

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

224

CWP-18706-2021

Date of decision: 25.11.2021

GOPAL DASS ESTATES AND HOUSING PVT LTD

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present : Mr. Rajeev Anand, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional AG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Petitioner approached this Court by means of filing the instant writ petition, raising a challenge to the order dated 02.09.2021 (Annexure P-6) passed by the Director, Town and Country Planning, Haryana, revoking the occupation certificate of the commercial building block 'Gardenia (ARDEE Mall)' issued on 01.06.2020 (Annexure P-1), whereby directions had been issued for sealing the commercial building. Further prayer had been made for quashing of the notices dated 11.08.2021 (Annexure P-2) and 12.08.2021 (Annexure P-3).

Challenge to the action of the respondent authorities was raised

inter alia amongst reasons that the orders suffered from lack of jurisdiction; in violation of the statutory mandate and without any valid foundation for revocation of the occupation certificates.

The matter came up for preliminary hearing on 20.09.2021 before this Court, when the following order was passed:-

'Pleadings on record would indicate that an order dated 2.9.2021 had been issued by the Director, Town and Country Planning, Haryana withdrawing the Occupation Certificate pertaining to commercial building plot with basement in commercial sites admeasuring 5.10 Acres falling in residential plotted Colony namely ARDEE City in Sector 52, Gurugram.

In a previous round of litigation i.e. CWP-31663-2018 preferred by the petitioner, the writ petition had been disposed of in terms of order dated 3.9.2021, Annexure P-8 granting liberty to the petitioner to avail of the statutory remedy of appeal available under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975.

At the stage of disposal of the writ petition, it had been observed that the operation of the order dated 2.9.2021 with regard to withdrawal of the Occupation Certificate would be held in abeyance for a period of one week and thereafter would be subject to the orders to be passed by the appellate authority on the appeal/application seeking interim directions.

Apparently, petitioner-Firm has filed an appeal bearing No. 20 of 2021 before the appellate authority (Principal

Secretary, Department of Town and Country Planning, Haryana) and the same is pending adjudication on merits.

Instant writ petition has been filed raising a challenge to the show-cause notices as also the order dated 2.9.2021 by projecting a case that the statutory remedy of appeal would not be an efficacious remedy inasmuch as there is a clear bias against the petitioner and the matter is being proceeded further with a pre-determined mind.

In support of such contention, counsel has referred to the order dated 7.9.2021, Annexure P-13 whereby the application filed along with the statutory appeal seeking interim directions stands rejected. He submits that even though in the basic order under challenge dated 2.9.2021, there was no reference to the same yet the application for stay has been rejected by citing provisions under the Haryana Apartment Ownership Act, 1983.

During the course of hearing, Mr. Rajiv Anand, Advocate confines the scope of the instant writ petition only with regard to protection as regards implementation of the order dated 2.9.2021 during the pendency of the appeal. He submits that he would not be pressing the challenge raised in the instant petition to the show-cause notices as also the order dated 2.9.2021 and would rather press his appeal on merits that had already been filed.

Notice of motion on such limited aspect returnable for 25.11.2021.

Keeping in view the totality of circumstances and to ensure that the statutory remedy of appeal, availed of by the petitioner is not rendered nugatory, status-quo as it exists today is directed to be maintained during the pendency of the appeal before the first respondent.

Pendency of the instant petition would not be seen as an impediment for the appellate authority to proceed further with regard to adjudication of the statutory appeal filed under Section 19 of the 1975 Act on merits.'

Today on resumed hearing, learned counsel for the petitioner has submitted that he would be satisfied in the event the instant writ petition is disposed of in terms of the order dated 02.11.2021, passed by this Court in CWP No.19080 of 2021.

Mr. Ankur Mittal, learned Additional AG Haryana, while appearing for the respondents, has no objection to the instant writ petition being disposed of in terms of order dated 02.11.2021 passed in CWP No.19080 of 2021.

He further reiterates that the appeal in question is fixed for final hearing and that earnest efforts would be made for an expeditious disposal of the appeal. He has very fairly stated that in the eventuality of the final order to be passed by the appellant authority is against the petitioner, the same would not be given effect to for a period of 14 days so as to enable the petitioner to take legal recourse, if so advised, in terms of his statement in CWP No.19080 of 2021.

Since the matter is pending consideration before the Appellate

authority, we refrain from making any observations and examining the validity of the order dated 02.09.2021 (Annexure P-6) passed by the Director, Town and Country Planning, Haryana, revoking occupation certificate of the commercial building block. The matter ought to be dealt with by the appellate authority in the first instance.

Under such circumstances and without going into the merits of the case, writ petition is disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

25.11.2021

S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*