

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP No.23922 of 2017

Smt. KashmiriPetitioner

Versus

State of Haryana and othersRespondents

2. CWP No.3317 of 2018

Ram Singh and othersPetitioners

Versus

State of Haryana and othersRespondents

3. CWP No.3318 of 2018

Babu Ram and othersPetitioners

Versus

State of Haryana and othersRespondents

4. CWP No.3319 of 2018

Rampal and othersPetitioners

Versus

State of Haryana and othersRespondents

5. CWP No.3320 of 2018

Sher Singh son of Jagmal and othersPetitioners

Versus

State of Haryana and othersRespondents

6. CWP No.3409 of 2018

Sher Singh son of Harbaksh and othersPetitioners

Versus

State of Haryana and othersRespondents

Date of Decision: 17.03.2020

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. N.D.Achint, Advocate,
for the petitioner(s).

Mr. Ankur Mittal, Additional Advocate General, Haryana,
for the respondents.

KARAMJIT SINGH, J.

This common order shall dispose of all the above captioned writ petitions, as in all these cases, the question which arises for consideration is same.

The brief facts of each case are as follows:-

CWP No.23922 of 2017

The petitioner purchased the land along with constructed house/shop in the area of village Ullawas, Tehsil Sohna, District Gurgaon for valuable consideration. Mutation of the said property was sanctioned in favour of the petitioner on 23.12.2014. Show cause notice (Annexure P-10) dated 19.12.2016 was issued to the husband of the petitioner, under Section 12 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter called, 'Act of 1963'), to remove the construction, which was already existing at the spot. On the basis of the said show cause notice, respondent No.3-District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning, Haryana, passed order (Annexure P-9) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-9) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-19) dated 15.09.2017. The petitioner has challenged show cause notice (Annexure P-10) dated 19.12.2016, order (Annexure P-9) dated

03.01.2017 and order (Annexure P-19) dated 15.09.2017, being illegal.

CWP No.3317 of 2018

The petitioners were owners of land bearing Khasra No.20//3/1(6-18) situated in village Ullawas, Tehsil Sohna, District Gurugram and they constructed houses and shops, in 1990. Show cause notice (Annexure P-4) dated 19.12.2016 was issued to petitioner No.1, under Section 12 of the Act of 1963, to stop the further construction of the alleged shops. On the basis of the said show cause notice, respondent No.3-District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning, Haryana, passed restoration/demolition order (Annexure P-5) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-5) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-14) dated 15.09.2017. The petitioners have challenged show cause notice (Annexure P-4) dated 19.12.2016, restoration/demolition order (Annexure P-5) dated 03.01.2017 and order (Annexure P-14) dated 15.09.2017, being illegal.

CWP No.3318 of 2018

The petitioners were owners of land bearing Khasra Nos.17//3/1(0-16), 4/2(5-2), 7/1/1(2-kanal), 9//6/2/2(3-19), 14/2(3-12), 15/1(5-4), 17//7/2/1(2-11), 8/2(1-16), 14/1/2(0-18) and 17//14/2/2(2-0) situated in village Ullawas, Tehsil Sohna, District Gurugram and they constructed houses and shops, in 1990. Show cause notice dated 03.01.2017 was issued to petitioner No.1, under Section 12 of the Act of 1963, to stop the further construction of the alleged shops. On the basis of the said show cause notice, respondent No.3-

District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning, Haryana, passed restoration/demolition order (Annexure P-3) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-3) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-8) dated 15.09.2017. The petitioners have challenged show cause notice dated 19.12.2016, restoration/demolition order (Annexure P-3) dated 03.01.2017 and order (Annexure P-8) dated 15.09.2017, being illegal.

CWP No.3319 of 2018

The petitioners were owners of land bearing Khasra No.20//23(3-18) and 22(4-0) situated in village Ullawas, Tehsil Sohna, District Gurugram and they constructed houses and shops, in 1990. Show cause notice (Annexure P-4) dated 19.12.2016 was issued to the petitioners, under Section 12 of the Act of 1963, to stop the further construction of the alleged shops. On the basis of the said show cause notice, respondent No.3-District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning, Haryana, passed restoration/demolition order (Annexure P-5) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-5) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-14) dated 15.09.2017. The petitioners have challenged show cause notice (Annexure P-4) dated 19.12.2016, restoration/demolition order (Annexure P-5) dated 03.01.2017 and order (Annexure P-14) dated 15.09.2017, being illegal.

CWP No.3320 of 2018

The petitioners were owners of land bearing Khasra No.21//3/1(6-18), 17//18, 23 and 24 situated in village Ullawas, Tehsil Sohna, District Gurugram and they constructed houses and shops, in 1990. Show cause notice (Annexure P-3) dated 19.12.2016 was issued, under Section 12 of the Act of 1963, to stop the further construction of the alleged shops. On the basis of the said show cause notice, respondent No.3-District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning, Haryana, passed restoration/demolition order (Annexure P-4) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-4) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-10) dated 15.09.2017. The petitioners have challenged show cause notice (Annexure P-3) dated 19.12.2016, restoration/demolition order (Annexure P-4) dated 03.01.2017 and order (Annexure P-10) dated 15.09.2017, being illegal.

CWP No.3409 of 2018

The petitioners were owners of land bearing Khasra Nos.17//3/1 (350 Sq. Yards), 8/2 (100 Sq. Yards), 14/2 (350 Sq. Yards) and 7/2 (350 Sq. Yards) situated in village Ullawas, Tehsil Sohna, District Gurugram and they constructed houses and shops, in 2000. Show cause notice (Annexure P-1) dated 19.12.2016 was issued to petitioner No.3, under Section 12 of the Act of 1963, to stop the further construction of the alleged shops. On the basis of the said show cause notice, respondent No.3-District Town Planner (Enforcement), Gurugram, exercising the power of Director, Town and Country Planning,

Haryana, passed restoration/demolition order (Annexure P-2) dated 03.01.2017, whereby direction was given to remove the aforesaid construction. The petitioner filed appeal against the order (Annexure P-2) before the Tribunal constituted under the Act of 1963 but the said appeal was also dismissed, vide impugned order (Annexure P-7) dated 15.09.2017. The petitioners have challenged show cause notice (Annexure P-1) dated 19.12.2016, restoration/demolition order (Annexure P-2) dated 03.01.2017 and order (Annexure P-7) dated 15.09.2017, being illegal.

In CWP No.23922 of 2017, joint written statement was filed by respondent Nos.1 to 4, in which, it was pleaded that the petitioner(s) raised construction in the controlled area, in violation of the provisions of Sections 6 and 7 of the Act of 1963. On the basis of the said illegal construction, show cause notice(s) dated 19.12.2016 was/were issued to the petitioner(s) and thereafter, the petitioner(s) was/were directed to remove the illegal construction, vide order dated 03.01.2017. The said order was challenged by the petitioner(s) before the Tribunal, which passed order dated 15.09.2017. It was pleaded that the said show cause notices, order of demolition and order passed by the Tribunal are legal and valid and prayed that the writ petition deserves to be dismissed. A copy of the said reply was also placed on record in the remaining five connected writ petitions. The petitioner(s) filed rejoinder to the said written statement, in CWP No.23922 of 2017.

We have heard learned counsel for the petitioner(s) and have gone through the record of the file.

Learned counsel for the petitioners contended that in CWP No.23922 of 2017, no such show cause notice was issued to the land owner,

namely, Smt. Kashmiri and rather, the alleged show cause notice was issued to her husband-Dharambir. All the proceedings subsequent to show cause notice dated 19.12.2016 with regard to the property of Smt. Kashmiri are illegal and liable to be set aside.

Learned counsel for the petitioners further argued that the impugned show cause notices issued to various land owners are illegal. The disputed construction regarding which the said show cause notices were issued, was very old. Impugned order dated 03.01.2017 was passed by the District Town Planner, while exercising the powers of the Director, Town and Country Planning, Haryana, without granting any opportunity of hearing. The petitioners challenged the same before the Tribunal constituted under the Act of 1963. However, the appeal filed by the petitioners was dismissed by the said Tribunal, without hearing them.

Learned counsel for the petitioners further contended that the notification regarding declaration of controlled area was not published in any newspaper. The plans showing the controlled area were never published. There were violations of Sections 4 and 5 of the Act of 1963. It is further contended that the petitioners also sought change of land user, regarding which, no decision was taken up by the competent authority.

On the other hand, learned counsel for the respondents submitted that the property in question comes under the controlled area, which has been properly notified in the official gazette, in compliance of the Sections 4 and 5 of the Act of 1963. It is further contended that change of land user is not permissible in controlled area. The petitioners raised construction in the controlled area in violation of the provisions of Sections 6 and 7 of the Act of

1963. Accordingly, show cause notices were issued to them, on 19.12.2016 to remove the illegal constructions raised by them in the controlled area and before doing so, they were asked to produce the relevant documents in support of their claim, before the competent authority. However, the petitioners failed to produce any such documents, on which, the District Town Planner, exercising the powers of the Director, Town and Country Planning, Haryana, passed order dated 03.01.2017, in accordance with law. The appeal filed by the petitioners against the said order was dismissed by the Tribunal, vide order dated 15.09.2017, after hearing the parties. It is further contended that the impugned orders are legal and valid. It is prayed that all the writ petitions deserve to be dismissed.

We have considered the submissions made by the learned counsel for the parties.

The Act of 1963 came into force on 30.11.1963. It was an Act to prevent haphazard and sub-standard development along scheduled roads and in controlled area in the State of Punjab. Subsequently, by the Haryana Adaptation of Laws Order 1968, the Act was adapted by the State of Haryana and extended to the whole of that State.

The respondents have specifically pleaded in their written statement that the complete revenue estate of village Ullawas was notified as Additional Controlled Area-III and IV around Gurgaon by the Government under Section 4(1) of the Act of 1963, vide notification dated 21.05.1981 and the copy of the said notification is Annexure R3/5. It has also been pleaded in the written statement that the said notification was duly published in 'The Tribune' dated 08.09.1981, 'Dainik Veer Arjun' New Delhi edition dated

10.09.1981 and Urdu newspaper dated 08.09.1981. The copies of the said publications are Annexure R3/6. The disputed construction was raised in village Ullawas, which was declared as controlled area, vide aforesaid notification dated 21.05.1981.

In CWP No.23922 of 2017, it has been pleaded that the petitioner purchased the site in dispute comprised of Khasra No.21//3/2/1, 8/2, 21//26 situated in village Ullawas, Tehsil Sohna, District Gurgaon, for valuable consideration and mutation in that regard was sanctioned in favour of the petitioner on 23.12.2014.

In CWP No.3317 of 2018, it has been pleaded that the petitioners raised disputed construction of their houses and shop in Khasra No.20//3/1(6-18) situated in village Ullawas, Tehsil Sohna, District Gurugram, in 1990.

In CWP No.3318 of 2018, it has been pleaded that the petitioners raised disputed construction of their houses and shop in Khasra Nos.17//3/1(0-16), 4/2(5-2), 7/1/1(2-kanal), 9//6/2/2(3-19), 14/2(3-12), 15/1(5-4), 17//7/2/1(2-11), 8/2(1-16), 14/1/2(0-18) and 17//14/2/2(2-0) situated in village Ullawas, Tehsil Sohna, District Gurugram, in 1990.

In CWP No.3319 of 2018, it has been pleaded that the petitioners raised disputed construction of their houses and shop in Khasra No.20//23(3-18) and 22(4-0) situated in village Ullawas, Tehsil Sohna, District Gurugram, in 1990.

In CWP No.3320 of 2018, it has been pleaded that the petitioners raised disputed construction of their houses and shop in Khasra No.21//3/1(6-18), 17//18, 23 and 24 situated in village Ullawas, Tehsil Sohna, District Gurugram, in 1990.

In CWP No.3409 of 2018, it has been pleaded that the petitioners raised disputed construction of their houses and shop in Khasra Nos.17//3/1 (350 Sq. Yards), 8/2 (100 Sq. Yards), 14/2 (350 Sq. Yards) and 7/2 (350 Sq. Yards) situated in village Ullawas, Tehsil Sohna, District Gurugram, in 2000.

As per the revenue record produced by the petitioners, the land in question was being used only for agricultural purposes at the time of issuance of notification dated 21.05.1981.

It is clear that the entire revenue estate of village Ullawas was declared as controlled area, vide notification dated 21.05.1981. It means that the aforesaid disputed constructions were raised by the petitioners in violation of the provisions of Sections 6 and 7 of the Act of 1963, without getting approved building plans and without seeking the permission of the competent authority to change the use of the land for the purposes other than those for which it was used on the date of publication of the aforesaid notification dated 21.05.1981.

It was contended in CWP No.23922 of 2017 that no proper notice was issued to the land owner calling upon him/her to demolish the construction allegedly raised by him/her unauthorizedly. As per the record, in that CWP, the notice was issued to Dharambir, husband of the land owner, namely, Smt. Kashmiri, both of whom were living together. We are of the view that the purpose of declaring an area, the controlled area, cannot be allowed to be defeated by recourse to such hyper technical pleas, especially by those who have violated the terms of the statute.

The aforesaid constructions, being raised in violation of the provisions of Sections 6 and 7 of the Act of 1963, deserve to be removed and

for that purpose, the competent authority issued impugned notices to the petitioners, to do the needful. However, the petitioners failed to produce the relevant documents. Thus, District Town Planner, exercising the powers of the Director, Town and Country Planning, Haryana, passed order(s) dated 03.01.2017 to restore the land in question to its original state. The appeal(s) filed by the petitioners against the said order(s) were dismissed on 15.09.2017 by the Tribunal constituted under the 1963 Act. We are of the view that no fault can be found with the impugned orders, which were passed as per law, by the concerned authorities, after affording opportunity of hearing to the parties.

Consequently, the writ petitions stand dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

17.03.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No