

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

(110)

**2023:PHHC:110086-DB
CWP-18415-2023
Date of Decision: 23.08.2023**

Rajit Kaicker & another

--Petitioners

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 for respondents.

G.S. SANDHAWALIA.J (Oral)

1. The relief claimed in the present petition 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-5) 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 (Annexure P-6) submitted to the 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.

2. Mr. Verma has placed on record the order dated 9.8.2023 which has now been passed in respect of Plot No.A-43/3, DLF, Phase-1, Gurugram, wherein the reply filed by the owner was examined and found unsatisfactory. Accordingly the owner was directed to immediately restore the building to its original approved use in conformity with the approved building plan.

3. We have already dealt with the similar matters while dealing with CWP-18037-2023 and other connected petitions decided on 21.8.2023 and the manner in which the adjudication should be done. We have already come to the conclusion that the orders passed by the competent authority are arbitrary. The relevant portion of the order reads as under:-

*“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 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.”

4. Accordingly, for the reasons contained in CWP-18037-2023 and other connected petitions, the order dated 9.8.2023, is quashed. It is open to the petitioners to file a detailed reply to the show cause notice stressing upon the fact that under which provision the commercial activity is permissible. The respondent authority will then consider all the aspects including the issue of jurisdiction which has already been raised and pass a reasoned order. The necessary exercise be completed by petitioners within a period of two weeks from today and it would be open for the respondents to pass a speaking order thereafter expeditiously in accordance with law, after complying with the principles of natural justice.

5. Petition is disposed of in the above terms.

(G.S. SANDHAWALIA)
JUDGE

23.08.2023
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(HARPREET KAUR JEEWAN)
JUDGE

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