

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

(122) CWP-18037-2023

Saloni Kaicker

2023:PHHC:108153-DB

Date of Decision: 21.08.2023

--Petitioner

Versus

State of Haryana & others

--Respondents

(123) CWP-18053-2023

Smt. Rati Monga & another

--Petitioners

Versus

State of Haryana & others

--Respondents

(125) CWP-18132-2023

Mohini Kakkar through her GPA

Smt. Prabhjot Randhawa @ Prabhjot Kaur

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.

HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN.

Present:- Mr. Shekhar Verma, Advocate for petitioners.

Mr. B.R. Mahajan, Advocate General, Haryana with
Mr. Arun Beniwal, DAG, Haryana and
Mr. Piyush Bansal, Advocate and Mr. Padamkant
Dwivedi, Advocate.

G.S. SANDHAWALIA.J (Oral)

1. This order shall dispose of the aforementioned three writ petitions. For the sake of brevity, facts have been taken from CWP-18037-2023.

2. The relief claimed in the present petitions filed under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of Certiorari for quashing the impugned show cause notice dated 26.7.2023 (Annexure P-7) issued by respondent no.2 and all the subsequent proceedings arising therefrom. The directions are also sought by way of a Mandamus to pass an order on the reply dated 2.8.2023 submitted to the

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said show cause notice by considering the activity of Paying Guest facility from residential areas which is stated to be permissible in law by withdrawing the show cause notice.

3. A perusal of the paper book would go to show that the show cause notice was issued on the ground that Plot No. MR-11, DLF Phase-I, Gurugram has been converted from residential to commercial use. The allegations were that the property being part of a residential licensed plotted colony namely DLF Phase-I, Gurugram and the license having been granted under Section 3 of Haryana Development and Regulation of Urban Areas Act, 1975 (for short the Act) the violation has been made without any prior permission from the competent authority. Accordingly contravention of Section 3B of the Act was alleged which is apparently admitted to the extent that since the claim in the writ petition is also that it is a permissible usage as it is being used for the Paying Guest facility. Apparently, the petitioners filed a reply dated 2.8.2023 wherein the only issue raised as such mainly was the question of jurisdiction and the fact that Municipal Corporation, Gurugram would have the jurisdiction since the house tax was being paid for the property in question by treating it as a commercial property. It is further averred that no inspection has been done and a request was made to withdraw the show cause notice.

4. Mr. B.R. Mahajan, learned Advocate General, Haryana has put in appearance on behalf of the respondents and submitted that the order dated 9.8.2023 has been passed. Copy of the said order has been placed on record. The said order 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

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memo not 12524 dated 26.07.2023 for running, commercial activity at plot no MR-11, 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 26.07.2023, an opportunity of personal hearing was granted to you for appearing before the undersigned and submitting the written reply on or before 03.08.2023. You have submitted a written reply in this office which was found unsatisfactory. Therefore it can be presumed that the aforesaid violations are made intentionally in violation of the provision of the Act No. 8 of 1975 and hence is liable for 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 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. A perusal of the above order would show that apart from the fact that the written replies were found unsatisfactory and a presumption was drawn that the violations were intentional, the directions were issued that within a period of next seven days, the building be restored to its original approved building plan, failing which action would be taken to give effect to the order without giving any further notice and the cost of such measures will be recovered under Section 10(3) of the Act. We are further informed that in pursuance to the said order sealing in the case of Plot No.

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MR-11 has been done. We are of the considered opinion that the order in principle can be termed as a non-speaking order and does not contain any reason and suffers from said infirmity as it does not deal with the objection raised in the reply and as such would come under the ambit and the observations made by the Apex Court in ***M/s Kranti Associates Pvt. Ltd. and another Vs. Shri Masood Ahmed Khan & others, 2010(4) RCR (Civil) 600***. The same reads as under:-

“51.....

- 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.*

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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".

6. Learned State counsel also submits that in similar circumstances, this Court in **CWP-16441-2023 titled as Tarun Aggarwal and others Vs. State of Haryana & others** and others decided on 17.8.2023

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has set aside a joint order passed wherein as many as 43 persons' interests have been dealt with without dealing with each individual case. We are of the considered opinion that respondents are acting in haste as such and not applying their mind as is expected from a quasi judicial authority as civil interests of the petitioners are involved. Resultantly, all the orders though not appended or challenged but since the petitioners have got the copies of the same, we accordingly quash the same in view of the above discussion. We further direct that it is open to the petitioners who have been served the show cause notices under Section 10(2) to file the detailed replies within a period of 10 days from today to the concerned authorities pointing out the legal rights if any which they have to continue using the premises for purpose other than for which the licence was given and under the policy or regulation if any. On the receipt of the said notices the respondents shall take up each case individually and pass separate orders taking into consideration the facts and circumstances of each case.

7. In view of the above, the de-sealing of Plot No. MR-11, DLF, Phase-I, Gurugram shall take place forthwith. We have further made it clear that we are not deciding the issue on merits and only because of lack of application of mind, we are forced to intervene.

8. The petitions are disposed of in the above terms.

(G.S. SANDHAWALIA)
JUDGE

21.08.2023
lucky

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No