

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

111

CWP No.13974 of 2022(O&M)

Date of Decision: 12.07.2022

M/s Revital Reality Pvt. Ltd.

.....Petitioner.

Versus

State of Haryana and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Abhinav Sood, Advocate and
Ms. Mahima Gill, Advocate and
Ms. Bhawna Chaudhary, Advocate
for the petitioner.

Mr. Ashish Chopra, Senior Advocate with
Mr. Kunal Dawar, Advocate
for respondents No.2 and 3.

Amol Rattan Singh, J.(Oral)

By this petition, the petitioner seeks issuance of a writ in the nature of certiorari, quashing an order dated 28.03.2022 (Annexure P-8), passed by the Director General, Town and Country Planning, Haryana (though not impleaded as a respondent in the petition with only the State of Haryana through its Principal Secretary, Town and Country Planning Department, so impleaded), as also an order dated 19.05.2022 (Annexure P-1), passed by the same Authority.

Vide the said orders, effectively the licence issued to the petitioner by the said department has been suspended and subsequently

transferred to respondent No.3, i.e. M/s Loon Land Developers Pvt. Land.

Mr. Bali, learned Senior Counsel appearing for the petitioner, at the outset submitted that though it is stated in the petition that there is no efficacious remedy available to the petitioner other than by way of the present petition, however, as a matter of fact, both the orders are appealable but with the principles of natural justice not having been complied with, in as much as the petitioner was not heard before passing of either order, the jurisdiction of this court is being invoked under Article 226 of the Constitution of India.

When this court observed that even so it would be a discretionary remedy and therefore as to why we should entertain the petition at the first instance rather than relegating the petitioner to its remedy of appeal/revision before the competent authority, he relies upon a judgment of the Supreme Court in *M/s Radha Krishan Industries Vs. State of Himachal Pradesh and others, Civil Appeal No 1155 of 2021 (Arising out of SLP(C) No 1688 of 2021), decided on 20.04.2021*, from which he points to the principles of law as have been laid down by the Supreme Court in the context of the aforesaid:-

“27. The principles of law which emerge are that :

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
- (ii) The High Court has the discretion not to entertain a

writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact,

the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

He therefore submits that as stated in clause (iii) of para 27 of the said judgment, where there has been a violation of the principles of natural justice and the order or proceedings are wholly without jurisdiction, it would be an exception to the rule of relegating a litigant to its alternate remedy, rather than a High Court exercising jurisdiction itself under Article 226 of the Constitution of India.

Having perused the initial part of the order dated 19.05.2022 (Annexure P-1), and seeing that Mr. Ashish Chopra, Senior Advocate, had appeared in that matter before the Director General, Town and Country Planning, Haryana, with Mr. Chopra sitting in court today, we had called upon him to inform this court, as an officer of the court, as to whether the petitioner was heard during the passing of that order.

Though he very fairly submitted that the petitioner or its counsel were not present on that day, however, he has submitted that the petitioner in fact had initially filed objections against transfer of the licence to respondent No.3 but had subsequently on 28.04.2022 withdrawn those objections and gave its consent for transfer of the licence to respondent

No.3 and therefore, the principles of natural justice actually would not stand violated; and consequently, this petition should not be entertained by this court.

Mr. Puneet Bali, learned Senior Counsel appearing for the petitioner, however, on the other hand points to a communication addressed by the petitioner to the Director General, Town and Country Planning, Haryana, on 28.04.2022 (though on the letter head of M/s Supertech), from which he points to the following part of the letter:-

“Besides the above violations made by M3M, the orders dated 28th March, 2022 issued by your good office have many deficiencies and not in accordance with the laid down policy dated 18.02.2015 bearing Memo No.PF-51A/2015/2708 (“Policy”) for allowing Change of Developers which were already brought to your kind notice vide our letter dated 11th April, 2022 vide which we filed our objections for Change of Developer and suspension of the Licence bearing No.19 of 2019. A copy of the letter containing the objections is enclosed herewith.

Despite all these happenings, we submitted a letter dated 20th April, 2022 (which was received at your office on 21st April, 2022) to your good office seeking withdrawal of our objections filed on 11th April, 2022 based on the assurances made by the Management of M3M Construction Private

Limited to resolve the issues amicably during the course of our internal discussions. But we regret to inform you that despite our best efforts, the Management of M3M Construction Private Limited has not shown its positive intentions to resolve the matter till date. A copy of our withdrawal of objections letter is enclosed herewith.

It has come to our knowledge that the department issued a letter bearing Memo no.LC-4210/JE(VA)/2022/11596 dated 27.04.2022 to M/s Loon Land Development Ltd. without addressing to us, who is the developer of the project. We strongly place on record our objections to this action of the department. A copy of the said letter is enclosed herewith.

In view of the above facts and submissions, we sincerely request your good self to suspend/hold the orders dated 28th March, 2022, till all the terms and conditions of the above said agreements and the policy guidelines are fully complied with.”

He submits that despite the said letter having been duly communicated to the Director General, Town and Country Planning, as would be seen from the stamp of that office at the opening page of the letter, which is also dated 28.04.2022, the impugned order has been passed without hearing the petitioner.

Mr. Bali has also referred to Section 21 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter to be

referred to as “the Act of 1975”), which reads as follows:-

“Review-- The Director may, either of his own motion or on an application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

Provided that-

- (a) when the Director proposes to review any order passed by the predecessor in office, he shall first obtain the sanction of the Government;
- (b) no application for review of an order shall be entertained unless it is made within a period of ninety days from the date of passing of the order, or unless the applicant satisfies the Director that he had sufficient cause for not making the application within that period;
- (c) no order shall be modified or reversed unless the parties concerned have been afforded a reasonable opportunity of being heard;
- (d) no order against which an appeal has been preferred shall be reviewed.”

He submits that thus, with the Director General, Town and Country Planning, Haryana, admitting in his communication (Annexure P-8), dated 28.03.2022, that he had reviewed the order dated 27.08.2020 and the petitioner was being directed to submit a registered collaboration

agreement executed between it and M/s Loon Land Developers Ltd. within 30 days, sanction of the Government before such review was necessary, which was not taken by the Director General; and further as per proviso (c) to Section 21 of the Act of 1975, even hearing all the parties concerned was necessary.

Learned Senior counsel appearing for respondent No.3 however submits that the order dated 28.03.2022 (copy Annexure P-8), has obviously been passed in exercise of Section 3 (3A) of the Act of 1975; and therefore, simply because the Director General, Town and Country Planning Department, has referred to it 'as a review' it does not actually amount to a review, with Section 3(3A) actually reading as follows:-

“3. Application for licence – xx xx xx

(3A) Where, by virtue of any section of this Act, power to grant any licence or issue any notification, order, rule or direction is conferred, then that power shall include power exercisable in like manner and subject to terms and conditions, as may be prescribed, to add to, amend, vary, suspend, withdraw or rescind such licence or such notification, order, rule or direction or to de-licence.”

Having heard learned counsel as above, in view of the judgment relied upon by the petitioner, even so without making any comments on the actual merits of the case, notice of motion is issued.

At the asking of the court, Mr. P.S. Chauhan, Senior Additional Advocate General, Haryana, accepts notice on behalf of respondent No.1.

Mr. Kunal Dawar, Advocate (instructing Mr. Ashish Chopra, Senior Advocate), accepts notice on behalf of respondents No.2 and 3.

It is also considered appropriate to implead the Director General, Town and Country Planning, Haryana, as respondent No.7 in the petition, with the Registry directed to carry out the necessary correction in the memo of parties, and with Mr. P.S. Chauhan also accepting notice at the asking of the court on behalf of the newly added respondent.

At this stage, Mr. Ashish Chopra, learned Senior Counsel appearing for respondents No.2 and 3 has sought a pass over in the matter to take instructions as to whether the matter can be disposed of today itself by this court so as not to linger the proceedings on any further, and consequently, it would be taken up in the post lunch session.

Adjourned to the post lunch session.

Post Lunch Session

Mr. Chopra now submits that he has instructions to the effect that in view of what has been observed by this court as regards the ratio of the judgment of the Supreme Court, the said respondents would not have any objections to the matter being remitted to the competent authority, i.e. the Director General, Town and Country Planning, Haryana, for passing a fresh order after duly hearing both the parties.

Mr. P.S. Chauhan, Senior Additional Advocate General, Haryana, appearing for the State, on telephonic instructions from the Director General, submits that the matter in fact may be disposed of as

above.

Consequently, the petition is allowed to the extent that the impugned orders are set aside with the matter remitted to the Director General, Town and Country Planning, Haryana, who would duly hear both the parties in detail and consider all objections as have been raised by the petitioner, which would be referred to in detail by him; and thereafter he would pass a fresh order as per law, within a period of three weeks from today.

Naturally, this court has not made any observation on the merits of the case, which would be gone into by the Director General, Town and Country Planning, Haryana.

It is to be specifically observed that though Mr. Kunal Dawar, Advocate, has accepted notice only on behalf of respondents No.2 and 3, Mr. Bali has submitted that the other non-official respondents are companies wholly “connected” with respondents No.2 and 3, and in any case the impugned orders immediately concern only the said respondents (No.2 and 3).

(AMOL RATTAN SINGH)
JUDGE

12.07.2022
D.Gulati

(LALIT BATRA)
JUDGE

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No