
(2014) 07 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6994 of 2003 (O&M)

District Bar Association

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 265
Haryana Urban Development Authority Act, 1977 — Section 54
Punjab Shops and Commercial Establishments Act, 1958 — Section 3(d)

Citation : AIR 2015 PH 13 : (2014) 4 RCR(Civil) 471

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Ajay Tewari, J

Bench : Division Bench

Advocate : Sudhir Mittal, Advocate for the Appellant; H.S. Lalli, Addl. Advocate General, D.V. Sharma, Senior Advocate and Ajay Nara, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The writ petition has been filed by the District Bar Association, Panchkula, which is an association of lawyers, through its elected representatives in pursuance to a resolution duly passed. A challenge is laid to the notification dated 12.1.1999 amending the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 (hereinafter to be referred to as "the said Regulations").

2. In terms of the Regulations originally framed, the undisputed legal position is that the land or building is not to be utilized by the transferee or lessee for purposes other than for which it has been disposed of to him. The stated reason for which the rights in the property have been conferred is for residential use. In terms of said Regulations, the amendment made is in Regulation-2 where, after clause (b), a clause (bb) has been inserted as under:-

(bb) "Non-nuisance professional consultancy" means an activity carried on by an individual by his personal skill and intelligence and includes:-

- (a) Doctors (without Nursing Home);
- (b) Lawyers;
- (c) Tax Consultants;
- (d) Architects (without studio)
- (e) Contractor Consultants;
- (f) Chartered Accountant/Company Secretaries;
- (g) Property Consultants;
- (h) Tourist Guides;

3. A reading of the aforesaid, thus, shows that the expression "Non-nuisance professional consultancy" has been defined under the definition Clause-2 to mean an activity carried on by an individual by his personal skill and intelligence and includes the professional activity of lawyers.

4. Now turning to Regulation-16, the same deals with the use of land and building which provides a prohibition from use of the land and building for purposes other than for which it has been disposed of to him. This is qualified by the proviso which was brought in by the amendment permitting 25% of the built up covered area of the building or 50 square metres whichever is less for rendering non-nuisance professional consultancy services with the prior permission of the Chief Administrator. However, this proviso further qualifies that this would be subject to payment of fee as prescribed therein. The permission is also required to be given for a period of five years on payment of the prescribed fee to be renewed after a period of five years on the payment of renewal fee. Regulation-16 reads as under:-

16. Use of land/building.-The transferee or lessee shall not use the land/building for a purpose other than that for which it has been disposed of to him:

Provided that the transferee or lessee of a land/building can use 25% of the built-up covered area of the building or to square metre, whichever is less, for rendering non-nuisance professional consultancy services with the prior permission of Chief Administrator on payment of fee which shall be as under-

Total fee

1. For Panchkula, Gurgaon and Faridabad Urban Estates ...Rs. 0.50 lacs
2. For Hisar, Rohtak, Bhiwani, Bahadurgarh, Sonapat, Rewari, Karnal, Panipat, Ambala, Kurukshetra, Yamunanagar/Jagadhri Urban Estate ...0.30 lacs
3. For Hansi, Shahbad, Kaithal, Sirsa, Jind Naraingarh and Dharuhera Urban Estates ...Rs. 0.20 lacs

The permission will be given initially for a period of 5 years on payment of

prescribed fee. The fee shall be recovered at 10% with application, 40% at the time of grant of permission and balance 50% after one year from the date of permission failing which the permission shall stand cancelled. However 10% rebate shall be given if payment is made in lump sum. The permission shall be renewed after a period of five years on the payment of renewal fee, equal to 10% of total fee which will be recovered in lump sum at the time of renewal.

16-A. Application to be made for rendering non-nuisance professional consultancy services.-A person seeking permission from Estate Officer, Haryana Urban Development Authority concerned for rendering non-nuisance professional consultancy services in land/building disposed of for residential purposes, should apply in form "H" to the Estate Officer, Haryana Urban Development Authority concerned.

16-B. Permission for rendering non-nuisance professional services.-The Estate Officer, Haryana Urban Development Authority concerned, on considering the application within a period of 30 days subject to fulfilment of requirements may grant permission to the applicant in form "I".

5. Regulation 16-A, which is again inserted by an amendment, provides for an application to be made for rendering non-nuisance professional consultancy services. The case of the petitioner is that the levy defined as a fee to carry on professional consultancy services is illegal. It is their submission that the imposition is not really a fee as there are no corresponding services being rendered as the administration of the township already stands handed over to the Municipal Corporation of Panchkula/respondent No. 4. The levy is stated to be in the nature of tax and, thus, the imposition is stated to be not in accordance with law as per mandate of Article 265 of the Constitution of India.

6. The petitioner-Association and its members made various representations, but to no avail. But, on the other hand, respondent-HUDA threatened re-possession which gave rise to filing of the writ petition.

7. The writ petition was admitted to hearing and interim orders were passed and, thus, neither has any fee been paid or collected nor any action taken for re-possession in the meantime.

8. At the stage when the writ petition was taken up for hearing, learned counsel for the petitioner pointed out an additional fact that even under the Punjab Shops and Commercial Establishments Act, 1958, the offices of lawyers have been specifically excluded from the purview of that Act as per Section 3(d). In substance, the contention was that there was really no commercial establishment at all which could have invited any fee from the lawyers. Learned counsel for the petitioner specifically relied on the pronouncement of the Hon'ble Supreme Court in V. Sasidharan Vs. Peter and Karunakar and Others, holding that the lawyers' profession was not a commercial establishment.

9. Learned senior counsel for respondents No. 2 and 3/HUDA, faced with the

aforesaid position, was of the view that though there was earlier an adamant stand of HUDA not to even consider the issue, he would get the matter re-examined in the conspectus of the legal position and would advise HUDA appropriately. This is so set out in our order dated 6.2.2014. Learned senior counsel has, however, filed an affidavit of Administrator, HUDA in Court today, which shows that the learned senior counsel has not been successful. Learned counsel confesses that despite his opinion and the opinion obtained from the office of Advocate General, which favour the line adopted by the petitioner, the authorities have not accepted the same in view of the judgment of the Hon''ble Supreme Court in R.K. Mittal and Others Vs. State of Uttar Pradesh and Others,

10. A perusal of the affidavit shows that since the prescribed user of the plots was residential and where the residential plots were put to other uses, resumption proceedings were initiated. It is in the process of consideration of the representations that vide order dated 19.3.1997 approval was given for proposal to allow 25% of the covered area of the building or 50 sq. metres whichever is less for non-nuisance professional consultancy services and in exercise of powers conferred by Section 54 of the Haryana Urban Development Authority Act, 1977, a notification was issued on 12.1.1999 which was published on 2.2.1999.

11. In para-12 of this affidavit, it has been averred that the HUDA has not stated anywhere that the practice of lawyer is a commercial activity or a commercial establishment but that running of an office by lawyers and other professionals is not a conforming activity in a residential house. The charging of what is labelled as a nominal fee, it has been averred, cannot be termed as a tax or levy as there is no compulsion on the allottees to make such payments, but rather only people opting for "mixed use of the premises" are needed to pay the charges as such a non conforming use of land would increase load on public services like road, electricity, etc. The quid pro quo for charging the fee is stated to be the concession allowed to the allottees for such mixed use.

12. We have heard learned counsel for the parties.

13. In our view, the ratio of R.K. Mittal and others case (supra) has to be understood in the proper perspective and to us it appears that the judgment has not been read properly by the authorities. In this behalf, we would like to draw attention to sub para-6 of para-74 of the judgment where this aspect has been dealt with and reads as under:-

(6) That for such use, the lawyers, architects and doctors shall be liable to pay such charges as may be determined by the Development Authority in accordance with law and after granting an opportunity of being heard. The affected parties would be at liberty to raise objections before the Development Authority that no charges are payable for such users as per the law in force.

14. A reading of the aforesaid itself shows that first a notice has to be issued for the charges and it is open to the individual to contend that such charges are not payable. The opinion of the Hon''ble Supreme Court, unlike what is pleaded

before, does not state that there can be no challenge to the charges levied.

15. We may note that apparently the attention of the Hon"ble Supreme Court has not been drawn to the earlier judgment in V. Sasidharan's case (supra) which effects only the legal community.

16. We put a query to learned senior counsel for HUDA that if a well known author makes a study which he utilizes for writing a book and that is his source of earning, can it be called a non-residential use? There is really no satisfactory answer to this because the activity of an individual profession of a lawyer is also based on a study of the books and papers for which he maintains the space. It is a noble profession and in that context it has been held not to be commerce or business. This would possibly be the line of the advice even given to HUDA which has, however, not found favour.

17. It has also been pointed out that in this day and age where technology has taken over, there are lot of professionals who perform duties from their homes by use of such technologies being the laptop and i-pad. In fact, there are certain commercial establishments which at times encourage their officers to work from their homes by using such technologies as space has become costly. Similarly, in order to retain women workforce where there are young children, such women are also encouraged to work from their homes. These are only illustrative examples of how a home remains a residential use while such persons carry on their vocations.

18. We are, thus, of the view that keeping in mind the nature of the legal profession of an individual lawyer, the use of a limited space as prescribed in the said Regulations cannot change the character or the activity to non-conforming use so as to invite a fee/permission however large or small the amount of fee may be.

19. We, thus, quash the applicability of the requirement of permission and payment of fee insofar as it is applicable to lawyers so long as the premises are used within the restrictions of the definition in the regulations.

20. The writ petition is accordingly allowed to the aforesaid extent leaving the parties to bear their own costs.