(2015) 10 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 656 of 2015

Ambrish Jain and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Punjab Municipal Act, 1911 — Section 192
Punjab Municipal Corporation Act, 1976 — Section 275, 275, 275(3)
Punjab Regional and Town Planning and Development Act, 1995 — Section 70

Citation : (2015) 10 P&H CK 0042

Hon'ble Judges : Hemant Gupta, J;Raj Rahul Garg, J

Bench : Division Bench

Advocate : Sumeet Mahajan, Senior Advocate and Amit Kohar, for the Appellant; Gaurav Garg Dhuriwala, DAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J—Challenge in the present writ petition is to an order dated 04.11.2014 (Annexure P-10), whereby representation/objections filed by the petitioners against the change of land use of House No. B-XIX/116/1-A, The Mall, Ludhiana from residential to commercial was declined.

2. The petitioners are owner of House No. B-XIX-116/1-A, The Mall, Ludhiana, measuring about 325 sq. yards, having purchased the same from one Mrs. Nirmala Rani, who was owner of land measuring 1045 sq. yards, vide sale deed dated 05.03.2004. Out of remaining 720 sq. yards of land, respondent No. 7 has purchased an area measuring 360 sq. yards, whereas balance 360 sq. yards is still owned by Mrs. Nirmala Rani. It is pointed out that a Town Planning Scheme known as ''Sheep Shank Road Scheme'' was finalized by the Municipal Committee, Ludhiana on 16.06.1964. Admittedly, the land use in respect of property in question situated on The Mall Road is residential in the said Scheme.

3. It was on 28.07.1994 (Annexure R-3-5/2), the State Government addressed a communication to the Commissioner, Municipal Corporation, Ludhiana/Jalandhar/

Amritsar suggesting change of land use in certain Town Planning Scheme including the Scheme in question so as to permit commercial use on certain roads in the towns including in respect of road in question. It was on 05.07.2013 (Annexure P-9), the State Government approved the recommendations of the Municipal Corporation, Ludhiana permitting conversion of land use from ''residential'' to ''commercial'' to the owners of plots abutting the roads including the ''Sheep Shank Road Part A'', on the plot/properties abutting on Mall Road. The petitioners filed objections to such change of land use, which have been declined vide order (Annexure P-10) impugned in the present writ petition.

4. Learned counsel for the petitioners has pointed out that similar objections in respect of use of another property No. B-XIX-16/4, Mall Road, Ludhiana was declined by the Municipal Corporation, Ludhiana on 03.04.2008 (Annexure P-5). Thus, it is contended that once the Municipal Corporation has declined the request of change of land use in respect of similarly situated property on the same Mall Road, the change of land use granted to the property in question is discriminatory, arbitrary, unreasonable and not sustainable. The Municipal Corporation has declined change of land use for the reason that the area was primarily developed as residential area, therefore, change of land use cannot be permitted for use of commercial purposes. It is also contended that circular dated 28.07.1994 is invalid and in contravention of the statutory provisions inasmuch as the Town Planning Scheme can be amended in the same manner as is required for preparing a Town Planning Scheme in view of Section 19 of the General Clauses Act, 1898. Since the procedure prescribed in Section 275 of the Punjab Municipal Corporation Act, 1976, which is pari materia with Section 192 of the Punjab Municipal Act, 1911, was not followed therefore, the State Government cannot permit change of land use. It is further contended that use of land reserved for residential purposes in the Town Planning Scheme (Annexure P-1) will create anomalous situation, as some of the buildings will be used for residential purposes, whereas some other would be used for commercial purposes. Therefore, the commercial activities in the area would be a source of constant nuisance and disturbance for the residents of the locality. It is also contended that even the lay out plan has been sanctioned in contravention of the Municipal Corporation Ludhiana Building Byelaws, 2010 (for short ''the Byelaws''), as no rear set back has been kept by the land-owner while submitting the building plans for raising of the commercial building.

5. On the other hand, it is submitted that the policy dated 28.07.1994 was submitted before this Court in CWP No. 5902 of 2007 titled ''Rajesh Inderpall & others v. State of Punjab & others'', wherein the Municipal Corporation filed an affidavit that the process of amending the statutory schemes has been initiated. It is also pointed out that the Master Plan of Ludhiana has been notified on 22.07.2008. As per the said Master Plan, 19 different roads of Ludhiana were earlier approved as Commercial by the Government in furtherance of the Government Policy guidelines dated 28.07.1994 stood protected. The Master Plan has been attached with the reply as Annexure R-3-5/3. It may be noticed that

said Master Plan has been published in terms of Section 70 of the Punjab Regional and Town Planning and Development Act, 1995 (for short ''1995 Act''). It is further pointed out that Resolution No. 950 dated 06.07.2009 was passed by the Municipal Corporation, Ludhiana resolving that the roads, which were declared as commercial by the Government, the same are required to be incorporated by amendment in the schemes. Therefore, the requisite procedure should be adopted. Thereafter, in terms of Section 275 of the Punjab Municipal Corporation Act, 1976, the public notices dated 09.03.2010 were published in two different leading newspapers with regard to change of land use of major roads of 19 Town Planning Schemes in the city of Ludhiana. It is pointed out that due to inadvertence and bona fide error, public notices of different locality were supplied to the petitioners under the Right to Information Act. After considering the objections, the same were declined by the Corporation on 27.05.2010. The petitioners did not raise any objection to the proposed change of land use or to the policy dated 28.07.1994. Thereafter, the matter was again considered by the Municipal Corporation vide resolution No. 1025 dated 15.06.2010. The proposed amendment/modification of the Scheme was accepted. The resolution was sent to the State Government and the State Government has issued notification dated 05.07.2013 approving the amendments in the Scheme. In view of the said fact, it is argued that the rejection of the objections vide order dated 04.11.2014 is legal and valid.

6. In another affidavit filed by Shri Priyank Bharti, Director -cum-Special Secretary, Department of Local Government, Punjab, Chandigarh, it is averred that instructions dated 28.07.1994 were modified vide instructions dated 22.08.2006. The Government has permitted conversion of land use from Residential to Commercial to the owners of plots abutting the roads/schemes in accordance with the provisions of Change of Land Use Policy of 2006 and notified Master Plan of Ludhiana in exercise of the powers under Section 275(3) of the Punjab Municipal Corporation Act, 1976 and Sections 41, 42, 43 of Punjab Town Improvement Act, 1922 read with Section 19 of the General Clauses Act, 1898.

7. In the other affidavit dated 01.10.2015 filed on behalf of the Chief Town Planner, Punjab, it is averred that Local Planning Area in respect of Master Plan, Ludhiana was prepared, which was published vide notification dated 18.07.2007. The area of Local Planning Area is 127122 hectares out of which 117704 hectares falls in Ludhiana District, which includes 5 cities/towns namely Ludhiana, Sahnewal, Doraha, Mullanpur and Phillaur and 301 villages, whereas the rest of 9418 hectares comes under Jalandhar District. The draft Master Plan was published in the newspaper on 04.03.2008. Thereafter, 331 objections were received, which were considered by the Punjab Regional and Town Planning and Development Board in its Meeting held on 24.07.2008 and accordingly the Master Plan was approved. The Master Plan was notified in the official gazette on 12.09.2008.

8. In a separate affidavit filed by Shri Surinder Singh Bindra, Assistant Town

Planner, Zone - D, Municipal Corporation, Ludhiana, it is pointed out that consequent to Resolution No. 950 dated 06.07.2009, the public notice to amend 19 different Town Planning Schemes was published in ''Daily Jagran (Hindi)'', ''The Tribune (English)'' & ''Daily Ajit (Punjabi)'' on 05.03.2010. The public notice was also affixed on the Notice Board of the Municipal Corporation, Ludhiana and also Munadi was extensively held in the Scheme areas. It is also pointed out that the building plans submitted by respondent No. 7 have been sanctioned as per the Ludhiana Municipal Corporation Building Byelaws. The maximum ground coverage is 60% of the plot size of respondent No. 7 and that parking space of 10.46 Economic Car Space (ECS) was required as per the Byelaws and the National Building Code. It is also pointed out that the building plan was sanctioned with front set back of 40''-9" feet area, which is more than the prescribed open area on ground of 40% (15% front + 25% rear on the ground floor). It is pointed out that rear set back is not a mandatory provision.

9. We have heard learned counsel for the parties at length and find no merit in the present writ petition. The relevant extract of Section 275 of the Punjab Municipal Corporation Act, 1976, which is pari materia with Section 192 of the Punjab Municipal Act, 1911 reads as under:

"275. Building Scheme - (1) The Corporation may, and if so required by the Government shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely:--

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the city, and off the use to which they may be put;

(b) the prescription of a building line on either side or both sides of any street existing or proposed; and

(c) the amount of land of such unbuilt area which shall be transferred to the Corporation for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed thirty-five per cent, and the amount transferred without payment shall not exceed twenty-five per cent, of any one owner''s land within such unbuilt area.

(2) When a scheme has been drawn up under the provisions of sub- section (1), the Corporation shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the Corporation in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3) The Corporation shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such

objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Government which may sanction such scheme or may refuse to sanction it, or may return it to the Corporation for reconsideration and resubmission by a specified date.

x x x

Explanation - For the purpose of this section-

(i) ''built area'' is that portion of a City of which the greater part has been developed as a business or residential area; and

(ii) ''unbuilt area'' is an area within the local limits of a City which is declared as such at a special meeting of the Corporation by a resolution confirmed by the Government, or which is notified as such by the Government."

10. The argument of learned counsel for the petitioners that the State Government has modified the scheme vide circular dated 28.07.1994 is not tenable. The Municipal Corporation has passed Resolution No. 950 dated 06.07.2009. The said Resolution is to amend the sanctioned Scheme permitting commercial activities on certain roads including the road in question. The said Resolution has been approved by the State Government on 05.07.2013 after considering the objections filed. The Resolution, the public notices and the official notification are in terms of the provisions of Section 275 of the Punjab Municipal Corporation Act, 1976. Therefore, the procedure prescribed for preparing a Town Planning Scheme has been followed in respect of amendment of the Scheme as well. The policy dated 28.07.1994 as amended in the year 2006 are the guidelines for consideration of the Municipal Corporations. The Municipal Corporation, Ludhiana has considered it independently while resolving to permit the change of land use. Therefore, it cannot be said that the Scheme stood amended with the issuance of the guidelines dated 28.07.1994. In fact, the Scheme was amended with the publication of the Notification by the State Government on 05.07.2013. It is, thereafter, the building plan was sanctioned.

11. Not only the Town Planning Scheme, as contemplated by the Municipal Corporation Act has been amended, but even the Master Plan, Ludhiana also protects the change of land use as communicated by the State Government. The relevant extract from the Master Plan reads as under:

"Section - C

MIXED LANDUSE ZONES

xx xx xx

Mixed Use in Residential Areas - Need for differentiated approach:

xx xx xx

Identification of mixed Use Areas in Existing Urban Areas as urbanizable areas

The identification of mixed use areas/streets in both the urbanized as well as urbanisable areas of Ludhiana would be as follows:

In already urbanized areas/urban areas, mixed use (except industrial use) shall be permissible in the following areas:

(i) On all streets/roads already declared commercial by the department of Local Government Punjab subject to the decision of case/cases pending in any Hon''ble Court.

(ii) Streets/Areas where commercial use was allowed in the previous Master Plan of Ludhiana shall continue to the extent as permissible in the previous Master Plan, Ludhiana.

(ii) Future identification and notification of mixed use streets/areas falling in (i) and (ii) above shall be based on the criteria and procedure prescribed below and given vide publicity by the concerned local body/authority/any other competent authority."

12. In terms of Clause i(i), as reproduced above, all streets/roads declared commercial by the Department of Local Government, Punjab are reserved for Mixed Use subject to the decision of the cases pending in any Court. Clause (ii), on the other hand, permits the mixed land use over the streets/areas where the commercial use was allowed in the previous Master Plan.

13. Earlier, a set of writ petitions bearing CWP No. 5693 of 2004 titled ''Dr. Gurkirpal Singh v. State of Punjab & others''; CWP No. 5902 of 2007 titled ''Rajesh Inderpall & others v. State of Punjab & others'' and CWP No. 12787 of 2007 titled ''Arun Kumar v. State of Punjab & others'' in respect of non-formulation of Master Plan for the City of Ludhiana was disposed of on 11.12.2012 by a Division Bench of this Court, as the Government has published the Master Plan in Ludhiana. Thus, there is no Court case pending prohibiting change of land use over the streets in question. The guidelines of the Department of Local Government dated 28.07.1994, as modified in the year 2006, identifies certain streets as commercial on which pre-dominantly commercial activities are being undertaken and the street in question is one of the said streets, where the commercial activities have been undertaken. The Master Plan as published under the 1995 Act does not prohibit the use of the building on the street in question for commercial purposes. Therefore, in terms of the Punjab Municipal Corporation Act, 1976 as also under the Punjab Regional and Town Planning and Development Act, 1995, the street in question is the street where commercial activities have been made permissible. Thus, the challenge of the petitioners to the modification of the Scheme on the ground that the action of the State Government is contradictory to the statute is not tenable in law.

14. Reliance to the order passed by the Municipal Corporation dated 03.04.2008 is again not tenable. At that time, the Municipal Corporation has not followed the

procedure for amending the Scheme in terms of Section 275 of the Punjab Municipal Corporation Act, 1976. Such procedure was followed when Resolution No. 950 dated 06.07.2009 was passed, public notices issued and the amended scheme notified. Therefore, on account of further developments in accordance with the Statutes, the Scheme stands modified. Such order does not continue to be relevant in the present situation.

15. Reference to an order passed by the Division Bench of this Court reported as Dr. Balbir Singh Sidhu Vs. State of Punjab and Others, (2014) 2 RCR(Civil) 351 is again not tenable. In the said writ petition, the circular dated 28.07.1994 was challenged. The question examined was; whether the State Government could modify the Scheme published under the Punjab Town Improvement Act, 1922. It was found that Section 43 of the said Act does not contemplate the modification of Scheme only way of a notification. The said judgment does not deal with the issue in respect of Section 275 of the Act, which prescribes the procedure for modification of the Scheme after giving public notice and by way of a notification.

16. The argument that even building plan is in contravention of the Byelaws is again not tenable. The Byelaws (Annexure P-21) in respect of plot size 250 to 500 sq. yards contemplates as an F.A.R. of 1:2.00 with 40% total setbacks i.e. 15% front and 25% rear side. However, the requirement of the rear set back is not mandatory requirement. A perusal of Byelaws 3.15 shows that the violation of front set back shall not be compoundable. As per Byelaws 4.6, the width of rear set back, if left at any point of building, shall not be less than 3 meters. It is, thus, sought to be contended that rear set back is not mandatory. The relevant Byelaws read as under:

"3.15 COMPOUNDING OF DEVIATIONS FROM THE SANCTIONED PLAN:

(a) Residential Buildings:

(i) Violation of front set back shall not be compoundable.

(ii) Excess coverage above 5 per cent than the permissible shall not be compoundable.

(b) Commercial and other buildings:

(i) Violation of front set back shall not be compoundable.

(ii) Excess F.A.R. than the sanctioned/permissible F.A.R. shall not be compoundable.

(iii) Decrease in parking area shall not be compoundable.

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4.6 HEIGHT OF BUILDINGS AND SET BACK:

(i) The height of buildings for residential, group housing, commercial, industrial, institutional and other public purposes shall be regulated as per the permissible height and F.A.R. restrictions indicated for such like buildings in the bye-laws besides the Air funnel height restrictions applicable in the area, if any.

(ii) The width of front set back shall be regulated as per provisions indicated in respect of residential, commercial and industrial buildings and also in accordance with the provisions of ground coverage and F.A.R. restrictions in respect of group housing, institutional and other public buildings. The side set back shall be optional. Where left, it shall not be less than 2 meters or 1/6th of the height of the building whichever is more. The width of the rear set back, if left at any point of building, it shall not be less than 3 meters or 1/5th of the height of the building whichever is more."

17. A perusal of the affidavit filed by the Assistant Town Planner and the site plan (Annexure P-20) show that total covered area for the Ground Floor is 58.04% and the front open parking is 41.86%. The entire basement of 1668.85 sq. feet is the parking area. If the front and rear set back is clubbed together, it meets the requirement of the Byelaws, which provide 40% of the plot area as the set back. In fact, respondent No. 7 has proposed the front set back of more than 40% of the plot area apart from 1668.85 sq. feet as the covered parking, which meets the requirement of the Byelaws. The rear set back as per the provisions quoted above is not mandatory as the front set back is required to be maintained and is non-compoundable. Reference may be made to Byelaws 3.15 and 4.6(ii), as reproduced above.

18. Thus, we find that the Town Planning Scheme has been amended in terms of the provisions of Section 275 of the Act and that in the absence of any violation of the Byelaws, the building plan sanctioned cannot be said to be illegal warranting any interference by this Court in exercise of its writ jurisdiction.

19. Consequently, we do not find any merit in the present writ petition. The same is dismissed.

