



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

**CWP-22100-2024
Date of Decision: 27.09.2024**

Arvind Kumar and Another

....Petitioners

Versus

Haryana Shehri Vikas Pradhikaran and Others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Ms. Amrita Nagpal, Advocate,
for the petitioners.

Mr. Deepak Sabherwal, Advocate, with
Estate Officer, HSVP, Panipat (present in person).

VIKRAM AGGARWAL, J.

1. The petitioners assail the order dated 15.05.2024 vide which the representation filed by the petitioners seeking allotment of incidental open space adjoining their plots in Sector-24, Panipat was rejected.

2. The petitioners are owners of plots No.1060 and 1043-P in Sector-24, Panipat. Both plots are corner plots having a common rear wall. The petitioners had constructed a house on plot No.1060 and are living therein. A triangular shaped incidental open space adjoins these corner plots which, as per the petitioners is lying unutilized for the last many years. It is the case of the petitioners that though this site had been ear-marked for setting up of a nursing home but the same had not been allotted or utilized on account of its improper shape and size.

3. It is the case of the petitioners that the said open space has become a nuisance for the petitioners as residents of the area have started throwing garbage etc. in the said plot. In the rainy season, on account of it being low lying, water accumulates in the said open space whereby threat of deadly diseases starts



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looming on the residents. This open space is also used for parking by vehicles of a factory which is on the other side of this open space.

4. The petitioners were interested in maintaining this open space and, therefore, in terms of the policy dated 14.12.2019 (Annexure P-4), the petitioners moved a representation dated 03.10.2023 (Annexure P-5) for allotment of the said space. When no response was received, another representation dated 17.10.2023 (Annexure P-6) was filed. This was followed by a legal notice dated 29.11.2023 (Annexure P-7).

5. For the representations and legal notice did not evoke any response, the petitioners filed **CWP No.786 of 2024** titled as '**Arvind Kumar and Another Vs. Haryana Shehri Vikas Pradhikaran and Others**' which was disposed of on 15.01.2024 (Annexure P-9) with a direction to the respondents to pass appropriate orders on the representations/legal notice within three months.

6. On account of non-compliance of the order dated 15.01.2024, **COCP No.2330 of 2024** was also filed and the same is stated to be pending. In the meantime, it is the case of the petitioners that certain unauthorized persons had encroaching upon the said open space and some kiosks had also come up.

7. Ultimately, the impugned order dated 15.05.2024 (Annexure P-15) was passed vide which the request of the petitioners to allot the incidental open space to them was rejected, leading to the filing of the instant writ petition.

8. On 04.09.2024, the following order was passed:-

“Contents that in terms of the policy dated 14.02.2019 (P-4), the petitioners had moved the respondent authorities for allotment of an incidental open space that abuts their house. However, vide impugned order dated 15.05.2024 (P-15), passed by respondent No.3, their claim has since been rejected on the ground: as per demarcation plan drawing No.363/2008 dated 22.07.2008/25.06.2009, as also the report sought from the Survey Branch and Junior Engineer of Estate



Officer, HSVP, Panipat, the subject strip of land is reserved for a nursing home. It is urged that a bare analysis of the photographs appended as Annexure P-8, reveals that the said strip of land cannot be utilised for any such purpose. And, rather, being an open vacant space, a part thereof has already been encroached, whereas, the rest is being used to dump waste.

Served with the advance copy of the petition, Mr. Deepak Sabherwal, Advocate, for the respondent-HSVP, is present in Court. At the outset, he prays for a short accommodation to seek instructions as also to furnish a specific affidavit, as to how the subject site could, at all, be utilised for a nursing home, along with the necessary documents, vide which, it was, indeed, reserved for any such purpose.

Adjourned to 26.09.2024.”

9. Today, affidavit of the Estate Officer, HSVP, Panipat has been filed in Court. As per the said affidavit, the incidental open space is ear-marked for a nursing home site and as per the revised layout-cum-demarcation plan drawing, the total area of the site for the nursing home is 492.20 square meters and the site fulfils the planning parameters. It is also the stand of the respondents that the site in question in fact does not fall under the incidental open space and, therefore, the policy dated 14.02.2019 is not applicable. As regards the issue as to whether the site can be utilized for a nursing home or not, the planning wing of HSVP had opined that the same can be utilized for a nursing home from planning point of view. With regard to the encroachment, it has been averred that a notice under Section 18(1)(b) of the Haryana Shehri Vikas Pradhikaran Act, 1977 (for short ‘the 1977 Act’) has been issued against unknown persons for raising unauthorized construction in the form of a wall and running a nursery and that the encroachment would be cleared before 30.10.2024.

10. Learned counsel for the petitioners submit that the site in question is not fit for being used for a nursing home on account of its irregular shape and size.



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Reference has been made to the photographs (Annexures P-8 and P-13). It has been submitted that under the circumstances, the said space should be allotted to the petitioners.

11. Per contra, Mr. Deepak Sabherwal, learned counsel representing HSVP submits that the claim of the petitioners deserves to be rejected in view of the specific stand set out in the affidavit.

12. Having examined the contentions of the contesting parties, this Court finds the claim of the petitioners to be devoid of merit. First of all, as per the stand of the HSVP, the site in question is not an incidental open space and, therefore, in the first place, it cannot be considered for allotment under the policy dated 14.02.2019. Further, it is ear-marked for a nursing home. The planning department of HSVP has opined that it can very well be utilized for a nursing home which is evident from the averments made in paragraph 6 of the affidavit:-

“6. That the case was referred to HSVP, HQ for seeking comments whether the site in question can be used/utilized nursing home or not.

***‘The Planning Wing of HSVP, HQ gave following comments: -
"It is submitted that the claim of the petitioner is not covered under policy dated 14.12.2019/29.10.2021 (F/A) as the site in question is not incidental open space, the same is reserved for Nursing Home. The approved part revised Layout-cum-Demarcation plan bearing drawing no. DTP(PN) 363/2008 dated 22.07.2008/25.06.2009 is placed at F/B. A copy of approved revised Layout-cum- Demarcation plan of Sector-24(part-II) is placed at F/C. As per telephonic enquiry from O/o EO, HSVP, Panipat, the site is unsold and the encroachment can be removed. However, the same may be got verified.***

As regards its utilization, the area of the site is 492.20 sq. mts, whereon maximum 50% ground coverage is permissible (246.10 sq. mts) with FAR 150%. As per the tentative sketch of zoning plan placed at F/X, 282.50 sq. mtrs (57.30%) Zoned area is available, hence, can be utilized for Nursing Home from planning point of view.’

Copy of proposed Zoning Plan of Nursing Home site Sector 24 (Part - II), Panipat is attached as Annexure - R 2 and copy of approved part revised



Layout-cum-Demarcation plan bearing drawing no. DTP(PN)363/2008 dated 22.07.2008/25.06.2009 is attached as Annexure R-3.

13. As regards the encroachments, it has specifically been stated that the encroachments shall be removed in accordance with law by 30.10.2024. Under the circumstances, the claim of the petitioners must fall to the ground. Once the site in question is ear-marked for a nursing home and the same can be utilized for the same, there is no question of the petitioners making any request for its allotment to the petitioners and moreso, when it is not an incidental open space. Even *qua* an incidental open space, the petitioners may not have any right and can at best, even in such a case, could have made a request for its allotment. In view of the specific stand taken by the respondents in their affidavit, the petitioners are left with no right whatsoever including even the right to file an application for allotment of the site concerned.

In view of the aforementioned facts and circumstances, we do not find any merit in the present writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

27.09.2024
Prince Chawla

Whether speaking/reasoned :	Yes/No.
Whether reportable :	Yes/No.