

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

112

2023:PHHC:109214-DB

CWP-18272-2023

Date of Decision: 22.08.2023

Jatin Bhagat

.....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. Shekhar Verma, Advocate,
for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

Mr. B.R. Mahajan, Sr. Advocate,
with Mr. Piyush Bansal, Advocate,
for respondent No.3.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge raised in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the show cause notice dated 27.02.2021 (Annexure P-2) issued by respondent No.2 and impugned order dated 25.07.2023 (Annexure P-7) and all subsequent proceedings arising therefrom.

2. A perusal of the show cause notice would go on to show that it was on account of the fact that the owner of the plot No.26, Ground Floor, Aakashneem Marg, DLF Phase-II, Gurugram had been put to notice regarding the internal change in the building and using the residential building for commercial use i.e. clinic (Arya Physiotherapy Clinic) in violation of Section 3B of the Act No. 8 of 1975 of Haryana Development and Regulation of Urban Areas Act, 1975 (in short '1975 Act'). The

consequential order as such is on account of the fact that the owner had not appeared on the prescribed date and nor submitted any reply and, therefore, directions have been issued to restore the building to the original use in conformity with the approved building plans within a period of 7 days, failing which, appropriate necessary legal action would be taken and the cost of such measures would be recovered from the petitioner as costs of arrear of land revenue.

3. Counsel for the petitioner has pointed out that earlier Dr. Arya Vir Arya had been granted permission for rendering a non-nuisance of Doctor Consultancy (Physiotherapy) Service in the said premises on 16.08.2018 (Annexure P-1) which was to the extent of 49.40 sq. mts. on the ground floor as shown in red colour and which was less than 25% or 50 sq. mts. of the covered area. The same was for a period of 5 years subject to payment of Rs.60,000/- as penalty and even the water, sewerage and electricity charges had to have commercial rates for the portion which was being used for non-residential use. It is the case of the petitioner that after the issuance of the show cause notice vide sale deed dated 02.09.2022 (Annexure P-3), he purchased the property from the said land owner to the extent of ground floor (1800 sq. ft.) with basement (1890 sq. ft.) having total super/covered area of 3690 sq. ft. and, thus, became owner of 1/3rd share of the said property. It is accordingly contended that even permission for rendering non-nuisance Property Consultancy in respect of the said plot was taken on 27.01.2023 (Annexure P-5) in the favour of M/s. Unique Associates and necessary permission was granted for 38.731 sq. mts. on the ground floor on conditions as noticed above regarding the original land owner. Thus, the area as such was also specified in red colour in the plan which was less than 25% or the 50

sq. mts. of the covered area.

It is accordingly submitted that the impugned order dated 25.07.2023 (Annexure P-7) does not take into consideration the fact that the owner of the property has changed hands after the issuance of the show cause notice dated 27.07.2023 and secondly necessary permission has already been granted on 27.01.2023.

4. Mr. Bahri, on instructions, has pointed out that the misuse is of a different area which is of the basement, permission of which had never been granted.

5. However, we are of the considered opinion that firstly, the show cause notice was issued to the erstwhile owner and, therefore, a separate notice has to go to the present petitioner specifying what is the misuse. It is open to the petitioner to file his detailed reply explaining the circumstances and keeping in view the said reply, it is open to the authorities to pass a fresh order after complying with the principles of natural justice. Accordingly, show cause notice dated 27.02.2021 (Annexure P-2) and the consequential order dated 25.07.2023 (Annexure P-7) are accordingly quashed being not sustainable. However, liberty is given to the respondents to issue fresh show cause notice to the petitioner in accordance with the provisions of the 1975 Act and proceed ahead.

6. Writ petition stands disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

22.08.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE