

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22058-2014

Date of decision:02.02.2023

VIVEK MALHOTRA AND ANOTHER

...Petitioners

Versus

DIRECTOR GENERAL TOWN AND COUNTRY PLANNING, HARYANA,
CHANDIGARH AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLR MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Rai Singh Chouhan, Advocate and
Ms. Deepika Chauhan, Advocate for
Mr. B.S. Bedi, Advocate for the petitioners.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J. (ORAL)

1. A perusal of Annexure P-1, and also perusal of Annexure P-1/A appended to the writ petition discloses, that on the land which became acquired by the petitioners from their vendor through a validly executed registered deed conveyance, M/s Hindustan Petroleum Corporation Limited, has issued a letter of intent in favour of the petitioners, to set a retail outlet, on such lands.

2. Moreover, though a perusal of the above annexures, also discloses that the concerned, made a letter to the District Collector, Karnal, Haryana, for a NOC being granted for establishing a retail outlet on the petition lands. However, since the department of Town & Country Planning, declined to issue the requisite CLU permission to the petitioners. Therefore, the petitioners are led to institute the instant writ petition before this Court against the above declining orders. The declining orders are embodied in Annexures P-4 to P-7. Therefore, the petitioners pray that the above declining orders be quashed, and, set aside.

3. The learned State counsel while referring to a decision drawn by this Court on CWP-6026-2001, has argued that the lands, as became purchased by the petitioners from their vendor was subjected to construction thereons of an Industrial Unit, and, since through para (i) as occurs in the verdict drawn by this Court, on the petition (supra), para whereof becomes extracted hereinafter.

“(i) The petitioner may file application before the competent authority for regularising the construction/setting up of the industrial unit and for grant of CLU. Such application shall be decided by the competent authority within next 6 weeks keeping in view the fact that the area in which the industry has been set up has been declared as industrial zone and CLU has been granted to other industrial units”.

4. The petitioners' vendors were directed, to move an application before the Competent Authority, for regularizing such construction, and, for grant of CLU. Therefore, the learned State counsel argues, that even the lands sold to the petitioners by their vendor become subjected to construction of an Industrial Unit. Consequently, he argues that unless the said construction raised by the vendor of the petitioners, upon, the petition lands, is dismantled or is demolished, thereupto there is no leverage bestowed in the petitioners, to claim that the CLU be granted in their favour.

4. The above controversy is amenable to be settled, only when there was cogent evidence existing on record, displaying that even on the land purchased by the petitioners, from their vendor, hence existing thereons an industrial unit, and, obviously until the said manufacturing unit, as occurring on the petitioners' land, became dismantled or demolished, at the instance of the petitioners, therefore, the petitioners being not entitled to claim that the CLU be issued in their favour.

5. However, on a thorough perusal of the documents, as placed before this Court, it is revealed that the above evidence is not existing on record. The petitioners have infact purchased a vacant plot and constructed a boundary wall. There is no industrial unit established by his vendor or by the petitioners. Therefore, their case could have been considered independently for the grant of CLU.

6. However, the learned State counsel submits, that the vendor of the petitioners has raised a boundary wall on the petition lands, therefore, when the said boundary wall is also covered within the definition of a “building”, as defined in Section 2(11) of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963, provisions whereof stands extracted hereinafter, and, whose perusal discloses, that even a “wall” is included in the definition of a “building”. Therefore, he argues that until the said wall as purportedly raised on the petition lands, and, purportedly at the instance of the vendor of the petitioners, is dismantled or removed, or becomes regularized thereupto the asked for CLU by the petitioner cannot be granted to him.

“2(11) “Building” means any shop, house, hut, outhouse, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood mud thatch, metal or any other material whatever, and includes “wall” and “a well”.

7. Conspicuously, hence it is required to be determined from the documents, as existing on record whether the said wall exists on the petition lands or not. The above controversy become settled, on a perusal of Annexure P-2, which is a communication which became addressed by the District Town

Planner, Karnal to the Director General, Town & Country Planning, Haryana. Since both the addressor, and, the addressee of the letter are government departments, under the Haryana Town & Country Planning Department, therefore, the echoings therein, are to be construed to be admissions of the Competent Authorities. Since a perusal thereof discloses, that speakings occur thereins, that the petition lands are vacant, therefore, obviously the said wall is to be construeable to be not raised on the petition lands. Therefore, the contention raised by the learned State counsel that the demolition of the boundary wall, has to occur, at the instance of the petitioners, is not a correctly made argument.

8. Since the learned counsel for the petitioners submits before this Court, that the petition lands are to be skirted by a boundary wall, as the raising of a boundary wall, is an imperative necessity, for the functionality of the petrol pump and construction of boundary wall, within the four corners of the area, purchased by the petitioners from their vendor, is not a legal impediment for the grant of CLU. Nonetheless, it is also further submitted before this Court, by the learned State counsel, that since “boundary wall” falls within the definition of a building, as carried in section (supra), therefore, the petitioners are to be directed to seek permission from the lawful Authorities, for regularizing boundary wall, within the four corners of the land purchased by them. The said permission be properly applied along with application of CLU. In view of the above observation, the impugned orders Annexures P-4 to P-7 dated 27.06.2013, 12.12.2013, 08.07.2014, and 27.10.2014 respectively are hereby set aside and permission is granted to the petitioner to approach the Competent Authority for grant of CLU of the petition land and for regularizing the existing boundary

wall. On such application being promptly moved before the competent authority, the same shall be decided afresh within three weeks hereinafter.

9. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

02.02.2023

(KULDEEP TIWARI)
JUDGE

Ithlesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No