

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

CWP No.3341 of 2019

Date of Decision : 31.05.2019

M/s Manglam Multiplex Pvt.Ltd.

....Petitioner

Versus

State of Haryana and another

...Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

Present : Mr.R.S.Rai, Sr. Advocate with
Mr.Kunal Dawar, Advocate
for the petitioner.

Mr.Ankur Mittal, Addl.Advocate General,
Haryana.

MAHESH GROVER, J.(O)

The petitioner prays for quashing of the orders dated 15.01.2018 and 17.1.2018 declining the applications moved by it on 07.08.2014, 06.05.2016 and 26.02.2016 for grant of additional licence qua the additional area adjoining the existing project against licence No.234 of 2007.

A licence to develop a Group Housing Colony was given to the petitioner on 16.10.2007 qua an area comprised in 61.556 acres. Thereafter four additional licences were given to the petitioner on 22.08.2009, 06.05.2010, 20.08.2014 and 22.08.2014. In this manner the total land under development by the petitioner came to 66.51 acres. The licence granted as per policy existing at that point of time envisaged consideration and grant on the first come first serve basis, which, however, came to be challenged before this Court by way of a writ petition resulting in its negation. This was challenged by the State in SLP where the operation of the judgment impugned was stayed but liberty was granted to the State to frame a new

policy. Prior to all this the petitioner had already submitted an application which was pending and later on approved by the State in May 2017. The new policy came into force in November 2017 and now the case of the petitioner for grant of additional licence is being declined on the strength of the new policy.

In fact, the controversy is limited in one sense of the word where the petitioner, who is a developer having developed an area of 66.51 acre against different licences issued to him from time to time seeks inclusion of more area by and an additional licence.

It is not in dispute as the State also concedes that a policy in vogue then and now did permit the grant of licence if a developer chose to develop more area adjoining the existing development project. The petitioner's claim is that it was merely an additional licence to be granted while the respondents insist that it would mean a fresh licence under the new policy and unless the petitioner satisfies all the parameters he would not be able to get the licence.

Learned counsel for the petitioner has contended with reference to the material on record that if the argument of the learned counsel for the respondents is accepted, then it would frustrate the very contention raised by the petitioner i.e. that a developer would be enabled to develop an adjoining area even if it is a small tract.

It is argued that if the respondents' plea is accepted such situation of requirement of the area under the new policy can never be met. Besides, it is contended that the entire exercise of consideration virtually stood concluded in petitioner's favour if the order dated 23.05.2017 is seen as also the minutes preceding this decision.

Our attention has also been drawn to the new policy where in Clause

2.2 the relevant parameters are set out providing essential cap of 20% of the net planned area. Clause 2.2(i) of the notification dated 10.11.2017 is extracted herebelow :-

(i) All the pending licence applications of group housing colonies, commercial colonies and the applications under left over pockets policy shall be returned on the ground that in compliance of the order of Hon'ble High Court and of Hon'ble Supreme Court the Department shall adopt fresh policy guidelines for grant of licence and further licences will be granted as per the fresh policy guidelines and the applicants are free to apply again for grant of licence as per the fresh guidelines, as and when notified by the Govt. Since the applications are being returned on the above ground, therefore, to avoid litigation on the ground of examination of the applications as per the prevailing policies at the time of submission of the applications, the scrutiny fee and part licence fee, if paid, in respect of all such applications shall also be refunded.”

A bare perusal of the above does indeed indicate that there is a cap of 20% of the planned area of residential sector including the Group Housing Colony under the left over pocket policy. Clause (i) states that all the pending licence applications of group housing colonies, commercial colonies and the applications under left over pockets policy shall be returned and the cases would be considered under the fresh policy guidelines.

We have heard the learned counsel for the parties and notice that the controversy exists in a very narrow compass i.e. whether application for

licence of an adjoining area to an already existing residential complex developed under the licence can be construed to be an additional licence or it has to be considered as a fresh licence to be granted only if the policy guidelines of November 2017 are met with.

To our minds the case of the petitioner seems to be justified as he has already developed a residential colony by initially putting into use an area of 66.51 acres by expanding it when small tracts of land in the vicinity of the existing project were added for development and four separate licences issued against that. Eventually the petitioner developed 66.51 acres of land. His application for additional licence was clearly set in motion under the old policy but this could be said to be inconsequential considering that the policy itself was struck down. But it is to be noticed that the Hon'ble Supreme Court stayed the operation of the order of the writ court while granting permission to the State to formulate a fresh policy.

Indeed, the State was well within its right to formulate a fresh policy in terms of the liberty granted by the Hon'ble Supreme Court but it would not be attracted to the case of the petitioner whose case was virtually accepted by the State under the old policy. It is to be remembered that the judgment of this Court striking down the old policy was stayed by the Hon'ble Supreme Court. It would thus not inhibit the consideration of the petitioner's case under the old policy particularly when it virtually found acceptance if the minutes of the decision making are to be seen and which we deem appropriate to extract herebelow to make it a part of the narrative :-

“.....Accordingly, the instant application is now under the cap of 20% of net planned area of Sector 65, for grant of group housing licence.

There is no other application pending with the department for grant

of group housing licence in this sector except the applications submitted by Manglam Multiplex the applicant company for area measuring 1.4125 acres and 0.90625 acres which are subsequent in seniority to be above application of area measuring 7.9125 acres and are being examined separately....”

A reading of the above clearly indicates that even as per the new policy the petitioner meets the parameters of a 20% cap, implying thereby that the State has virtually considered the case of the petitioner to be just under the new policy as well. In continuation of the above extracted part of the order the authority considering the case of the petitioner acknowledges the fact of the area being additional and adjoining to the previous licenced area which is evident from the portion of the order extracted herebelow :-

“Field report in instant cases has already been received from Senior Town Planner Gurugram dated 26.02.2015 (CP/500) & ownership verification report from Deputy Commissioner, Gurugram dated 19.02.2016 (CP/499). Further, the report from District Town Planner- Gurugram & Land Acquisition Officer, Gurugram has been received on 05.02.2016 placed at CP/349 & CP/356 respectively. The revenue documents submitted by applicant company alongwith application have been got scrutinized from the office kanungo and the comments of the same is placed at NP/57. According to which the clear ownership of the land measuring 7.9125 acres vests with Applicant Company. The site is shown on Shazra Plan on CP/514 may kindly be perused. The additional area is adjoining to the previous licenced area and will be approachable from previous licenced area as shown on the approved circulation plan (CP/503).”

Similarly, a recommendation was made by the State itself which can

be gathered from the following extract :-

“23. **Recommendations** :- As per policy of the department, license applications over an area 20% of net plan area are considered for grant of license for Group Housing colony in residential sectors. In present case an area measuring 10.4625 acres of licenced area of group housing colony (6.94375 acres from licence no.234 of 2007, 2.08125 acres from, licence no.114 of 2014 and 1.4375 acres from licence no.122 of 2014) has been migrated into mixed land use vide order dated 02.05.2017 CP/517-526, accordingly said area is available for grant of GH licenses. There is no pending application of other license except present license application which is of 7.9125 acres including 1.4125 acres and 0.90625 acres which are subsequent in seniority to be above application of area measuring 7.9125 acres but of present license, which are being examined separately in this area. Therefore, present license application cover in the cap of 20% area of Sector-65 which can be considered for grant of additional license for Group Housing in addition of license no.234 of 2007.”

It is necessary to emphasise here that a cursory look at the above extracted portion shows that the State is talking of grant of an additional licence while offering consideration to the case of the petitioner. It is in this context that the decision of 23.05.2017 assumes significance and to understand the importance of the process the relevant portion of this decision is extracted herebelow :-

“In view of above, the case fulfills the technical parameters for grant of licence to develop group housing colony and submitted

for consideration/approval of DGTCP. If approved, then a conditions mentioned in the office note on NP/80-82 shall be imposed in the LOI.”

It is also necessary to state here that the policy came into existence in November 2017 whereas consideration ceding claim of the petitioner to be compliant was in May 2017.

Learned counsel representing the State has not disputed the fact that licence can indeed be given to an already existing project if the land falls adjacent to the developed project, but there seems to be an utter fallacy in the argument that it has to be treated as a fresh licence to be granted only if all the parameters of the new policy are met including the requirement of the area. In fact, what has been stated by the petitioner to be an additional licence would be inconsequential and the only thing is to understand that licence can be granted to the petitioner only if he otherwise fulfills the requirement of the area prescribed in the policy.

Obviously, if the new policy of November 2017 is applied ipso facto there would be an outright rejection of the petitioner's claim as he would never met the requirement of the required area and that is the reason why we would lean towards the argument of the petitioner and construe this to be an additional licence qua same portion of the area which he has come to acquire or probably having acquired it earlier for putting it to use. If the argument of the learned counsel for the respondents is accepted, then the existing developer would never be enabled to get more area for development under a licence unless the requirement of the area as set out in the new policy is met in entirety. This would defeat the purpose of developing adjoining area altogether. It is quite possible that a developer had acquired a minimal area of one or two acres as has been happening

previously as well. But the development of the adjoining area would complement the existing project. If the new policy has to be construed and applied, then the petitioner can get a licence only if he has entered an area of minimum 10 acres. Our view finds resonance in the stand of the respondents themselves when they in a related petition filed an affidavit virtually echoing our view :-

“First licence is granted when the colonizer fulfills the minimum area norm. However, more often than not, it happens that some of the pockets within or around the applied area remain unacquired or could not be acquired by the colonizer due to certain reasons, may be, the concerned land owners were not willing to sell their land or the price offered by the colonizer did not suit them. If the applied area for licence falls within the compact block and fulfills the condition of minimum area norms the licence is granted. When such left out pockets are subsequently acquired by the colonizer or some additional land is purchased by the colonizer adjoining to the earlier licensed area, such area mostly is less than the minimum area norm and therefore does not fulfill the minimum area requirement for grant of an independent licence, but has the potential of becoming an integral part of the earlier licensed area. Therefore, while granting licence for this smaller area, an integrated layout plan of the entire area of the colony comprising of the area of the earlier licenses and the new licence area is approved by the Department on the request of the colonizer. It would also be relevant to mention here that the Department has to grant licenses for such additional land which are contiguous to the earlier licensed area due to the reason that if licence is not granted for this area, this would

lead to unauthorized construction in an haphazard manner which will be against the objectives of enactment of the Act of 1975. This is because of minimum area norms for an independent colony which are necessary so that basic community facilities can be provided based on a well defined project population criteria. Licence for additional area pockets being less than minimum area norm ensures that such area are utilized for development in a planned manner. Hence, the entire area including the area of additional licence is considered as one unit/colony and not as a separate colony. However, while approving the revised layout plan, it is also ensured by the Department that all the infrastructure facilities such as community buildings, school/dispensary sites, shopping area as per the density norms are provided by the colonizer. It is not possible to provide all these facilities if the licence for additional area is considered as an independent colony. Therefore, the necessity for revising the layout plan and the zoning plan arises. But while approving the revised layout plan/zoning plan, it is always kept in mind by the Department that the total percentage of the area under roads, open spaces, schools, public and community buildings and other common uses is not reduced as provided under Rule 4 of the Rules of 1976. However, the residents of the area sometimes think it otherwise and allege that the colonizer has been allowed to raise construction at site by giving undue benefit to him. But this plea is wrong as no deviation is made by the Department from the approved policy/Rules while granting licence for the additional area and approval of the revised layout/zoning plans.”

To our minds, the approach of the respondents is not correct. The

petitioner's plea seems probable and worthy of acceptance and hence while doing so, we direct the respondents to issue the necessary clearances/additional licence to the petitioner to carry out its development work in the area adjoining the existing project.

Petition allowed.

(MAHESH GROVER)
JUDGE

May 31, 2019
dss

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes