

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

CWP-7842-2019

Date of decision: 11.4.2019

M/s The Forests Resorts

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Akshay Bhan, Sr. Advocate with
Mr.Prateek Sodhi, Advocate for the petitioner

Mr.Sanjeev Soni, Advocate for respondent No.2.

JITENDRA CHAUHAN, J.

The present writ petition under Article 226 of the Constitution of India has been filed for issuance of direction to the respondents to desal the resort of the petitioner and for quashing the revocation notice dated 2.8.2018 (Annexure P-12).

Learned senior counsel for the petitioner submits that the resort was constructed in the year 2002-03 after the building plan had been sanctioned by the Municipal Corporation, Amritsar and since then the same had been functional till it was sealed on 27.03.2017. In pursuance of order dated 28.6.2017, issued by the Government of Punjab, the petitioner deposited the requisite fee for regularization of the marriage palace/resort and the same was regularized vide letter dated 2.2.2018 (Annexure P-11). It is asserted that despite having been regularized, respondent No.2 had

issued a show cause notice dated 2.8.2018 (Annexure P-12) regarding revocation of the regularisation of the resort and directed the petitioner to produce No Objection Certificate from the office of Station Commandant, Amritsar Cantt. It is further stated that Notification dated 11.11.2004 (Annexure P-2) was issued by the Government of India, whereby a purported restriction of construction 1000 yards of Vallah Ammunition Dump (for short 'the Dump') had been prescribed, which has prospective effect and would not be applicable on the resorts already functioning including the petitioner.

Learned senior counsel further submits that the said Notification dated 11.11.2004 was challenged by the Food and Vegetable Merchant Union by way of filing a civil writ petition before this Court and vide order dated 20.12.2005, it was ordered that no coercive action of displacing the fruits and vegetable venders be taken until they are rehabilitated. The aforesaid order was assailed before Hon'ble the Supreme Court vide SLP No.1522 of 2006. During the pendency of the aforesaid SLP, the General Officer Commander (for short 'GOC') had submitted a detailed report wherein the fact that the petitioner resort has been functional prior to the issuance of notification dated 11.11.2004, was specifically mentioned. Learned senior counsel further asserts that vide order Annexure P-3, GOC proceeded in an arbitrary manner directing that all the constructions within 350 sq. yards be declared as 'no man's area', but with respect to the petitioner resort it was merely recommended that the boundary wall, which was allegedly constructed after 2004, be demolished.

Upon submissions of the aforesaid report, Hon'ble the Supreme Court vide order dated 20.2.2007 directed Deputy Commissioner, Amritsar and Punjab Marketing Board to take fresh decision in that regard. However, respondent No.2 – Municipal Corporation Amritsar without any authority or direction bestowed upon it, illegally assumed jurisdiction and served demolition notice dated 8.6.2007 (Annexure P-4).

Aggrieved against the aforesaid notice, the petitioner resort preferred CWP-9498-2007, wherein while issuing notice of motion, this Court stayed the demolition of the petitioner resort vide order dated 28.3.2008 (Annexure P-5). Apparently, in the year 2011 and thereafter in 2013, two different public interest litigation's bearing CWP Nos.21547 of 2011 and 11997 of 2013 were filed seeking directions to take action against unauthorized marriage palaces/resorts situated in or around Amritsar. During the pendency of the aforesaid petitions, State of Punjab framed policy guidelines and building norms for regularization of existing marriage palaces and setting up of new marriage palaces on 16.11.2011 (Annexure P-6), which were subsequently amended on 7.1.2013. On 25.5.2016 the petitioner preferred application (Annexure P-7) for regularization which has not been decided so far. Despite stay order in favour of the petitioner-resort passed in CWP-9496-2007, which is still subsisting, respondent No.2 issued notice dated 18.07.2016 regarding shutting down of the resort. Learned Senior counsel further states that by misconstruing the interim orders passed in COCP No.1933 of 2016, the petitioner-resort was illegally sealed on 27.03.2017 without following the due process of law. The representation

dated 28.03.2017, submitted to respondent No.2 was also not decided. After persistently knocking the doors of the respondent-authorities, it transpired that Government of Punjab eventually issued orders for regularization of the petitioner-resort on 28.03.2017. Upon deposit of regularization fees of more than Rupees sixty four lakh, regularization letter dated 02.02.2018 (Annexure P-11) was issued in favour of the petitioner. The matter does not end here. On 02.08.2018, another show-cause notice (Annexure P-12) was issued in an arbitrary manner for revoking the regularization of the petitioner-resort and the petitioner was directed to produce no objection certificate from the office of the Station Commander, failing which upon expiry of 15 days, final action for revocation was to be taken. The petitioner duly responded to the aforesaid show-cause notice and submitted its detailed reply dated 14.08.2018 (Annexure P-13). Thereafter, neither any further notice/order was served upon the petitioner, nor any coercive steps were taken against the petitioner. However, on 20.02.2019, there was an untoward incident whereby fire broke out at the petitioner resort despite best preventive and precautionary steps taken by the petitioner resulting in huge monetary loss to the petitioner-resort. The officials of respondent No.2 visited the resort on 22.02.2019 and without serving any show-cause notice, sealed the resort in a capricious and unreasonable manner.

Complete set of paper book was handed over to Mr. Sanjiv Soni, Advocate, learned counsel for respondent No.2, who was present in the Court, to have instructions in the matter vide order dated 25.03.2019.

Short affidavit in pursuance of order dated 25.3.2019 has been

filed on behalf of respondent No.2 in the Court today. The same is taken on record. Copy thereof has been supplied to the learned counsel for the petitioner.

Learned counsel for respondent No.2 submits that the Ministry of Defence issued new guidelines vide notification dated 21.10.2016 (Annexure R-2/1). Vide memo dated 27.06.2018 (Annexure R-2/2), the Station Commander clarified that the instructions are not applicable on Valla Ammunition Dump, Amritsar and no commercial activities can be carried out within 1000 yards from the crest. Immediately, respondent No.2 passed order dated 17.07.2018 (Annexure R-2/3) for revocation of the regularization of all the marriage palaces within 1000 yards of the crest. Thereafter, the Station Commander filed CWP-2199-2017 against the State of Punjab for getting 1000 yards land within radius of the dump free from illegal constructions having been raised by different individuals contrary to the provisions of notification dated 11.11.2004 (Annexure P-2). The State of Punjab filed a detailed reply (Annexure R-2/4) in that case.

Learned counsel for respondent No.2 further informs that on 20.02.2019, a fire broke out at the petitioner-resort and as per the report (Annexure R-2/5) of the Assistant Divisional Fire Officer, the fire was controlled by calling tenders from various authorities. Thereafter, respondent No.2 vide its order dated 21.02.2019 (Annexure R-2/6) ordered to seal all the marriage palaces including the petitioner-resort. In compliance of the order Annexure R-2/6, the petitioner-resort was rightly sealed.

Heard.

The Ministry of Defence issued new guidelines vide notification dated 21.10.2016 (Annexure R-2/1), relevant portion whereof reads thus:-

“a) Security restrictions in respect of Defence establishments/installations located at 193 stations as listed in Part A of Annexure to this circular shall apply to 10 meters from the outer wall of such Defence establishments/installations to maintain clear line of sight for effecting surveillance. Any construction or repair activity within such restricted zone of 10 meters will require prior No Objection Certificate (NoC) from the Local Military Authority (LMA) / Defence establishments.”

Perusal of the affidavit filed on behalf of respondent No.2 shows that respondent No.2 had been given an impression that due to notification dated 21.10.2016 (Annexure R-2/1), the petitioner-resort falls outside the restricted area of the dump and petitioner-resort was regularized vide memo dated 29.12.2017. Thereafter, the Station Commander vide memo dated 27.06.2018 (Annexure R-2/2) clarified that these instructions were not applicable on Valla Ammunition Dump and no commercial activity could be carried out within 1000 yards from the crest. It has been specifically mentioned in the impugned notice dated 2.2.2018 (Annexure P-12) that the petitioner was directed to submit NoC regarding the operation of marriage palace from the office of Station Commander within a period of fifteen days from the receipt of the notice, failing which the final action for

revocation of the order for regularization of marriage palace would be taken without any further correspondence. However, the petitioner failed to submit No Objection Certificate. The said notice Annexure P-12 cannot be said to be invalid or unjustified in view of the fact that Commissioner, Municipal Corporation, passed order dated 17.07.2018 (Annexure R-2/3) whereby, regularization granted to all the marriage palaces within 1000 yards of the crest of the dump was revoked and all the owners of such marriage palaces were requested to seek NoC from the Station Commander.

It is an admitted position that on 20.2.2018 major fire broke out at the petitioner resort and the fire was controlled, as is evident from report Annexure R-2/5. Thereafter, the Commissioner, Municipal Corporation, vide order dated 21.02.2019 (Annexure R-2/6) rightly ordered to seal all marriage palaces including that of the petitioner within the radius of 1000 yards from the crust of the Dump as immediate action of sealing the resort was warranted in view of the fire incident and it was necessary to investigation the cause of the fire. The Court feels that the restriction imposed by GOC as mentioned in order Annexure P-3 is of strategic and national importance to the Army and for the safety of the public at large. All the citizens are duty bound to abide by the restrictions, which are reasonable and rational. The Court is not oblivious of the fact that the demolition order dated 8.6.2007 (Annexure P-4) has already been stayed by this Court vide order dated 28.3.2008 (Annexure P-5) passed in CWP-9498-2007, which is still pending. The plea raised by the petitioner that the action of respondent No.2 to seal the premises without serving any show cause

notice, is not tenable in the light of the fact that show cause notice dated 2.8.2018 (Annexure P-12) had already been issued for revocation of the regularization of the petitioner resort.

In view of the above, the present petition being bereft of merit, is hereby dismissed.

11.4.2019
gsv

[**JITENDRA CHAUHAN**]
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No