

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

Sr. No.118

**CWP-2281-2022 (O&M)
Date of decision : 30.03.2022**

M/s WWICS Estates Pvt. Ltd.

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Sunpreet Singh, Advocate and
Mr. K.S. Rupal, Advocate, for the petitioner.

Mr. V.M. Gupta, Addl. AG, Punjab.

Mr. S.K. Khunger, Advocate with
Mr. Ramneek Kaur, Advocate, for respondent No.4.

SUDHIR MITTAL, J. (Oral)

CM-4337-CWP-2022

This application has been filed for placing on record annexures
P-18 and P-19.

For the reasons stated therein, the application is allowed and
annexure aforementioned are taken on record.

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The grievance of the petitioner is that its construction has been
halted without assigning any reason and appeal has not been decided.

The petitioner is constructing a residential colony known as
'Hill View Estates' in an area which lies within one kilometer of the Sukhna
Lake Wildlife Sanctuary. It appears that construction has been halted on
account of Division Bench judgment dated 02.03.2020 passed in
CWP-18253-2009 and other connected cases titled as Court on its own

motion Vs. Chandigarh Administration and others. In the said judgment, it has been held that the commercial/residential/other structures constructed in the catchment area of the Sukhna Lake are illegal/unauthorized and they be demolished within a period of three months from the date of passing of the order. A direction has also been issued to the U.T. Chandigarh to declare Sukhna Lake as a wet-land under the Wet-Land Conservation Management Rules, 2017. A similar direction has also been issued to the States of Punjab and Haryana. Ministry of Environment Forest & Climate Change has been directed to notify at least one kilometer area from the boundary of the Sukhna Lake Wildlife Sanctuary as Eco-Sensitive Zone.

Learned senior counsel for the petitioner has argued that the directions given by the Division Bench do not restrain the appellate authority from exercising its jurisdiction and thus, a direction deserves to be issued to it to decide the appeal which has been disposed of without passing an order on merits.

Sh. V.M. Gupta, Addl. AG, Punjab, has submitted that one of the directions given by the Division Bench in the aforementioned case is that at least one kilometer area beyond the Sukhna Lake Wildlife Sanctuary be declared as Eco-Sensitive Zone. In an Eco-Sensitive Zone construction activities are prohibited. Review of the aforementioned judgment has been sought, but none of the directions regarding declaration of Eco-Sensitive Zone has been stayed. Thus, the appellate Court was justified in returning a finding that he could not decide the appeal as the colony of the petitioner lies within one kilometer of the Sukhna Lake Wildlife Sanctuary.

The case of the petitioner is that residential construction is not barred in an Eco-Sensitive Zone and that the Division Bench does not restrain decision of the appeal on merits.

A perusal of the order of the Division Bench (supra) supports the contention made by learned senior counsel for the petitioner. Directions have been issued, but there is no restraint upon appellate authority from exercising its jurisdiction. It can, thus, pass an order on merits keeping in view the decision of the Division Bench.

The impugned order dated 25.10.2021 (Annexure P-12) is, accordingly, set aside. The writ petition is allowed and the appellate authority is directed to decide the appeal in accordance with law and on merits by passing a speaking order within three months from the date of receipt of certified copy of this order.

(SUDHIR MITTAL)
JUDGE

30.03.2022
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No