
(1985) 09 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3989 of 1985

Dalip Singh

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

Date of Decision : 27-09-1985

Acts Referred:

Citation : (1986) 1 ILR (P&H) 386 : (1986) 1 LLR 586 : (1986) PLJ 50 : (1985) RRR 98

Hon'ble Judges : I.S.Tiwana, J

Advocate : Sh. Arun Jain, Advocate, Sh. Ashok Bhan, Senior Advocate with Sh. Amarjeet singh, Advocate., Advocates for appearing Parties

Judgement

I.S. Tiwana, J. (Oral)

1. The petitioners who have constructed their houses in Sector 20A (in the line bearing House Nos. 150 to 161) of Chandigarh, complain of the violation of the zoning plan (Annexure P. 2) meant for that Sector, by the Chandigarh Administration in proposing to construct a community centre/Janjghar in the open space lying between "V4" road and the street "A1" running in front of the their houses. According to the petitioners, the respondent authorities have no right to construct any building on this open space as in the zonal plan referred to above no specific provision was made with regard to the utilisation of that area. The area concerned is marked as "A" in the copy of the zonal plan (Annexure P. 2). The primary claim of the petitioners is that since the construction of their houses was subjected to frame control drawing and architectural sheets in the light of Rule 3(b) read with Schedule 1 of the Punjab Capital (Development and Regulation) Building Rules, 1952 and they were not allowed to have the architectural design of their choice, on account of the fact that their houses are facing or abutting on the "V4" road, the Chandigarh Administration is under a similar obligation or liability not to use the open space lying between their houses and the "V4" road. Their case further is that the construction of a Janjghar in front of their house would be a source of continuous nuisance to

them. On the other hand, the case of the respondent Administration is that the design on the construction of the petitioners' houses was subjected to drawing and architectural controls on account of the fact that their houses abutted on street "A1" and not for the reason that these houses were facing "V4" road. It is also maintained on its behalf that as there was no specification of the use of the area marked "A" in the zoning plan Annexure P.2, the Administration is at liberty to utilise the area in the most suitable manner as this does not involve any violation of the zoning plan. Having heard the learned counsel for the parties I find it difficult to accept the contentions advanced by the learned counsel for the petitioners.

2. As already pointed out above, the firm case of the petitioners is that the construction of their houses was subjected to the frame control drawing and architectural control sheets on account of the fact that they faced or abutted on "V4" road and were thus deprived of a free utilisation of their sites in matters of construction of their houses according to their choice. This stand of theirs stands negated by the plea of the respondents read in the light of the zoning plan, Annexure P. 2, wherefrom it is clear that their houses actually abut on "A1" street and it is on account of this that the construction of their houses was regulated by the drawing and architectural control sheets. This stand of the learned counsel for the respondents appears to be well supported by the following notes which exist on the zoning plan, Annexure P. 2 :

1. Frame Control. Residential buildings constructed on sites except site Nos. 1 to 12 on street "A1" shall conform to all restrictions and stipulations contained in drawing Nos. 3 and 6 of Job No. 197 attached to this plan.

2. Architectural Control. Plot Nos. 1 to 12 on street "A 1" shall follow the architectural control as per Drg. No. 29 of Job No. 33.

It is not a matter of dispute that plot Nos. 1 to 12 which are referred to in these notes are the plots on which Houses Nos. 150 to 161 have been constructed.

3. Further I find weight in the contention of the respondent Administration that since in the zoning plan Annexure P. 2, the area in question was not specified as open space, the Administration can utilise the same in a most useful manner without affecting anybody's rights. A distinction between "open space" and "vacant space" has been drawn in somewhat similar circumstances by a Bench of this Court in C.W.P. No. 3027 of 1969 (M/s Aggarwal Timber Store and others v. The Chief Commissioner, U.T. Chandigarh and others), decided on March 27, 1970, wherein it has been observed that "every space lying vacant in any Sector cannot be treated as "open space" and on that ground a resident of this town has no cause of action to challenge the action of the authorities if they desire to utilize and allow construction on those vacant spaces"". In a nutshell the case of the Administration is that had the area marked "A" in Annexure P. 2 been specified as open space, some argument could be raised by a resident of the city that the Administration cannot use the area for construction purposes or, in other

words, cannot change the user of the same. No purpose with regard to the utilisation of this area having been specified in Annexure P. 2 and it being only shown as a vacant space, the right of the Administration, to my mind, is not in any way restricted in utilising it in any manner.

4. In the light of the discussion above, this petition fails and is dismissed but with no order as to costs.