

(2010) 04 P&H CK 0242
In the Punjab And Haryana At Chandigarh

Gurdeep Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Punjab Urban Estates (Development and Regulation) Act, 1964 — Section 3(1)

Citation : (2010) 04 P&H CK 0242

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The claim of the petitioners is on the basis that Greater Mohali Area Development Authority (GMADA) is authorizing construction of some shops in violation of the sanctioned town and country planning scheme which reserve the property as meant for establishing a primary school with two pockets on the side, to be left free as green space to serve as lungs for the residents of the area. The petitioners' grievance is that GMADA had allowed for several illegal constructions to come up that compromise public safety by allowing rehri markets to come up and the area which was earmarked for establishing primary school had been completely encroached upon for altogether a different purpose. The petitioners cite an instance of fire accident occurring on 01.06.2007 at the very same place and the residential houses of the petitioners and others had also been completely ravaged. After the fire accident, it appears that the Residents' Welfare Association in Phase 3B1 resolved that an alternate suitable site should be provided to the shopkeepers of the affected market at some other commercial area and not to allow for the shops at the same place. GMADA, however, had communicated to the Chairman of the Janata Market on 18.08.2009 that persons who had not been allotted constructed booths shall shift to Sector 70 and that steps have been taken to construct the booths in the place where they had been previously a fire accident.

2. Since the petitioners' claims are based on an assumption that there had been

a master plan already approved demarcating the place where booths/shops are sought to be established, as reserved to be retained an open space, it becomes necessary to examine the contention of GMADA relating to the alleged existence of the master plan. It appears that when booths had been constructed as per lay out plan-cumdemarcation drawn up in 1988, as it stood revised in the year 2002, they were done as per the orders passed by a Division Bench of this Court in Civil Writ Petition No. 8783 of 2000. The said writ petition had been filed by the residents of Kothi No. 526-529 seeking for restraint against construction and although originally an order of stay had been issued, on an application No. 34946 of 2001 filed by PUDA in Civil Writ Petition No. 8783 of 2000, the High Court had allowed the construction of booths at the back of houses bearing Nos. 529-525 subject to the condition that the constructions should be made after keeping a vacant space at least 10 feet. The order passed by this Court in the above writ petition on 14.12.2001, had been placed before the Regional Planning and Design Committee of Mohali region in its meeting held on 31.01.2002 and a revised lay out-cum-demarcation of the rehri market had been made to provide for 353 rehri sites instead of 382. The constructions were being made only pursuant to the directions already given by the Court and in terms of the resolution passed by the Regional Planning and Design Committee. The bona fides of the writ petition itself is denied by the respondent by pointing out that one among the petitioners had applied for award of contract for construction of the booths and only because it was rejected, as a disgruntled person, he has aligned himself with others to file the writ petition.

3. The respondents have also denied in general terms that there is any danger of causing pollution. The Assistant Divisional Fire Officer has also filed a written statement referring to the fire safety measures envisaged by the National Building Code of India Part IV which classify the nature of buildings and measures that are necessary to be taken for fire safety. He would state that the fire department has not received any plan from GMADA with regard to the area referred to in the present writ petition and as and when the site plan was submitted or referred to, then only they would consider and render any opinion. A short reply by way of affidavit has also been filed by the Additional Secretary, Department of Local Government, Punjab, stating that the property vested with the GMADA-respondent No. 2 and that the Local Administration has no role to play. The Deputy Superintendent of Police has filed a reply in the form of affidavit taking similar plea that the property vests with GMADA and they have nothing to do with the subject matter involved in the writ petition.

4. The learned Counsel appearing for the petitioners shall have a right to obtain an interdict against a construction only if it is clearly established that there is a master plan or a scheme which demarcates the nature of construction that could be made in a particular place and the establishments of booths or the market in the particular place is violative of the reservation already made through some building or town and country planning scheme. The petitioners' only reliance is on a copy of the plan which shows the particular place where the market is

sought to be established as a place which is vacant on both sides of a place marked as "P.S" which the petitioners claim as referring to a primary school. The details of the town and country planning scheme themselves are not available before the Court. The learned Counsel appearing on behalf of the GMADA has produced at the time of arguments a lay out-cumdemarcation plan for Sector 60 which is said to have been issued by the office of the Divisional Town Planner as per drawing No. 612, dated 18.02.1988. The said plan refers to the place which is now disputed as falling within 5 modes of users namely the north eastern extremity as reserved for PWD stores, the next parcel of land viz., the next southern parcel of land is referred to as reserved for gurudwara; the next adjacent parcel is for private primary school; the next southern parcel is referred for rehri market and the south western extremity is reserved for Vaishno Mata Mandir. Between the contention of the petitioners that on both sides of the private primary school, the places were reserved as open and the contention of the GMADA that even in the plan of the year 1998, constructions had been mentioned, there is a disputed question of fact that this Court cannot resolve.

5. The learned Counsel appearing for the GMADA points out to the development of law relating to town planning and building regulations with reference to the Punjab Urban Estates (Development and Regulation) Act, 1964 that defines the "urban estate" to mean an area declared u/s 3(1) of the 1964 Act. Section 3 empowered the State Government to declare areas as urban estates through notifications where it was situate or within the limits of the local authority. The provisions of the Act were sought to be enforced through various sets of rules and in so far as it pertains to development and regulations, they are governed by the Punjab Urban Estates (Development and Regulation) Rules of 1974. The lay out plan refers to a plan as approved by the Chief Town Planning, Punjab showing the following details under Rule 3 (xxxi):

"layout plan" means the plan approved by the Chief Town Planner, Punjab, showing any or all or all of the following:

- (i) Streets, roads, public open spaces, parking areas.
- (ii) Areas temporarily or permanently prohibited for building operation.
- (iii) Building lines, maximum area that can be built upon, and permitted uses in respect of each or a group of plots into which the land may be shown to be divided, and
- (iv) Any other conditions or restrictions that shall be applicable in the area covered by the layout plan.

6. I have not been shown through any master plan or demarcation of the property as vacant land or park. Several decisions which the learned Counsel appearing for the petitioners relied on refer to situation when Courts have interfered to restore the user of the property to be in conformity with the zoning regulations. There is nothing on record to show that there is any notification

relating to the disputed property as reserved to be an open space or for establishing a park. The lay out plan under the Rules 1974 is only the plan that is approved by the Town Planner and the copy of the blue print filed by the learned Counsel appearing for the respondents at the time of arguments shows the property to be used for establishing a market. The petitioners cannot seek for a restraint in the manner sought for in the petition without proving that there is any violation of the lay out plan. The writ petition itself is based on a wrong assumption that a master plan exists where the property is reserved as a permanent vacant piece of property. I am not examining the decisions cited by the learned Counsel appearing for the petitioners that have referred to the mode of enforcement of building regulations and the power of public authorities to ensure that constructions are not made in haphazard manner and where there is a development plan or a building scheme or a town and country planning scheme, the same shall be adhered to. The apprehension raised by the petitioners that there had been fire at the place is perhaps justified and for that the answer shall not be to quell any construction activity. Safety concerns fall within regulatory mechanisms and hence the 2nd respondent shall establish the market only in due compliance of safety standards. This is particularly so because the written statement on behalf of the 4th respondent-Fire Department states that there has been so far no application for safety clearance against fire. All the local regulations relating to safety of constructions shall be punctiliously adhered to.

7. The contention of the 2nd respondent that the petition itself is not bona fide since the 1st petitioner had at a previous time applied for a contract for construction and only when it was denied, he has engineered the writ petition, cannot be said to be without basis. The motivation for the writ petition itself is suspect.

8. The writ petition fails and it is dismissed with cost assessed at Rs. 10,000/- payable to the 2nd respondent.