

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

(112)

Neutral Citation No.2023:PHHC:112500-DB

CWP-18172-2023

Decided on : 28.08.2023

RSA MOTORS PVT. LTD. AND OTHERS

.....Petitioner(s)

Versus

CHANDIGARH ADMINISTRATION AND OTHERS

.....Respondent(s)

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

Present:- Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate and
Mr. Gunjan Rishi, Advocate for the petitioner (s).

Mr. Anil Mehta, Senior Standing Counsel,
Mr. Aman Bahri, Standing Counsel
for the respondents U.T. Chandigarh.

G.S. Sandhawalia, J.(Oral)

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Application to place on record order dated 18.08.2023 passed by the Estate Officer as Annexure P-19, is allowed. Annexure P-19 is taken on record. Office to append the same at the appropriate place.

CM stands disposed of.

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In the present writ petition filed under Article 226/227 of the Constitution of India the petitioner challenges the multiple show cause notices dated 21.07.2023 (Annexure P-11), 28.07.2023 (Annexure P-15) and 10.08.2023 (Annexure P-17) on the ground that there is a abuse of the process of law and the same have been issued with a pre-determined mind in respect of the building of the petitioner for which the occupation certificate had been granted way back in the year 2016.

2. The building in question is stated to on Plot No.24, Industrial

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conversion fees of Rs.16 crores had been paid for change from industrial to commercial usage. The first show cause notice dated 21-07.2023 (Annexure P-11) has been issued by the Sub-Divisional Magistrate exercising the powers of Estate Officer, U.T. Chandigarh. The same was on account of the fact that there was alteration in the building without prior permission of the Chief Administrator and the planning of various floors had been partially changed and there had been excess coverage and various offices had been merged and there was total violation of area measuring 72328.52 square feet. The said notice was issued under Rule 14 and Rule 10 of the Chandigarh Estate Rules, 2007 (for short '2007 Rules') read with Section 8-A of the Capital of Punjab (Development Regulation) Act, 1952. The said notice apparently has been replied on 02.08.2023 (Annexure P-12 to P-14) which is still pending consideration, wherein various explanations have been given including the fact that there is no violation regarding certain floors.

3. Similar notice was issued by the same officer on 28.07.2023 (Annexure P-15) wherein additional objections regarding the basement level and vehicle parking was taken under the same rules. The reply of the same has been given on 08.08.2023 (Annexure P-16) wherein it was replied that the Basement Level-1 measuring 1260 square feet was being used for Service Station of Cars and within permissible limits and it does not constitute any misuse, since the service area is 80:20 which is permissible under Rule 10.A (xv) of the 2017 Rules. The consideration on that notice is also stated to be pending.

4. The third notice again from the Estate Officer, U.T. Chandigarh, though not from the SDM has been issued wherein a new cause of action is stated to have accrued to the authorities regarding

environmental clearance on account of the project being greater than 20000 square meter for which counsel has pointed out that there was a environmental clearance which had been given on 23.01.2015 (Annexure P-5) though with the condition that the same was to be valid for a period of 5 years from the date of issuance till the completion of the construction of project, whichever is earlier. It is also pointed out that a criminal complaint had also been filed by the authorities on that issue and further proceedings had been stayed in **CRM-M-18420-2015 ‘M/s Berkeley Realtech Limited and others Vs. Chandigarh Pollution Control Committee’**.

5. The said show cause notice further mentions that the said environmental clearance was not submitted along with application seeking sanction of building plans and was submitted alongwith application of occupation certification and stated to be invalid for non-compliance of conditions. There are further allegations that the permission from National Wildlife Board has not been submitted, even after the more than 7 years. It has also been brought to our notice that an occupation certificate has also been granted on 29.04.2016 (Annexure P-6) and the last show cause notice, thus, seeks withdrawal of said occupation certificate on the ground that there was a misrepresentation and misuse of site for industrial activity though the building plan which was sanctioned way-back on 09.11.2010 (Annexure P-4).

6. Though no reply has been filed to the said show cause notice dated 10.08.2023, but an application has been filed by the petitioners dated 18.08.2023 (Annexure P-19) whereby they have asked for supply of entire record including inspection reports, notings and other relevant record on

the basis of which the show cause notice dated 10.08.2023 has been issued.

7. Admittedly an order was also passed by the Estate Officer on 18.08.2023 (Annexure P-19) whereby the concerned department was directed to provide copy of the relevant documents to the petitioner by 19.08.2023 and he adjourned the case for 24.08.2023. Mr. Mittal has submitted that the show cause notice is based on the report dated 17.05.2014 of the Chandigarh Housing Board which was not made available and it was on the basis of the said report the area has been constructed and if the area is less than 20000 square meter then the environmental clearance is not necessary. It is now pointed out that the case has been fixed for today before the authority. Thus, apprehensions are raised by the Senior Counsel that the respondents are going ahead at a break-neck speed and apprehension is that they would seal the premises by passing a final order.

8. We are of the considered opinion that since only the show cause notices have been issued, it would be appropriate to have an order from the authorities on the basis of the replies filed, so that the issue is clarified. A reasoned order would come forth as the facts are still hazy and, therefore, in our considered opinion the petition is premature at this stage. However, since the record has not been made available, we direct that the respondents firstly to provide the report dated 17.05.2014 to the petitioners before they proceed further, as it is the basis of the show cause notices and the proceedings can then only be finalized as such as it goes to the root of the matter. After the needful has been done, the competent authority shall pass a reasoned order, after complying the principles of natural justice.

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9. Mr. Anil Mehta has opposed the said prayer.
10. Mr. Mittal has further apprehension that since the matter has been proceeded with the lot of alacrity, there should be protection as the occupation certificate can be revoked and putting a large number of occupants at a lot of inconvenience. We have already noted the area which has been constructed and the fact that the occupation certificate was granted way-back on 29.04.2016 and a period of more than 7 years has gone by. If any activity has been carried out against the rules, it has been right under the nose of the respondent-Estate Office and, therefore, we are of the considered opinion that keeping in view the peculiar facts and circumstances and keeping in view the speed in which the respondents are proceeding and prosecuting the litigation by even filing caveat application, interim protection will continue for a period 10 days even after the final order is passed, so that the petitioner can challenge the same in accordance with law.
11. Keeping in view the fact that two show cause notices have been issued by the same officer and even the third show cause notice has been issued by the Estate Officer, it would be appropriate if one competent authority decides the issue comprehensively, so that there is no multiplicity of litigation.
12. The writ petition stands disposed of with the aforesaid observations.

(G.S. SANDHAWALIA)
JUDGE

28.08.2023
Naveen

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No