

(2008) 03 P&H CK 0053
In the Punjab And Haryana At Chandigarh

Bansal India (Pvt.) Limited	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5, 6, 9

Citation : (2008) 2 PLR 656

Hon'ble Judges : T.P.S. Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition challenges orders dated 14.3.2002 (P-9) and 3.3.2004 (P-17), passed by the Director, Town and Country Planning, Haryana-respondent No. 3. A further prayer has been made for quashing order dated 2.1.2007 (P-3) passed by the Director, Industries and Commerce, Haryana. In all these orders the prayer of the petitioner for issuance of permission for change of land use has been declined. The petitioner has also prayed that notifications under Sections 4 and 6 of the Land Acquisition Act, 1894, leading to passing of award on 22.7.2003, passed by the Land Acquisition Collector, Gurgaon, be also quashed.

2. The case of the petitioner in nutshell is that it had purchased 20 Kanals 19 Marlas of land by registered sale deed on 25.8.1993. It is claimed that the land was purchased after confirmation from the Town and Country Planning, Haryana, and that the site did not fall in any gontrolled or urban area. Applications for grant of No Objection Certificate was made on 2.9.1992 and 30.8.1993 to the Director, Town and Country Planning-respondent No. 3 for setting up proposed industrial unit on the land, which was issued on 11.1.1994 (P-4 and P-5). Similar No Objection Certificates were also granted in favour of other persons. By notification dated 31.1.1994, issued under the provisions of the Punjab Scheduled Roads and Controlled Area, (Restriction of Unregulated Development)

Act, 1963 (as applicable to Haryana) [for brevity "the 1963 Act"], the land belonging to the petitioner and 8 other companies falling in village Naharpur Kasan, was declared as controlled area.

3. The petitioner came to know of this notification by Memo dated 1.3.1994 issued by the Director, Town and Country Planning-Respondent No. 3 and it was advised to apply for change of land use in accordance with the provisions of the 1963 Act and the rules framed thereunder. The petitioner accordingly applied for grant of permission for change of land use on 6.4.1994 and submitted "No Objection Certificate" from the State Pollution Control Board, Haryana, Land Requirement Certificate from the Industries Department, Haryana and a certificate, certifying that the proposed unit is a non-polluting agro-based industry. It is claimed that a land justification certificate, dated 8.8.1994, was also issued to the petitioner in accordance with the decision dated 8.7.1994 taken under the Single Window Service (P-6 and P-7). Despite the recommendations made by the Director of Industries, Haryana-respondent No. 2, the request of the petitioner for grant of permission for change of land use was rejected on 6.10.1994. It is claimed that 8 Companies were, however, granted permission for change of land use.

4. The petitioner again renewed its request by making fresh application on 21.12.2001, for obtaining permission for change of land use, to the Director, Town and Country Planning-respondent No. 3 by depositing requisite fee. However, the same was rejected on 14.3.2003 (P-9). An appeal was preferred before the Commissioner and Secretary, Department of Town and Country Planning, Haryana, who remanded the case back vide order dated 10.6.2003, pointing out that other industries have been granted change of land use, which has been denied to the petitioner. The Director, Town and Country Planning, Haryana-respondent No. 3 was asked to examine the case of the petitioner afresh. On re-examination, the Director, Town and Country Planning, Haryana-respondent No. 3 again rejected the request, vide order dated 3.3.2004 (P-17) by concluding as under:

Whereas the main grounds to file the appeal are:

(a) The Director has failed to address to the question of satisfaction of condition of Section 5 which requires publication of plans including the restrictions in the controlled area including preparation of plan within a prescribed time limit and publication of the same in the prescribed manner.

(b) The NOC was granted to set up an industrial unit vide Director, Town and Country Planning, Haryana letter dated 11.1.1994 and while rejecting the case this aspect has not been considered.

(c) So many other units have been granted NOC and these are running successfully without going into the rigours of having to applying for change of land use.

(d) The Govt, of Haryana had fixed a two kilometer, buffer zone around the acquired land of IMT and it has been reduced through a circular which was never published in gazette, hence does not have any legal sanction under the Act.

(e) Change of land use to M/s Enkay India Rubber and M/s Alka Plywood has been granted as recently as April, 1996 and March, 2000. These units are near about the land of the appellant

(f) No opportunity of hearing has been provided to the appellant.

Whereas the appellant authority after examining the contents of the appeal and after hearing the arguments has remanded the case to decide it after granting the opportunity of hearing and in view of the issues raised in the appeal. In accordance with the above orders, the appellant was granted hearing on 8.7.2003, 5.8.2003, 30.9.2003 and 20.11.2003. The advocate appearing on behalf of the appellant submitted his arguments during the course of hearing. The main issues raised in the arguments are same as mentioned from (a) to (f) above. Very fact that the site is located in the controlled area and change of land use is required as per provision of Section 7 of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (hereinafter referred as Act No. 41 of 1963) the non-publication of the plan can not be a excuse to grant change of land use. NOC was granted by the Director, Town and Country Planning, Haryana on 11.1.1994 and the controlled area was published in the Govt. Gazette on 30.1.1994. While granting the NOC, it was made clear that provision of Act No. 41 of 1963 will be applicable as and when controlled area is declared. The initial application made on 9.6.1994 is requirement of Section 7 of the Act No 41 of 1963 was rejected as the site of the appellant was falling in the area envisaged for development of IMT, Manesar. The appellant again submitted an application in September, 2001 again requesting to grant the permission for change of land use for industrial purposes which was again refused vide letter dated 14.3.2003 as the site was falling within one kilometer buffer around the Industrial Model Township, Manesar and as per Government Policy no change of land use for industrial purpose was to be allowed.

5. The contention of the appellant that the other units which were granted NOC by the department are running successfully without going through the rigours of obtaining change of land use does not hold good as all these units came into an existence before declaration of the controlled area whereas the appellant did not take any steps for implementation of the project before declaration of the controlled area. The contention that the instructions for having a buffer zone of one kilometer is not published in the gazette also is not tenable as grant of permission for change of land use is not a right but the permission is always subject to the land use proposals prepared for the controlled area as well as policy parameter envisaged to regulate the development. The case of M/s. Enkay India and M/s. Alka Plywood is not similar to that of the appellant as the permission to both the units was granted after consideration of merits of these cases at the highest level by a committee headed by Chief Secretary, Haryana.

Moreover, the land has also been put under acquisition proceeding by the department of Industries, hence the title of the land has come under question".

6. After hearing learned Counsel at some length we are of the considered view that the writ petition suffers from inordinate and unexplained delay. It is admitted position that the application of the petitioner for change of land use was rejected vide order dated 6.10.1994 as is evident from the averments in para 17 of the writ petition. The aforementioned order has never been challenged, which shows that the petitioner had accepted the position which existed then and was satisfied with the rejection of its application for change of land use.

7. After more than seven years, on 21.12.2001, a new beginning was made, which has resulted in passing of order dated 3.3.2004 (P-17). The order dated 6.10.1994, has been concealed from this Court and the petitioner has felt contended by making a mere mention of the aforementioned order in para 17 of the writ petition. It is well settled that the remedy of writ petition under Article 226 could be availed within a reasonable time but-not later than the period of limitation provided for filing a civil suit. Such an order could have been challenged within a period of three years, which came to an end on 6.10.1997. Moreover, a perusal of the order dated 3.3.2004 (P-17), passed by the Director, Town and Country Planning, Haryana-Respondent No. 3 would show that the site belonging to the petitioner is located in the controlled area and change of land use is required as per provisions of Section 7 of the 1963 Act. The non-publication of the plan has been held to be irrelevant and not a valid excuse to grant the certificate for change of land use because No Objection Certificate was granted to the petitioner by respondent No. 3 on 11.1.1994 and the declaration of controlled area was made on 31.1.1994. The No Objection Certificate was applicable as and when declaration of controlled area is made; The application made by the petitioner on 9.6.1994 was rejected on 6.10.1994. Another application was made in September, 2001, which was rejected on 14.3.2002 (P-9) because no change of land use for industrial purposes was allowed in respect of the site falling within one kilometer buffer around the Industrial Model Town, Manesar. The contention regarding discrimination has also been rejected by the Director, Town and Country Planning, Haryana-respondent No. 3 because it has been concluded that all those units came into existence before declaration of the controlled area, whereas the petitioner failed to take any steps for implementation of the project before issuance of declaration on 31.1.1994.

8. We are further of the view that once the award u/s 9 of the Land Acquisition Act, 1894, has been passed on 22.7.2003, after issuance of notification and declaration under Sections 4 and 6 of the Land Acquisition Act, 1894, no writ petition would be maintainable as has been held by Hon"ble the Supreme Court in the cases of *Star Wire (India) Ltd. Vs. State of Haryana and Others*, ; *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, ; *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, and *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, .

Therefore, we find that the instant petition is devoid of merit and is, thus, liable to be dismissed.

For the reasons aforementioned, this petition fails and the same is dismissed.