



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

102

CWP-16928-2018 (O&M)**Date of Decision: 02.04.2025**

Suruchi

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Vivek K. Thakur, Advocate, for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

Mr. Tarun Vir Singh Lehal, Advocate, for respondent Nos.3&4.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, a challenge is made to the passing of Annexure P-14. Moreover, a prayer is made for the quashing and setting aside of Annexure P-14, besides a further prayer is also made for the quashing and setting aside of Annexure P-15. The instant writ petition is the second writ petition, which has been instituted by the petitioner with respect to the disputed plot.

2. The petitioner earlier instituted a writ petition bearing No. CWP-901-2016. In the said writ petition, a prayer was made for the quashing and setting aside of the order dated 29.12.2015 (Annexure P-9), as became passed by respondent No.3, whereby the earlier granted change of land use viz-a-viz the disputed plot No.4 from residential purpose, to commercial purpose, rather became cancelled.



3. Through a decision passed on the said writ petition on 31.01.2017, thereby the in writ petition bearing No.CWP-901-2016 was allowed. Naturally, therebys, the earlier granted change of land use, inasmuch as, the subject plot, being permitted to become used for commercial purposes, thus became upheld, besides the order (Annexure P-9) rescinding the supra made change of land use was also quashed and set aside. The operative part of the said decision becomes extracted hereinafter:-

“The stand of the Trust is that in the government notification dated 10.01.2011 itself, sanction of change of land use was made subject to formal approval by way of resolution of the Trust. We have perused this notification. The notification itself records that the Trust has already passed resolution No.349 dated 30.11.2006 to change the land use of plots No.4 and 5 from residential to commercial and that after considering the recommendations of the Trust etc. it was according sanction to the proposed change of land use subject to formal approval by way of resolution of the Trust. By this notification earlier Model Town Development Scheme No.1 notified on 29.7.1976 under sub-section (1) of Section 41 and sub-section (1) of 42 bearing lay out plan drawing No.DTP (1) 8/76 dated 19.02.1976 was modified to the extent indicated in the notification. Clearly, approval by way of resolution of the Trust, at the stage after the approval of sanction of change of land use by the Government, was only a matter of form, a procedural requirement, which was to follow as matter of course. More so, in the absence of any breach on the part of the petitioner of any condition of the notification. Resultantly, the writ petition is allowed.



The order/ letter dated 29.12.2015 Annexure P-9 is quashed. The Trust is directed to allow the petitioner to raise construction, as per notification dated 10.01.2011.”

4. Importantly, the respondent-Trust was directed to permit the present petitioner to raise construction over the subject plot in terms of the notification dated 10.01.2011. Therefore, it is necessary to bear in mind the said notification, which is appended with the instant writ petition, as Annexure P-5. The relevant contents of the said notification become extracted hereinafter:-

“And whereas considering the request of owners of plot no. 4 measuring 276.11 sq.yds and plot no. 5 measuring 281.45 sq. yds., the use whereof in the scheme layout was fixed as residential, Improvement Trust, Kapurthala has already passed resolution 349 dated 30-11-06 to change the use of plots No. 4 and 5 from residential to commercial as per Govt. order No. 5/48/2010 (27)-4LG-2/464-468, dated 17-03-2010 in the light of the policy instructions of Government issued on 22-11-06, after following the due procedure has accorded its approval for change of land use of plots under reference, from residential to commercial and it was also decided that the frontage of she said plots may be considered towards 60'-0" wide road.

Now, therefore, considering the recommendations of Executive Officer, Improvement Trust, Kapurthala, conveyed vide his letter No. KIT-2010/356 dated 19-8-2010, the Governor of Punjab in exercise of the powers conferred, under Section 43 of Punjab Town Improvement Act, 1922, read along with section 19 of the Punjab General Clauses Act, 1898 and all other powers enabling him in this behalf; subject to the formal



approval by way of resolution of Improvement Trust, Kapurthala, is pleased to accord sanction to the proposed change of land use of plot No. 4 measuring 276.11 sq. yds and plot No. 5 measuring 281.45 sq.yds. Model Town Kapurthala, on the following terms and conditions:-

1. That the building for commercial use shall be re-erected strictly in accordance with the schedule of clauses of the scheme, already notified.
2. That the violation in parking area and floor area restrictions shall not be compoundable under any circumstances;
3. The minimum front parking space as per the Building Byelaws or the house line (towards 60' wide road) as per zoning of the scheme which, ever is higher shall be provided and house line (towards 30' wide road) as per zoning of the scheme or set back area for parking which ever is higher shall be provided;
4. That the land owner will be liable to deposit land use change fees applicable as per the rates prescribed by the Government.
5. That no ingress/egress shall be allowed from the 30'-0" wide scheme road.

The relevant drawing No. DTP (X)-8/76 dated 19-2-1976 is modified to the extent stated above.”

5. The only dispute which has emerged amongst the contesting litigants, pertains to the amenability of fastening upon the present petitioner, condition No.4, inasmuch as in terms thereof, whether the petitioner is to be entailed with the liability to deposit the non-construction fees, as arising from her omitting to raise construction from the period ranging from



01.07.2014 to 31.12.2018. Since it appears that during the said period, no construction was raised by the present petitioner, therebys, Annexure P-14 was passed, which was followed by the passing of Annexure P-15.

6. The learned counsel for the petitioner contends with much vigour before this Court that the stand adopted by respondent Nos.3 and 4, and as becomes embodied in Annexure R-3/1, that non-construction fee rather is required to be levied upon the present petitioner for the supra period, but is a mis-projected stand and is also not legally sustainable.

7. The learned counsel for respondent No.3 and 4 defends the said stand.

8. However, for the reason to be assigned hereinafter, the stand adopted by the said respondents relating to levying of non-construction fee, thus, arising from no construction becoming raised over the subject plot rather for the period ranging from 01.07.2014 to 31.12.2018, is lacking in legal merit and as such, is rejected.

9. The prime reason for stating so become grooved in the factum that when for the said period, the subject plot remained under litigation, therebys, when there was a well deterrence upon the present petitioner, thus to raise construction over the subject plot. Therefore, when there was no intentional omission or wilful dereliction on the part of the present petitioner to raise construction over the disputed plot. As such, the liability as cast upon the present petitioner for the said period, thus to deposit non-construction fee computed in the sum of Rs.6,58,412/-, rather cannot be legally sustained.

10. At this stage, the learned counsel for respondent Nos.3 and 4



submits, that the subject plot remained under litigation only from the period commencing from 29.12.2015 up till 31.01.2017. Therefore, he contends that the period prior theretos, inasmuch as, since from the period commencing from 01.07.2014 till 29.12.2015, it was possible for the petitioner to raise constriction over the subject plot, whereas, hers omitting to do so, therefore, the liability for depositing the non-construction fee is justifiably fastened upon the petitioner.

11. Even the said argument merits rejection as the dispute as had earlier arisen was with respect to the order made by the respondents, whereby the earlier permitted change of land use with respect to the subject plot, thus from residential to commercial, rather became rescinded, whereupon she was lead to file writ petition bearing No.CWP-901-2016. Since it was, then open to the counsel for the respondents to raise the said ground during the pendency of the earlier writ petition bearing No.CWP-901-2016. However, the learned counsel for respondent Nos.3 and 4 did not then raise the said ground, thereupon, it has to be concluded that the said ground became waived or abandoned. Resultantly, the counsel for respondent Nos.3 and 4, cannot raise the said ground before this Court, which earlier became omitted to be raised during the pendency of earlier writ petition bearing No.CWP-901-2016. Additionally, since the petitioner has already deposited a sum of Rs.4,38,548/- on 24.12.2013 and since deposit thereof, thus, covers the supra period, as such, thereby too, the said argument loses its force and is, hereby rejected.

12. In aftermath, after allowing the instant writ petition, the impugned Annexures P-14 and P-15 are quashed and set aside. In consequence thereof, the respondents concerned are directed to, if they have not granted



approval to the building plans of the present petitioner, to forthwith grant lawful approvals thereto and subsequently, permit the petitioner to, in terms of the change of land use viz-a-viz the subject plot, from residential to commercial, thus, raise construction in consonance therewith.

13. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 02, 2025
harish

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No