

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

**CWP-21673-2018 (O&M)
DATE OF DECISION: 16.08.2023**

RICHMOND PARK OWNERS & RESIDENTS ASSOCIATION

.....PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Ms. Puja Chopra, Advocate,
for the petitioner.

Mr. Arun Beniwal, D.A.G., Haryana.

Mr. Ranvijay Singh, Advocate,
for respondent No. 6.

G.S.SANDHAWALIA, J. (ORAL)

1. The challenge in the present petition is to the appellate order dated 27.07.2018 (Annexure P-13), whereby respondent No. 1 (the Principal Secretary, Department of Town and Country Planning, Haryana) came to the conclusion that the dispute is of civil nature and pertains to the rights over the use of facilities and common areas and would not be covered in an appeal under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975 (for short 'the Act'). The appeal preferred by the appellant (writ petitioner) was dismissed relegating the parties to approach a Civil Court having jurisdiction.

2. While issuing notice of motion on 29.08.2018, a co-ordinate Bench had noticed that the matter should have been decided on merits. The

appellate proceedings had arisen out of the order, dated 29.05.2018 (Annexure P-8), passed by the District Town Planner Enforcement, Gurugram, wherein it was noticed that the show cause notice was issued on 28.04.2018 (Annexure P-6) under Section 10 (2) of the Act, alleging that the residents of the EWS/SP Block had been barred from using the common facilities, i.e. park, sports complex, club. etc. by constructing a wall between the main blocks and EWS blocks to seclude the residents of EWS blocks to use the common facilities in the Group Housing Society namely Richmond Park, Regent House & Regency Park-1, DLF-IV, Gurugram. The wall was stated to be in violation of Section 3-B of the Act, as it had been erected in violation of the approved layout plan and the same was liable for penal action under Section 10 (2) of the Act. Therefore, a show cause notice was issued to the petitioner as to why the unauthorized erection/installation of wall shall not be ordered to be removed and restore the land in accordance with the approved layout plan.

3. In the reply filed, various pleas were taken that the erection of blocks were on separate parcels of land and that the wall has been erected between the EWS Block & rest of the area of the said Group Housing Society to ensure the proper entry & exit of each block in order to maintain the optimum traffic management. It is also stated in the reply that no maintenance charges or any other additional charges have ever been recovered or imposed upon EWS or any other block of the society and the entire group housing under the Rich Reg Condominium Association had further been divided under four blocks, i.e. Richmond Park, Regency Park-1, Regent house and EWS & SP Units.

4. Vide the order dated 29.05.2018 (Annexure P-8) passed by the District Town Planner Enforcement Gurugram, the reply was found unsatisfactory, on the ground that no 'compound wall' of the alleged wall has ever been approved in the layout plan and as per the approved layout plan, the entry of EWS Block is separate which does not mean that an enclosure may be created for EWS block. It was further found that the purpose of erection/installation of the alleged wall would tantamount to the discrimination, seclusion and humiliation of the EWS families with the other residents of the said group housing colonies. The appeal, as such, as noticed has been dismissed by the Principal Secretary to the Government of Haryana Town & Country Planning Department, vide order dated 27.07.2018 (Annexure P-13), referring the matter to a Civil Court having jurisdiction.

5. Sections 15 and 19 of the Act are read as under:-

“15. No civil court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the rules made thereunder.”

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“19. Any person aggrieved by any order of the Director or any officer appointed by the Government, by notification in the Official Gazette, to exercise and perform all or any of the powers and functions of the Director may, within a period of thirty days of the date of communication of the order to him, prefer an appeal to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed : Provided that the appeal may be entertained after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the

appeal in time.”

6. In view of the above, we are of the considered opinion that it was for the appellate authority to go into the issue in detail rather than relegating the petitioner to avail the remedy before the Civil Court especially, keeping in view the fact that there is a bar as such under the Act itself, whereby it is provided that no civil court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the rules made thereunder. Once the Act itself provides that there would be a bar of the Civil Court, the appellate authority could not have relegated the dispute to the Civil Court under the statute of which he himself was a creature. The appeal under Section 19 itself says that a person aggrieved by any order of the Director or any officer appointed by the Government can file such an appeal.

7. In such circumstances, we are of the considered opinion that the appellate order suffers from the infirmity of lack of reasons and therefore, the judgment of the Hon'ble Supreme Court in **M/S Kranti Associate Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors** 2010 (4) RCR (Civil) 600 would come into play, that a quasi judicial order should contain reason. The relevant part of the judgment reads as under:-

“51. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful

to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

8. Resultantly, the writ petition is allowed and the appellate order dated 27.07.2018 (Annexure P-13) is set aside. The matter is remanded for fresh decision to the appellate authority on merits, which would consider all the aspects which are raised by the petitioner and after hearing all concerned, pass an appropriate order in accordance with law.

9. Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

August 16, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No