemented as per the tender notice invited by Advisor (Engineering) for and on behalf of the Chief Executive Officer.

(iv) Both the counsel had argued the matter to such an extent as if it is a writ petition or regular second appeal but in my opinion, it is yet to be proved whether the plaintiff would be entitled for permanent injunction on the grounds stated in the plaint, for, provisions of the GMDA Act of 2017 and photographs shown at bar have not been controverted by learned counsel for the petitioners, thus, it would be domain of the trial Court subject to proof in accordance with law to adjudicate upon the controversy.

(v) In view of the judgment referred by Mr. Aggarwal in *Rajat Kuchhal and others Vs. State of Haryana and others* (supra), prima facie, the authority of the Chief Administrator, HUDA was held to be wanting, for, it was held that change in the development plan cannot be done by one stroke of pen by the Chief Administrator, HUDA. It is also yet to be proved whether the Chief Administrator,

HUDA would have the power or the Commissioner, Municipal Corporation in view of the decision rendered in *Rajat Kuchhal's case* (supra) or there has to be amendment in the Rule as per the procedure prescribed under the prevailing Act.

- (vi) During the course of hearing, it has not also been explained by the counsel for the petitioners that as to why the area already earmarked for petrol pump on the 30 mtr wide road as indicated in the approved site plan cannot be used for shifting the existing petroleum pump at IFFCO chowk and what was the reason for converting the taxi stand into a petrol pump, particularly, when there is already a high pressure petroleum product pipeline maintained by the authority referred to above, therefore, the provisions of Order 39 Rule 1 and 2 CPC, in my view, are in favour of the respondent No.1-plaintiff for adjudication of the revision petition. Since the pleadings are already completed, appropriate direction can be issued to the trial Court to expedite the disposal of the trial particularly when the order of the lower Appellate Court granting injunction by

restraining the defendants from converting the site earmarked for taxi stand into petrol pump is in vogue.

As an upshot of my finding, the impugned order is upheld and the revision petition is disposed of with the following directions:-

- (a) In case, the issues are not framed, the trial Court shall undertake an exercise of admission and denial of the documents, which will curtail the unnecessary evidence, for, the parties would be leading evidence on the issues which are at variance.
- (b) Since the entire controversy is rested on the basis of the documentary evidence and the provisions of the Acts and Regulations referred to herein above, the oral evidence would not be that essential. However, without taking away right of either of the parties to examine any oral evidence, I deem it appropriate to direct the trial Court to give 4-4 effective opportunities to the respondent No.1-plaintiff and the petitioners-defendants in accordance with law. They will be at liberty to examine witnesses through the assistance of the Court by moving application on deposit of process fee and diet money. The four opportunities may span over a period of four months from the date of

receipt of certified copy of this order and the trial Court shall expedite the decision the suit within a period of four months thereafter.

- (c) I would be restraining myself from commenting upon the application of the Policies dated 29.07.2013 and 12.02.2013 with regard to minimum area prescribed for setting up a petrol pump on various areas/roads as it would also be proof of evidence and domain of the trial Court.
- (d) anything observed, herein, shall not be construed an expression of opinion on merits of the suit pending adjudication.

(AMIT RAWAL)
JUDGE

July 06, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes