

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

(113)

**CWP- 16441-2023
Decided on : 17.08.2023**

Tarun Aggarwal and others

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

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

Present: Mr. Alok Mittal, Advocate for the petitioner (s).

Mr. Arun Beniwal, DAG, Haryana.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the various show cause notices issued on the ground of being illegal, arbitrary and discriminatory and directions are sought to de-seal the premises of the petitioners as the same had been done in derogation of the provisions of Section 10 of the Haryana Development & Regulation of Urban Areas Act, 1975.

2. On 03.08.2023 we had passed the following order:-

“Counsel points out that in pursuance of the show cause notice dated 14.09.2022 (Annexure P-13) was served under Section 10(2) of the Haryana Development and Regulations of Urban Areas Act, 1975 (for short, the ‘Act’) regarding the contravention of provisions of Section 3B of the Act which is qua the construction beyond permissible limits and internal change in the building in violation of the approved layout plan. Petitioners are alleged to have submitted their replies on 20.09.2022 (Annexure P-14 colly.)

It is submitted that the process of sealing is on without any specific order having been passed.

Mr.Aman Bahri, Addl.A.G., Haryana puts in appearance on having a advance copy and place on record order dated 21.04.2023 whereby the District Town Planner, Enforcement, Gurugram has passed the order to stop the violation under Section 10(2) of the Act by coming to the conclusion that no reply was filed and neither anybody appeared on the dates. Mr. Bahri, accordingly, prays for time to confirm whether any of the 43 persons against whom the order has been passed had filed reply, as now contended.

List on 17.08.2023.”

3. Counsel for the State on instructions from Shri Vijay Sehrawat, ADA, O/o Town and Country Planning, Gurugram has frankly conceded that the order dated 21.04.2023 whereby rights of as many as 43 occupants/owners had been adjudicated upon cannot held to be justified, as apparently in pursuance of the last order it is now conceded that objections had been filed by various sets of persons, which had not been taken into consideration.

4. We are also in agreement with the argument raised by the counsel for the petitioners that each and every violation for every building would have to be dealt with separately and a consolidated order as now placed on record would not suffice. The order which was passed on 21.04.2023 reads as under:-

“Whereas, a Show Cause Notice under Section 10 (2) of the Haryana Development and Regulations of Urban Areas Act, 1975 (Act No: 8 of 1975) was issued to you vide this office memo no. 10105-10112,139-156,163-169,171-180 dated 14.09.2022 and 10455-10465 dated 20.09.2022 for carrying commercial activities in licensed-colony namely 'DLF Phase-1, Gurugram in violation of the provisions of approved building plans as well as in contravention of the provisions of Section 3B of Act No. 8 of 1975.

Whereas, vide above referred Show Cause Notice dated 14.09.2022 and 20.09.2022, an opportunity of personal hearing was granted to you for appearing before the undersigned and submitting the written reply on or before 21.09.2022 and 28.09.2022. However, you neither appeared on the prescribed date nor submitted any written reply regarding the aforementioned violations, meaning thereby that you have nothing to say regarding the aforesaid violations and moreover the violations mentioned above has not been removed till date and has not been restored/brought in conformity with the sanctioned building plans, hence the aforesaid unauthorized construction mentioned above is continuing to be in violation of the Section 38 of the Act No. 8 of 1975 and the same is liable for legal action under Section 10 of the Act *ibid*.

Keeping in view the above, you are hereby ordered under Section 10 (2) of the Act No. 8 of 1975 to immediately stop the aforesaid violation and restore the building to its original approved use in conformity with the approved building plans as well as the provisions of the Act/Rules framed thereunder, within a period of next seven days, failing which, appropriate necessary legal action will be taken against you to give effect to this order, without giving any further notice and the cost of such measures will be recovered from you as cost of arrear of land revenue under Section 10 (3) of Act No. 8 of 1975.”

5. It is settled principle of law that the authorities have to give reasons and to deal with the objections which have been raised. The same would be subject to the each individual as violations and defence would be separate. Having not considered the same, a consolidated order dealing with the cases of 43 persons had been passed, which would come within the ambit of non-appreciation of facts and would amount to being labelled as a arbitrary order, since the reasons given also are not germane and are not as per the factual matrix which are now sought to be raised.

6. Accordingly, keeping in view the above though the said order is not appended with the writ petition and is not under challenge, it cannot be sustained, in view of the above discussion. The order suffers from vice of not giving the appropriate reasons and judgment passed in **M/s Kranti Associates Pvt. Ltd. and another Vs. Shri Masood Ahmed Khan & others’, 2010 (4) RCR (Civil) 600** is directly applicable in the facts and circumstances. Resultantly, we quash the said order with liberty to the respondents to proceed in accordance with law. We also give liberty to the petitioners/occupants/owners of the building in question to file replies to the show cause notices, in case not filed, within a period of two weeks from today i.e by 31.08.2023. The respondent-authority shall consider the reply and pass individual orders in each case.

7. The writ petition stands disposed of with the above directions.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

17.08.2023
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No