

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

Sr. No.110

**CWP-23860-2021 (O&M)  
Date of decision : 08.02.2022**

M/s WWICS Estates Private Limited

..... Petitioner

**VERSUS**

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Kanwaljit Singh, Sr. Advocate with  
Mr. A.S. Sandhu, Advocate, for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. Vikas Singh, Advocate, for respondent No.3.

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**SUDHIR MITTAL, J.**

The petitioner is the promoter of two separate residential colonies namely Dream Meadows-I and Dream Meadows-II. Both the colonies have been developed at Kurali, District S.A.S. Nagar. Dream Meadows-I has been established on land ad-measuring 17.04 acres, whereas, Dream Meadows-II has been constructed on 8.93 acres. Site plan depicting the two parcels of land and lay-out thereof is on record as Annexure P-11. It reflects that the two colonies are on either side of a nalla over which a bridge has been constructed for internal communication. There is also a considerable lateral separation between the said colonies.

It has been averred that the said colonies fell under the classification of 'unauthorized' colonies. The State of Punjab notified a policy of regularization of such unauthorized colonies vide notification dated 21.08.2013. Thus, the petitioner submitted two separate applications dated 31.12.2013 for regularization in accordance with terms of the said policy. Two separate regularization orders were passed. In respect of Dream Meadows-I, the order is dated 06.08.2014, whereas, that for Dream Meadows-II is dated 07.08.2014. Certificates of regularization of even date were accordingly issued and the petitioner was required to deposit a sum of Rs.76,15,507/- for Dream Meadows-I and Rs.39,81,570/- for Dream Meadows-II. The amounts were duly paid and the receipts are on record as Annexures P-4 and P-5. Thereafter, the Real Estate (Regulation & Development) Act, 2016 was enforced and both colonies have obtained approvals under the said Act vide certificates dated 09.04.2019 and 06.09.2019, respectively.

It is relevant to record that a subsequent regularization policy dated 18.10.2018 had also been notified, whereunder, those whose applications under any of the previous policies were pending or had been rejected could also apply. Amounts, if any, paid earlier were entitled to be adjusted against amount to be paid under this policy.

It appears that the case of the petitioner was re-opened after the Project Manager filed a complaint against the Executive Officer of Municipal Council, Kurali. The complaint was addressed to the Secretary, Local Government, Punjab and the Chief Vigilance Officer of the Department was nominated to conduct an enquiry. On the basis

thereof, the Chief Vigilance Officer initiated letter dated 05.04.2019 to the Deputy Director, Local Government, Patiala, stating that the two colonies aforementioned were actually a single colony. Thus considered, the area was in excess of twenty acres and for such colonies regularization charges were 5% of the Collector rate, whereas, the petitioner had been charged 2% of the Collector rate by treating them to be two separate colonies. The Deputy Director concerned initiated proceedings against the petitioner and after granting an opportunity of hearing to it, passed the impugned order dated 28.07.2020 cancelling the regularization certificates (Annexures P-6 & P-7). Statutory appeal filed by the petitioner has been dismissed vide order dated 25.10.2021.

Learned senior counsel for the petitioner has argued that the site plan (Annexure P-11) clearly shows that there is no contiguity between the two colonies. The bridge has been constructed only for the facility of the residents and merely on account thereof, it cannot be concluded that both colonies are contiguous. Further, the Deputy Director has passed the order in alleged exercise of powers conferred by the Punjab Laws (Special Provisions) Act, 2013. The said Act does not give the Deputy Director the power to review his own order and thus, the order is without jurisdiction. Moreover, the finding against the petitioner is that fee at the rate of 5% of Collector rate should have been charged as against 2% paid by him. Assuming, the said finding to be correct, at best, the petitioner could have been directed to pay the remaining amount. On this ground also, the order of the Deputy Director was liable to be set aside.

The appellate order is totally non-speaking. Issues raised in the grounds

of appeal have not been considered. During the pendency of the appeal, the petitioner was given an offer to consent to his case being considered under the policy of the year 2018. Consent was given and the same was only an alternative. The appellate authority has only considered the consent while deciding the appeal and the reasoning given that the extended date for applying under the said policy having expired, the statutory authority had no jurisdiction to consider the case of the petitioner under the policy of the year 2018, is patently erroneous as is evident from time-line of the case. The extended date for consideration of the applications for regularization under the policy of the year 2018 was 30.01.2020. The order of the Deputy Director cancelling the regularization certificates is dated 28.07.2020 i.e. after the extended date. Thus, the petitioner could possibly not have made an application within prescribed time-limit. Keeping this in view, the statutory authority could have taken permission from the Government for consideration of the case of the petitioner under the 2018 policy, but he failed to do so. For these reasons, the appellate order as well as the order of cancellation deserve to be set aside.

On behalf of the State of Punjab, it has only been submitted that the Department on its own cannot consider the case of the petitioner under the policy of the year 2018 as the last date for consideration of cases thereunder has already expired.

The petitioner has sought issuance of the writ in the nature of certiorari for quashing of the impugned orders. The same is one of the prerogative writs issued by the Crown for quashing orders passed by the

subordinate Tribunals and Courts. It is utilized for correcting errors of jurisdiction committed by the Courts or Tribunals to keep them within their bounds. Wherever, the Courts or Tribunals exceeded their jurisdiction or failed to exercise the same or exercised it illegally or improperly, the Crown interfered by such a writ. The jurisdiction exercised for this purpose was supervisory and not appellate and accordingly, the findings of fact could not be interfered with. The exception to this rule was where a finding of fact had been reached by taking into consideration inadmissible evidence, failing to take into consideration admissible evidence or the same being based on no evidence. Insufficiency of evidence was no ground to seek interference. The leading authority on the nature and scope of the writ of certiorari is Hari Vishnu Kamath Vs. Ahmad Ishaque, 1955 (1) SCR 1104 followed by Syed Yakoob Vs. K.S. Radhakrishnan and others AIR 1964 SC 477. Relevant observations of the Supreme Court in Syed Yakoob (supra) are reproduced below:-

‘The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under [Art. 226](#) has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is

opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under [Art. 226](#) to issue a writ of certiorari can be legitimately exercised (vide [Hari Vishnu Kamath Vs. Syed Ahmed Ishaque](#) 1955 (1) SCR 1104, [Nagendra Nath Bora Vs. The Commissioner of Hills Division](#) and [Appeals, Assam](#) 1958 SCR 1240 and [Kaushalya Devi Vs. Bachittar Singh](#) AIR 1960 SC 1168. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in

disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.'

The aforementioned principles have been reiterated by the Supreme Court in General Manager, Electrical Rengali Hydro Electric Project, Orissa and others Vs. Sri Giridhari Sahu and others, 2019 (10) SCC 695.

In the instant case, a perusal of the grounds of appeal clearly shows that grievance was raised against order dated 28.07.2020 passed by the Deputy Director that the same was without jurisdiction, the said official not having power to review his own order. Issues of illegality of cancellation of certificates of regularization as the petitioner could have

been asked to pay the excess amount and the complete unreasonableness and perversity of the finding of the two colonies being a single entity have also been raised. The appellate authority has failed to consider any of these issues. An appellate authority is required in law to re-consider and re-appreciate all the points and issues raised before the original authority and having not done so, it has failed to exercise the jurisdiction vested in it. Thus, writ in the nature of certiorari can be issued in the facts and circumstances of this case.

The writ petition is allowed and order dated 25.10.2021 (Annexure P-15) passed by the appellate authority is quashed. The matter is remitted to it for passing a fresh order in accordance with law and after granting an opportunity of hearing to the concerned parties. The parties are directed to appear before the appellate authority on 15.02.2022 at 10.00 a.m.

**(SUDHIR MITTAL)**  
**JUDGE**

**08.02.2022**  
Ramandeep Singh

Whether speaking / reasoned  
Whether Reportable

Yes / No  
Yes/ No