
(2008) 12 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1384 of 2008

Luxmi Educational Trust

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 818

Hon'ble Judges : M.M.Kumar, J and Jora Singh, J

Advocate : Mr. B.S. Guliani, Advocate.For the Respondent Nos. 1 to 3, Mr. Suvir Sehgal, Additional Advocate General, Punjab, Mr. S.S. Satbir, Advocate.,
Advocates for appearing Parties

Judgement

Jora Singh, J.—The instant petition is directed against order dated 17.12.2007 (P1) passed by the Chief Town Planner, Punjabrespondent

No. 3 alleging that the site for educational purposes in village Majatri, Tehsil Kharar, is covered by the Chandigarh Periphery controlled Area and

a notification in that regard has been issued on 20.1.2006. The petitionerTrust has also prayed for quashing notification dated 20.1.2006 alongwith

its AnnexureB on the ground that it is wholly arbitrary, discriminatory and infringes the fundamental right of the petitionerTrust guaranteed by

Articles 14 and 21 of the Constitution.

2. Brief facts of the case necessary for disposal of the instant petition are that the petitioner is a registered Trust created with the object to establish

schools, colleges, commercial, medical and engineering education centres. On 16.1.2004, the petitionerTrust took the land on lease for a period of

99 years at village Majatri, Tehsil Kharar, District Ropar (now in District Mohali), vide registered sale deed (P4 & P5). Thereafter on 23.6.2004,

the petitionerTrust moved an application alongwith all the necessary documents

under the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, 'the Act') seeking permission to change the use of agricultural land for establishing educational institution (P6). It is claimed that Pollution Control Board and Forest Department have issued no objection certificate to the respondents. The respondents did not reject the application within the statutory period of 60 days and the petitioner taking the advantage of 'deeming provision' of Section 81(7) of the Act, started construction work of the college as per the building plans enclosed with the application whereby permission to change the land use was applied. The site plan and building plan have been placed on record (P7 & P8). The institute is stated to be located on LandranSirhind road and is about 200 meters away from the main road. It is claimed that there is no connecting public road measuring 22'6" abutting the institution and goes to the village Markan and, therefore, there is no violation of the provisions concerning 'controlled area'. The no objection certificate by the Education Department, Punjab, has also been granted on 27.12.2004 (P9). The petitionerTrust has also obtained recognition in terms of Section 14(1) of the National Council for Teacher Education Act, 1993 (for brevity, 'the 1993 Act'), which is necessary to open a B.Ed. college. Accordingly, the petitionerTrust has opened Guru Nanak Dev College of Education. The institution is affiliated to the Panabi University, Patiala, as per the approval given on 18.7.2005 (P10), which has been granted after due inspection and completion of all formalities. The institution has 300 students studying there apart from teaching and nonteaching staff.

3. On 31.7.2007, the Chief Administrator, Greater Mohali Area Development Authority, Mohali (for brevity, 'GMADA'), issued a show cause notice to the petitionerTrust under Section 12(2) of the Punjab New Capital (Periphery) Control Act, 1952 (for brevity, 'the Periphery Act'), which was challenged by the petitionerTrust in C.W.P. No. 16923 of 2007. The said petition was disposed of on 15.11.2007 by issuing direction to the Chief Town Planner, Punjab respondent No. 3 to dispose of the application of the petitionerTrust for change of land use within a period of 8 weeks. The Chief Town Planner in terms of the direction issued by this Court, has rejected the claim made by the petitionerTrust, by placing reliance on a notification dated 20.1.2006 (P2).

4. The claim of the petitionerTrust has been contested by filing written statement by respondent Nos. 1, 2 and 3. The broad factual narration has not been disputed. However, it has been asserted that the application of the petitionerTrust for change of land use was examined and was rejected because the approach to the site of the building belonging to the petitionerTrust was through 19ft. wide road and the width of approach road that an educational institution require has to be minimum 40ft. wide. It has also been claimed that the site is not a single compact unit but is bifurcated into two parts by the approach road. A copy of the field report has been attached (R1). It is further claimed that the GMADA respondent No. 4 is the competent authority to order demolition and any construction within the Periphery Controlled Area was to be regulated by the provisions of the Periphery Act.

5. Mr. B.S. Guliani, learned counsel for the petitionerTrust has argued that under Section 81(7) of the Act if an application for change of land use has been submitted then it is required to be rejected within a period of 60 days failing which it is deemed to be accepted. According to the learned counsel the plain reading of Section 81(7) of the Act spell out the aforementioned legal position. Learned counsel has further submitted that once the petitionerTrust has applied on 23.6.2004, there was no reason for the respondents to sit over the application keeping in view the mandatory provisions of Section 81(7) of the Act. In that regard he has placed reliance on a Division Bench judgment of this Court rendered in the case of Sham Lal v. Union Territory, Chandigarh, 1977 PLJ 509. Mr. Guliani has further submitted that the petitionerTrust has completed its building after obtaining no objection certificate from the Education Department, Punjab, on 27.12.2004 (P9) and recognition in terms of Section 14(1) of the 1993 Act from the National Council for Teacher Education (NCTE), which is required for opening a B.Ed. college. He has maintained that the show cause notice dated 31.7.2007, issued under Section 12(2) of the Periphery Act, which was subject matter of challenge in CWP No. 16923 of 2007, was based on the notification dated 20.1.2006 (P2), which is far later than the date of the application filed by the petitionerTrust on 23.6.2004, seeking permission for change of land use. Therefore, the notification dated 20.1.2006 (P2) cannot be given retrospective effect

depriving the petitioner Trust of its vested right.

6. Mr. Suvir Sehgal, learned State counsel has argued that the Periphery Act is the basic Act and notification dated 20.1.2006 (P2) has been

issued under the provisions of the Periphery Act. According to the learned counsel, the unauthorised construction in the controlled area has to be

regulated. He has pointed out that directions were issued by this Court in C.W.P. No. 14357 of 2002 directing the Committee to examine various

issues, which has fixed the date of 1.11.2005. He has also drawn our attention to Annexure B appended to the notification dated 20.1.2006.

7. After hearing learned counsel for the parties and perusing the paper book with their able assistance we are of the view that the matter is covered

the Division Bench judgment of this Court in Sham Lal's case (supra). It is conceded position that the petitioner Trust had filed an application on

23.6.2004 for grant of permission for change of land use and the same was not rejected within the stipulated period of 60 days. It is in this situation

that the 'deeming provision' of Section 81(7) of the Act comes into play, which reads thus :

Section 81(7) If the Competent Authority does not communicate its decision to grant or refuse permission to the applicant within a period of sixty

days from the date of receipt of his application in a case other than the heritage site and development affecting such site, and within a period of one

hundred twenty days in the case of heritage site and development affecting such site, or within a period of 60 days from the receipt of reply from

the applicant in respect of any requisition made by the competent authority, whichever is later, then such permission shall be deemed to have been

granted to the applicant on the date immediately following the expiry of the late date without prejudice to the provisions of this Act, rules and

regulations made thereunder.

8. A perusal of Section 81(7) of the Act makes it evident that if no decision is communicated to grant or refuse permission to an applicant within a

period of 60 days from the date of receipt of the application then permission is deemed to have been granted. It was in somewhat similar

circumstances that the provisions of Section 6(6) of the Periphery Act came up for consideration of this Court in Sham Lal's case (supra) and a

show cause notice issued by ignoring the 'deeming provision' was set aside.

While giving interpretation to the "deeming provision" the Division

Bench also considered Section 11 of the Periphery Act and observed as under in para 6 :

6.From the collective reading of sections 5 and 6, it is clear that a person can put a land in the controlled area to three specific kinds of uses

viz., of erecting or reerecting any building, of making or extending any excavation and of laying out any means of access to a road, only in

accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner, in writing. Thus, the scope of these two

sections is quite limited, as it empowers the Deputy Commissioner to grant or refuse the permission of putting the land situated in the controlled

area only to three specific kind of uses. As far as section 11 is concerned, it has got a much wider scope. Whenever, it is intended by a petitioner

to put the land to any kind of use other than those mentioned in sections 5 and 6, then permission has to be obtained by him for the same under

section 11(1) from the Central Government. It is an accepted principle of law that when there exists a general provision and a specific provision of

law on a particular subject, the latter provision shall prevail, provided the question to be determined is covered by both the provisions of law. The

general provision of law shall come into play only when in a particular case the specific provision of law is of no help. In the present case, the

petitioner made an application to the Deputy Commissioner cum Estate Officer, Chandigarh on 5th July, 1971, under section 6(1) read with section

5 of the Act. By the order of the Deputy Commissioner cum Estate Officer, Chandigarh, dated 7th /23rd October, 1971 (Annexure R1 to the

written statement), permission was, however, accorded under section 6(2)(a) of the Act for the construction of the cattle shed only on the

conditions mentioned in the said order. It means that the permission sought for was not granted within the statutory period of three months. That

being so, the provisions of subsection (6) of section 6 of the Act came into play in this case. Accordingly, permission for the construction of both

the cattle shed and the residential building, as a matter of law, shall be deemed to have been granted without any precondition by the Deputy

Commissioner cum Estate Officer and consequently the construction raised by the petitioner thereafter shall be deemed to have been fully authorised

by law.....

9. The Division Bench rejected the contention that permission in writing was required to be granted by the Deputy Commissioner cum Estate Officer

and the petitioner was to apply to the Central Government under Section 11(1) of the Periphery Act because accepting such an argument would

have rendered the provisions of Section 5 and 6 of the Periphery Act as otiose.

10. We are further of the view that a notification which has been issued on 20.1.2006 (P2) cannot be applied to the building which has been

erected earlier to the aforesaid notification. Although the petitioner Trust has claimed that the institution fulfils all the citing norms, in any case it

cannot be subjected to the rules which have been notified later because it would amount enacting the rules of game after the game is over. The

vested rights acquired by the petitioner Trust by raising construction cannot be taken away by an executive fiat. It is also a conceded position that

the petitioner Trust has set up the B.Ed. college with the name and style of 'Guru Nanak Dev College of Education'. All the formalities have been

completed as no objection certificate by the Education Department, Punjab was issued on 27.12.2004 and recognition in terms of Section 14(1) of

the 1993 Act has been granted by the NCTE. The institution has also been granted affiliation by the Panjabi University, Patiala on 18.7.2005 after

due inspection and completion of all the formalities (P10) and there are more than 300 students studying in the institution apart from the teaching

and nonteaching staff attached to it. Therefore, the impugned order dated 17.12.2007 (P1) is wholly illegal and, thus, liable to be quashed.

11. For the reasons aforementioned, this petition is allowed and the impugned order dated 17.12.2007 (P1) is hereby quashed.