

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 456 of 2021

1. Vineet Agrawal, S/o. Shri Suresh Kumar Agrawal, Aged About 35 Years.
 2. Suresh Agrawal, S/o. Shri Moolchand Agrawal, Aged About 63 Years.
- Both R/o. Main Road, Bilha, District Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh, Through The Secretary, Ministry Of Town & Country Planning, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh.
2. Joint Director, Town & Country Planning, Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. B.P.Sharma with Mr. M.L.Saket & Raza Ali, Advocates
For State/Respondents	:	Mr. Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

03.02.2021

Heard

1. Learned counsel for the petitioner would submit that the petitioners were granted a LOI on 13.06.2019 to open a petrol outlet at village Parsada. The petitioners applied for necessary permission and all the other Departments of State have accorded permission, however, eventually the Joint Director by its letter dated 09.12.2020 has refused the permission in exercise of power under Section 30 (1)(c) of the C.G. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (*for short "the Adhiniyam, 1973"*). He would further submit that the nature of the permission sought for would be governed by the C.G. Bhumi Vikas Rules, 1984 (*for short "the Rules, 1984"*) which has been made in exercise of power conferred by Section 85 read with sub-section 3 of Section 24 & 31 of the Adhiniyam, 1973. He would submit as per Rule 29 & 30 of the Rules, 1984, in case of refusal, the authority shall as far as possible advise all the objections to the plans

and thereafter shall give the reasons and relevant provisions of the rules which the plans contravene. Rule 30 contemplates that owner to resubmit plan complying with objections, thereafter, it would be decided in accordance with law. Learned counsel further submits that the order impugned dated 09.12.2020 (Annexure P-5) did not complied with the provisions of Rule 29 of the Rules, 1984; therefore, the petitioners have filed an application to the Joint Director by Annexure P-7, which should be considered as compliance to Rule 29 and reconsideration would be required under Rule 30.

2. Per contra, learned counsel for the State/respondents would submit that the order has been passed under Section 30(1)(c) of the Adhiniyam, 1973 and as per Section 31 of the Adhiniyam, 1973 since refusal has already been passed, it would be appealable. Therefore, since the statutory alternate remedy is available to the petitioner, the petition is liable to be dismissed.
3. Heard learned counsel appearing for the parties and perused the documents.
4. Perusal of Annexure P-5 which is impugned herein has been passed in exercise of power under Section 30(1)(c) of the Adhiniyam, 1973. Rule 29 & 30 of the Rules, 1984 on which the petitioners placed their reliance is reproduced below :

“29. Reasons to be given when permission refused.

- In the case of refusal, the Authority shall give the reasons and relevant provisions of the rule which the plans contravene. The Authority shall as far as possible advise all the objections to the plans and specifications in the first instance itself and ensure that no new objections are raised when they are resubmitted after compliance of earlier objections.

30. Owner to resubmit plan complying with objections. - *Once the plan has been scrutinised and objections have been pointed out, the owner or person giving notice shall modify the plan to comply with the objections raised and resubmit it. The Authority shall scrutinise the re-submitted plan and if there be further objections, the plan shall be rejected.”*

5. The submission of the petitioners that Rule 29 & 30 have not been complied with in its spirit, at this stage, cannot be considered for the reason that Rule 29 of the Rules, 1984 is about the procedure which is to be followed. It speaks that in case of refusal, the authority shall give the reasons and relevant provisions of the rule which the plans contravene and thereafter shall advise all the objections to the plans and specifications in the first instance. Thereafter, Rule 30 is about the owner to resubmit plan complying with objections and after such compliance is made, the authority shall scrutinise the re-submitted plan and if there be further objections, the plan shall be rejected.
6. Annexure P-5 would show that the orders have been passed on the ground that the proposed petrol pump cannot be allowed as no approach road is available and another proposed Shop, Dhaba & Parking are proposed in the area. Since the refusal order has finally been passed in exercise of power under Section 30(1)(c) of the Adhiniyam, 1973, it would be appealable under Section 31 of the Adhiniyam 1973, which reads as under.

“31. Appeal – (1) Any applicant aggrieved by an order granting permission on condition or refusing permission under section 30 or amendment under section 30-A may, within thirty days of the date of communication of the order to him, prefer an appeal to such authority, in such manner and accompanied by such fees as may be prescribed.

(2) The appellate authority may after giving a reasonable opportunity to the appellant and the Director to be heard, by order, dismiss the appeal or allow the appeal by granting permission unconditionally or subject to the conditions as modified.

(3) Subject to the provisions of Section 32 the order of the appellate authority shall be final.”

7. In view of the clear mandate of Section 31 of the Adhiniyam, 1973 since refusal has already been made in exercise of power under Section 30(1) (c) of the Adhiniyam, 1973, the petitioner may avail the alternative remedy of appeal before the appropriate forum. The petitioner shall be at liberty to raise all the grounds in appeal before the appropriate forum, if so advised, within a period of 30 days and thereafter the appellate authority shall decide the same, as early as possible.

8. In view of the above, the petition stands disposed off.

Sd/-
(Goutam Bhaduri)
Judge

Aks