
(2011) 03 P&H CK 0256

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2958 of 2011 (O and M)

Cambridge International Public School

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 51A
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 8
Land Acquisition Act, 1894 — Section 4, 6
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 4, 4(1), 5, 7

Citation : (2011) 03 P&H CK 0256

Hon'ble Judges : Rakesh Kumar Garg, J; Jasbir Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jasbir Singh, J.

C.M. No. 4341 of 2011

1. Application allowed, documents annexed with it are taken on record.

CWP No. 2958 of 2011

2. This writ petition has been filed by the Cambridge International Public School through its Director Smt. Simmi Dhingra. It is an averment of the Petitioner that the school is being run by a Society known as North India Christian Missions Society, which was registered with the Registrar of Societies Haryana on 10.4.2002.

3. In this writ petition, the Petitioner has laid challenge to a notification issued u/s 4 of the Land Acquisition Act, 1894 (in short, the Act) on 15.12.2008, proposing to acquire a vast tract of land, for a public purpose, namely, "for the development of commercial estate." Further challenge has been made to a declaration, issued u/s 6 of the Act on 18.12.2009. Still further, a letter dated

18.1.2011, vide which, the Petitioner was asked to supply a copy of change of land use permission certificate obtained from the Director, Town and Country Planning Department, Haryana to the competent authority is also under challenge. On 17.2.2011, following order was passed by this Court:

Counsel for the Petitioner is directed to file an affidavit as to when land falling in revenue estate of village Alipur was declared controlled notified area as per the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and further whether any permission was obtained from the competent authority before raising construction in question.

On request, adjourned to 24.2.2011.

4. There was no compliance then on 24.2.2011, this Court passed the following order:

On 17.2.2011, following order was passed by this Court:

Counsel for the Petitioner is directed to file an affidavit as to when land falling in revenue estate of village Alipur was declared controlled notified area as per the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and further whether any permission was obtained from the competent authority before raising construction in question.

On request, adjourned to 24.2.2011.

There is no compliance to the order passed. A copy of the notification dated 11.7.2002, vide which, land falling in village Alipur was declared as a notified area under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (in short, the Act), has been handed over to counsel for the Petitioner.

It is contention of counsel for the Petitioner that when land was purchased, some construction was in existence thereon and rest of the construction was raised in the year 2001. Perusal of the sale deeds (P2 and P3) shows that there is no mention of any construction in the property, which was subject matter of sale vide those sale deeds. As per photographs, palatial and huge construction exists at the spot. We are not satisfied that the same was raised in the year 2001.

Counsel for the Petitioner is directed to put on record a copy of the khasra girdawari and also other evidence to show that construction was raised before issuance of notification dated 11.7.2002 under the Act.

Adjourned to 23.3.2011.

5. In response thereto, the Petitioners filed an application to place on record the documents Annexure P14 to P-19. By placing reliance upon those documents, it has been said that the School building was in existence when process to establish the school was initiated by writing a letter on 2.6.2001(P14).

6. It is not in dispute that the area of the village Alipur, wherein land of the

Petitioner is situated, was notified as a controlled area as per the provisions of Section 4 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (in short, 1963 Act). Admittedly, at no point of time, any permission was taken from the competent authority to raise a palatial building (which is evident from the photographs put on record). The building consists of many rooms, appears to be residential in nature, numerous rooms for school, swimming pool, water tank etc. are in existence. The construction appears to be a full-fledged residential-cum-institutional complex.

7. Faced with the situation, counsel for the Petitioner states that unless restrictions are imposed as per provisions of Section 5 of 1963 Act, it is not necessary for a land owner to get any permission to construct a building/change of land use.

8. We feel that the contention raised is not justified.

9. Section 7 of 1963 Act regulates use of land in the controlled area, which reads thus:

7.(1) No land within the controlled area shall, except with the permission of the Director and on payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under Sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick field or for quarrying stone, bajri, surkhi kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.

(1A) Local authorities, firms and undertakings of Government, colonizers and persons exempted from obtaining a licence under the Haryana Development and Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application u/s 8 of this Act.

10. The provision makes it very clear that if a land owner wishes to change the land use, other than the one for which the land was being used at the time of issuance of a notification, permission has to be obtained from the competent authority to raise any construction. In the present case, no permission was taken. Furthermore, contention of counsel for the Petitioner that school building was in existence before issuance of a notification u/s 4 of the 1963 Act on 11.7.2002 is also not believable. The land underneath the building was purchased on 18.1.2001 and 17.1.2001 vide sale deeds Annexures P-2 and P-3. It is not believable that such a huge construction can be raised within a short span of time of about four months. As per averment of the Petitioner, process to start the school was initiated by writing a letter dated 2.6.2001.

11. Faced with the situation above mentioned, it was stated that the building was in existence when the land was purchased, however, perusal of the sale deeds indicates to the contrary. Otherwise also, we feel that no relief can be granted to the Petitioner because the Petitioner's school is not a legal entity. There is nothing on record to show that it is being run by the Society as alleged in this writ petition. The land was purchased in the name of Smt. Simmi Dhingra, alleged Director of the School. Even at the time of arguments, to a specific query, it was not stated that the land was ever transferred either to the Society or to the School. Once the Petitioner is not a legal entity, probably this writ petition cannot be entertained at its instance.

12. Otherwise also, we feel that on account of violation of the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, no relief can be granted to the Petitioner. As per the provisions of that Act, to construct building/ change of land use, permission is necessary from the competent authority. In the present case, it was not done. It has become a fashion to violate the provisions of law and then to make an attempt to get relief in one way or the other. Attitude of "sab chalta hai" cannot be tolerated, this has to be stopped one day, to make the people to be respectful to the law and its provisions. A violator of law, who has no respect in the established system of rule of law, cannot be granted any relief when exercising jurisdiction under Articles 226/227 of the Constitution of India. Adherence to the duties as enshrined in Article 51-A of the Constitution of India is must. One can claim his rights under Chapter III of the Constitution of India only if respect is shown to the duties as contained in the above said provision.

13. No case is made out for interference.

14. Dismissed.