

CWP No.14352 of 2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14352 of 2021
Date of decision : 07.12.2021

Gram Panchayat Village New Rajguru Nagar

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. K.S. Chahal, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Ms. Swati Dayalan, Advocate
for respondents No.2 and 4.

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Mr. Rajesh Goel, Mr. Jatin Kumar and
Mr. Rahul Garg, Advocates for respondent No.5.

Mr. Sanjay Kaushal, Senior Advocate with
Ms. Shelly Arora, Advocate
for respondents No.6 to 10.

AUGUSTINE GEORGE MASIH, J.

Petitioner – Gram Panchayat Village New Rajguru Nagar has approached this Court by way of the present writ petition challenging the Change of Land Use (hereinafter referred to as 'CLU'), dated 12.02.2019 (Annexure P-5), issued by the District Town Planner, Ludhiana, in favour of respondents No.6 to 10, from whom Avenue Supermarts Ltd. - respondent No.5 has purchased the said land, on the basis of No Objection Certificate

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(hereinafter referred to as 'NOC'), dated 11.02.2019 (Annexure P-4) issued by the Chief Administrator, Greater Ludhiana Area Development Authority (for short 'GLADA') granting regularization of the plot in question as per the Regularization Policy of the Government of Punjab, dated 18.10.2018 (Annexure A-2) being in violation of the Master Plan of Ludhiana notified by the Government of Punjab on 12.09.2008 earmarking the said area for residential purpose, whereas the CLU referred to above has been granted to construct a building for commercial purpose.

2. Briefly the facts are that the Gram Panchayat Village New Rajguru Nagar Block Ludhiana-1, Tehsil and District Ludhiana, has come into existence vide notification dated 08.01.2019 which was carved out of the area of Gram Panchayat Tharike.

3. Respondents No.6 to 10 had purchased some land in village Tharike, Hadbast No.16, Tehsil West, District Ludhiana, through various sale deeds. After coming into existence of the Regularization Policy dated 18.10.2018 (Annexure A-2), these respondents applied for regularization of the plot and to get NOC vide application dated 11.02.2019. The said application was accepted and NOC dated 11.02.2019 (Annexure P-4) was issued to the said respondents. Then a CLU was sought and the same was granted on 12.02.2019 (Annexure P-5). On 13.04.2019, respondents No.6 to 10 submitted a site plan for construction of commercial building over the said land. The site plan was approved on 18.04.2019 (Annexure P-7) and a letter of the even date was issued by the Estate Officer (Regulation), GLADA, Ludhiana, permitting construction for the proposed house under the Punjab Town Planning and Development Authority Building Rules,

2013 as also under the notification dated 18.10.2018 (Annexure A-2).

4. This land of respondents No.6 to 10 was purchased by Avenue Supermarts Ltd. - respondent No.5 vide sale deed dated 03.05.2019 (Annexure P-8). In the sale deed, nature of the property was mentioned as 'commercial'. Respondent No.5, thereafter, proceeded to start construction over the land. An application dated 07.08.2019 (Annexure P-10) was addressed to the Block Development and Panchayat Officer, Agricultural University Premises, Ludhiana-1, seeking NOC for commencement of the construction. Objections were raised by the Gram Panchayat with regard to the construction being carried out on the pretext that suitable sewerage and drainage system be made available as there was a possibility of epidemic of disease and pollution to the environment of the village in the absence thereof. Nothing happened thereafter and respondent No.5 proceeded to construct commercial building in the residential area as per the Master Plan approved for Ludhiana. When nothing was being done by the authorities despite requests made by the petitioner – Gram Panchayat, it was forced to approach this Court by way of the present writ petition.

5. The ground taken for challenging the CLU dated 12.02.2019 (Annexure P-5) is that it has been issued on the basis of NOC dated 11.02.2019 (Annexure P-4) relying upon the Regularization Policy of the Government of Punjab, dated 18.10.2018 (Annexure A-2), under which the irregular colonies in certain conditions could be regularized but there is no provision therein for conversion of residential zone into commercial zone or for converting residential plot for use as a commercial plot. Support is being supposed to be taken from Clause 1.4 of the said Regulation to contend that

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no residential area in the Master Plan can be changed to commercial area. Another ground which has been taken is that the construction has commenced without taking NOC from the Punjab Pollution Control Board. Referring to the site plan which has been passed on 18.04.2019 (Annexure P-7), it is asserted that the said site plan has been approved for proposed house, although plan has been submitted for constructing a building for commercial purpose, this shows non-application of mind by the authorities as also the fact that there was no sanction for constructing a commercial building and thus, construction on the land in question by respondent No.5 as a commercial building is not sustainable.

Another plea taken is that the procedure as prescribed for grant of CLU has not been followed as the application was given on 11.02.2019 and on the very next day, the same has been allowed i.e. 12.02.2019. The Punjab Regional and Town Planning and Development Act, 1955 has been enacted for making provision for better planning and regulating the development and use of land which includes preparation of Regional Plan and Master Plan and the implementation thereof. The purpose was for effective and planned development of the areas, for which commercial and residential areas were earmarked in the Master Plan prepared for each city. Ludhiana also got its Master Plan and therefore, the same was required to be followed in letter and spirit and violation thereof would render the whole process and construction illegal and impermissible. It has been, thus, said that the CLU which has been issued to respondent No.5 is in contravention of Sections 65 and 77 of the 1995 Act. Carrying out of commercial activity in the residential zone being impermissible, the impugned CLU issued to

respondent No.5 deserves to be quashed especially when it cannot be said to be actually an issuance of CLU as the same has been issued on the basis of NOC dated 11.02.2019 (Annexure P-4) and therefore, deserves to be quashed.

6. Learned counsel for the petitioner has argued and made his submissions on the basis of these pleadings referring to the documents appended along with the writ petition referred to above.

7. The stand of respondents No.2 and 4 is essentially required to be gone into as these are the authorities who have issued CLU and NOC which are being challenged by the petitioner in the present writ petition. A perusal of the same would show that respondents 6 to 10 had applied online for regularization of the commercial plot measuring 3306 square yards in an unauthorized colony situated in the revenue estate of village Tharika, Ferzepur Road, District Ludhiana, on 11.02.2019 (Annexure A-1) under the Regularization Policy issued by the State of Punjab vide notification dated 18.10.2018 (Annexure A-2). The fee which has been deposited by respondents No.6 to 10 along with the application for regularization of the plot in question is for commercial category. The same was considered as per the provisions of the policy and on verification of the revenue record from the branch of GLADA and after obtaining the field report from the concerned Junior Engineer, regularization certificate was issued qua the plot vide letter dated 11.02.2019 (Annexure P-4) under para 17.3 of the Regularization Policy of the year 2018. The District Town Planner, Ludhiana, vide letter dated 12.02.2019 clarified with regard to the letter dated 11.02.2019 which was written by respondents No.6 to 10 in the light

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of the Regularization Policy of the year 2018 that NOC issued by GLADA shall be treated as CLU. It was asserted that the petitioner has itself admitted that respondents No.6 to 10 had applied for sanction of building plan vide letter dated 11.02.2019 mentioning therein as 'Commercial Mercantile Building'. After obtaining the report from the District Town Planner, Ludhiana, with regard to the applicability of Punjab Urban Planning and Development Building. Rules, 2018 for the purpose of building plans of plot in question, intimation was sent on 16.04.2019 that the building plan was for commercial pocket in accordance with the said rules regarding ground coverage, regarding FAR, parking and setback. The said letter has been appended as Annexure A-3. On the basis of this letter, the building plan was approved vide letter dated 18.04.2019 (Annexure P-7) but while issuing the said letter, an inadvertent typographical error crept in where instead of mentioning it as 'Proposed Commercial Building', it was wrongly typed as 'Proposed House'.

As regards the Master Plan of Ludhiana, which was notified by the Government of Punjab on 12.09.2008, it was mentioned that certain changes were made in the Master Plan of Ludhiana vide notification dated 25.08.2011. The said notification is appended as Annexure A-5 colly. Vide this notification 'Mixed Land Use' along with road network was incorporated by inclusion, wherein apart from other roads, Ludhiana – Ferozepur road was also included. For declaring the land as mixed land use, conditions were mentioned. Relevant for the purpose of the present case is condition (ii), which reads as follows:-

“The mixed land use along road fronts shall be

permissible maximum depth upto 500 ft. subject to the condition that the frontage of the plot/property to be considered for mixed land use must abut the main road.”

It is mentioned that the plot in question falls on Ludhiana – Ferozepur road and is within the permissible maximum depth limit i.e. upto 500 feet and also abutted the main road. On this basis, it has been said that the building plan approved by the office of the GLADA is in accordance with the guidelines of Master Plan of Ludhiana.

8. Respondent – State has also filed its separate reply on behalf of respondents No.1 and 3, where the stand taken by respondents 2 and 4 (GLADA) has been reiterated. Separate reply has also been filed by respondent No.5 which has also taken basically the same stand justifying the construction of the commercial building after obtaining requisite permissions/approval from the competent authorities.

Counsel for the respondents have pleaded and projected their contentions on the basis of the pleadings justifying the issuance of NOC dated 11.02.2019 (Annexure P-4) and CLU dated 12.02.2019 (Annexure P-5).

9. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings as well as the records of the case.

10. The basic issue which has been raised by the Gram Panchayat is that the issuance of CLU dated 12.02.2019 (Annexure P-5) and NOC dated 11.02.2019 (Annexure P-4) by GLADA authorities to respondents No.6 to 10, who had sold the said land to respondent No.5 is in violation of

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the Master Plan notified for Ludhiana to the extent that no commercial building or activity is permissible in an area earmarked for residential purpose. Any violation thereof would render the issuance of the CLU as also the NOC unsustainable and therefore, deserve to be quashed. The answer to the said question lies in the reply which has been filed by respondents No.2 and 4 (GLADA).

11. The factual aspect being not in dispute is not again repeated herein for the sake of brevity. The Master Plan of Ludhiana was notified by the Government of Punjab on 12.09.2008. Government of Punjab, Department of Town and Country Planning, Punjab, dated 25.08.2011, made certain changes/additions in the Master Plan of Ludhiana, which were necessitated in public interest. During implementation of Section 77 of the Punjab Regional and Town Planning and Development Amendment Act, 2006, Punjab Regional and Town Planning and Development Board, in its 15th meeting held on 06.08.2009, approved amended alignment of Missing Link-II to be incorporated in the Zonal Plan. In the said notification, Section-C dealt with Mixed Land Use Zone. It was mentioned therein that the need for creating mixed land use zones in Master Plan of Ludhiana was felt in the light of the fact that Ludhiana city, being an important economic centre of the State, had large number of areas characterized by a mix of different land uses. The strategy was to provide suitable framework for allowing mix use activities appropriate to the character of the area as per the notified schemes having greater flexibility in terms of permitting variety of uses, namely, commercial (shops, offices, banks etc.), house-hold and green category industries or outlets for specialized services etc.

Mixed Land Use Zones were provided primarily in two categories (a) Mixed land use along road network and (b) Mixed Land Use Pockets. In category (a), various major roads were identified for mixed land use in Master Plan which included Ludhiana – Ferozepur road. As per clause (ii) thereof, the mixed land use along road fronts was held to be permissible upto the maximum depth of 500 feet subject to the condition that the frontage of the plot/property to be considered for mixed land use must abut the main road.

12. In the affidavit dated 04.10.2021 filed by the Estate Officer (Regulatory) GLADA, Ludhiana, in para 9 thereof, it has been mentioned that the application and the building plan revealed that the plot in question falls on the Ludhiana – Ferozepur road and is within the permissible maximum depth limit i.e. upto 500 feet and is also abutted the main road. If that be so, it cannot be said that the building plan approved by the GLADA authorities is not in accordance with the guidelines of the Master Plan of Ludhiana. Strangely enough, petitioner has not disclosed the subsequent notification dated 25.08.2011 (Annexure A-5) issued by the Government of Punjab bringing about certain changes in the Master Plan of Ludhiana. With inclusion of the Mixed Land Use zones vide above referred to notification, the very argument and the plea of the petitioner – Gram Panchayat falls on the ground.

13. It would not be out of way of mention here that the Master Plan of Ludhiana issued vide notification dated 25.08.2011 (Annexure A-5) has not been challenged by the petitioner and therefore, no fault can be found therein.

14. The main argument of the petitioner – Gram Panchayat having failed, we move on to the aspect with regard to the approval of the said building plan, which was passed on 18.04.2019, wherein, what was allowed was for construction of the proposed house, whereas respondent No.5 has proceeded to build a commercial building. Reply to the same has come from respondents No.2 and 4, in para 6 thereof, where it has been mentioned and has also been admitted by the petitioner that respondents No.6 to 10 had applied for sanctioning of building plan mentioning therein as 'Commercial Mercantile Building'. District Town Planner, Ludhiana, vide letter dated 16.04.2019 (Annexure A-3) informed that the proposed building plan of commercial pocket being in accordance with the provisions of Punjab Urban Planning and Development Building. Rules, 2018, it was in pursuance thereto that the building plan was approved vide letter dated 18.04.2019 (Annexure P-7), where because of an inadvertent typographical error, it was mentioned as 'Proposed House', instead of 'Proposed Commercial Building'. despite the fact that respondents No.6 to 10 had deposited the fee for commercial category. It may also not be out of way to mention here that when these respondents had collectively applied for regularization of the commercial plots measuring 3306 square yards in an unauthorized colony situated in the revenue estate of village Tharika, Ferozepur Road, District Ludhiana, on 11.02.2019 (Annexure A-1) under the Regularization Policy issued by the State of Punjab vide notification dated 18.10.2018 (Annexure A-2), they had deposited 100% fee in the commercial category qua regularization of the plot. There is no rebuttal filed by the petitioner – Gram Panchayat.

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In view of the above, it is apparent that all through, not only respondents No.6 to 10 had intended and applied for a CLU and NOC treating the said land as commercial but had in fact applied for the said category. The typographical error as has been pointed out in the affidavit appears to be so and therefore, the plea of the petitioner relating to the violation of the approved site plan cannot be sustained.

15. In view of the above, we do not find any ground for interference in exercise of writ jurisdiction. The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

07.12.2021
Harish

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>