

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.20760 of 2012(O&M).
Date of Decision: July 24, 2018

Liberty Multi-specialty Hospital

.....Petitioner

versus

State of Punjab and others

.....Respondents

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

Present: Mr.D.S.Patwalia, Senior Advocate with
Ms.Gurjot Grewal, Advocate, for the petitioner.
Mr.Sandeep Vermani, Additional AG, Punjab.

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Surya Kant, J. (Oral)

The petitioner is a multi-specialty private-hospital run by its sole proprietor Dr.(Mrs.) Rupinder Kaur Cheema. The petitioner is aggrieved by the communication dated 28.10.2011 whereby the Estate Officer, GMADA, has declined to regularize the nursing home set-up at residential site No.1799, Phase 3B-2, Mohali, on the plea that one of the neighbour, namely, allottee of plot No.1798 has not given consent for regularization of nursing home. It is averred in the communication that as per the policy, 'nursing home' in a residential house cannot be regularized unless written consent is given by all the neighbours.

[2] The instant writ petition was filed in the year 2012 and when it came up for preliminary hearing on October 15, 2012, this Court passed the following order:-

“... Learned counsel for the petitioner, inter-alia, contends that respondents No.2 to 4 have issued policy dated 01.12.2009 (Annexure P-16) relating to allowing functioning of Nursing Homes from residential buildings.

Clause 4 of the said policy enjoins that the allottees should seek 'no objection' from the adjoining houses for running the Nursing Homes. It is submitted that the petitioner applied for regularisation of its Nursing Home being run at Plots No.1799 and 1800, Phase 3B2, Mohali. The Estate Officer, Greater Mohali Area Development Authority issued a letter dated 4.8.2011 (Annexure P-18) to the petitioner for complying with certain conditions. The said letter acknowledges the deposit of Rs.26,33,600/- by the petitioner. The Estate Officer, Greater Mohali Area Development Authority, thereafter, issued a letter dated 12.8.2011 (Annexure P-19) to the owner of the adjoining Plot No.1798, Phase 3B2, Mohali to inform the office within 15 days regarding objection to the functioning of the Nursing Home of the petitioner at Plots No.1799 and 1800, Phase 3B2, Mohali and in case, the required objection was not received, the said Nursing Home would be regularised and the objection received thereafter would be ignored.

It is submitted by the learned counsel that the owner of the adjoining plot did not submit any objection regarding the functioning of the Nursing Home of the petitioner within the period of 15 days from the issue of letter dated 12.8.2011 (Annexure P-19). However, despite that the Estate Officer, Greater Mohali Area Development Authority vide letter dated 28.10.2011 (Annexure P-20) has not regularised the functioning of the Nursing Home by stating that the allottee of Plot No.1798, Phase 3B2, Mohali has not submitted her consent for regularisation of the Nursing Home. The petitioner represented against the said action by letters dated 7.11.2011 (Annexure P-21) and 16.5.2012 (Annexure P-22), but despite that , no action has been taken by the respondents. It is submitted that the Nursing Home of the petitioner is running for the last 30 years.

Notice of motion for 11.12.2012.

Meanwhile, operation of the impugned letter dated 28.10.2011 (Annexure P-20) shall remain stayed.....”

[3] The operation of the impugned communication dated 28.10.2011 having been stayed, the petitioner is running the nursing home at the site and is said to have deposited the 'compounding fee' of Rs.26.00 lacs or so. Meanwhile, the petitioner has placed on record the consent letter/no objection letters from all other neighbours as well as the Welfare Association of Residents of the area, except the owner of plot No.1798, phase 3B-2, Mohali.

[4] In the light of the subsequent events, namely, the no objection letter/consent letters referred to above, it appears that the matter re: regularization of the nursing home run by the petitioner requires reconsideration by GMADA authorities. The policy makers may re-visit the expression 'neighbour', if need be, to give full effect to their policy decision, moreso if the authorities are satisfied that no objection letter/consent letters given by most of the neighbours or Residents Welfare Association would amount to substantial compliance of the policy.

[5] It would also be expedient for the authorities to constitute an Inspection Team to visit the site and have the view-point of all the neighbours in writing including those who have an objection against regularization and understand the nature and depth of their grievance. Based upon an overall view or other stake-holders, a holistic view can be taken as to whether or not the subject nursing home is to be regularized.

[6] In the light of the observations made herein-above, the writ petition is allowed in part and the impugned communication dated

GMADA, Mohali to take a fresh decision in the light of the observations made herein-above read with the Government policy. Needless to say that in case the Authority decides the issue of regularization of nursing home against the petitioner, *status-quo* be maintained for a period of one month from the date of such decision to enable the petitioner to approach the higher authorities like Chief Administrator, GMADA or the State Government. Let the matter be decided afresh by way of a reasoned order and after hearing all concerned within a period of four months.

[SURYA KANT]
JUDGE

July 24, 2018
mohinder

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

CM No.10223 of 2018 in
CWP No.20760 of 2012

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Liberty Multi Specialty Hospital vs. State of Punjab and others

Present : Mr.D.S.Patwalia, Senior Advocate with
Ms.Gurjot Grewal, Advocate,
for the petitioner.
Ms.Sandeep Vermani, Additional AG, Punjab.
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For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and the 'No Objection Certificates'
(P-23 Colly.) are taken on record.

CM stands disposed of.

(SURYA KANT)
JUDGE

July 24, 2018
mohinder

(SUDIP AHLUWALIA)
JUDGE