

(1973) 05 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 327 of 1973

Maya Devi and Others

APPELLANT

Vs

The Chandigarh Administration and Others

RESPONDENT

Date of Decision : 28-05-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 117, 3

Citation : AIR 1974 P&H 100

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

This writ petition has been filed under Articles 226 and 227 of the Constitution of India praying that the respondents Nos. 1 and 2 be restrained for permitting respondent No. 3 to change the use of a shop and from permitting respondent No. 4 to run a halwai shop therein, i.e. Shop No. 18, Sector 11-D.

2. The facts as given in the petition are that the petitioners Nos. 1 and 2 are the owners of Shop No. 1 situated in Sector 11-D, whereas the petitioner No. 3 and Shrimati Giatra Devi are the owners of Shop No. 36. In Shop No. 1, the petitioners Nos. 1 and 2 have been carrying on the business of halwai; and in Shop No. 36, the petitioner No. 3 has been running a restaurant since 1960 and 1965 respectively. The Capital of Punjab (Development and Regulation) Act, 1952(hereinafter referred to as the "Act") and the Rules framed thereunder provide for the systematic planning and development of the various sectors of Chandigarh. The Administration prepared a Master Plan for the entire city of Chandigarh and in conformity with that, zoning plans were prepared by respondent No. 2 to provide for sectorwise planning. The Zoning Plan was prepared and the layout was drawn for Sector 11 on May 19, 1958 by the authorities. The layout prepared under the Zoning Plan is in the nature of a representation made to the citizens to enable them to decide about the purchase of plots for business in any particular locality by stating therein the nature of business for which they had been earmarked. In the Zoning Plan of Sector 11, it

is provided that market shall be established in part 11-D and in that market there shall be two shops, one for halwai and the other for restaurant, both situated on either end of Sector 11-D and bearing Nos. 1 and 36. The petitioners Nos. 1 and 2 and the grandfather of petitioner No. 3 purchased the shops mentioned above on the representations made in the Zoning Plan and started their business therein. The main attraction for them was that there would be only one halwai shop and one restaurant. In the second week of January, 1973, Shop No. 18 which had been earmarked for general merchandise in the Zoning and the layout plans, was being re-erected for the purpose of being used as halwai shop by the respondents. The petitioners, on enquiry, came to know that the authorities had orally permitted the respondents Nos. 3 and 4 to make reconstruction of their shop for the said purpose. The order of the respondents Nos. 1 and 2 in allowing the change of the user of the shop is illegal and without jurisdiction. The action of the respondents is neither bona fide nor in the conformity with the sound judicial principles. The order has not been passed in conformity with rules of natural justice. The petitioners have therefore, prayed that the aforesaid order be quashed. The petition has been contested by the respondents. Two returns have been filed, one by respondents Nos. 1 and 2 and the other by respondents Nos. 3 and 4. Inter alia, it is pleaded by respondents Nos. 1 and 2 that Zoning Plan is prepared by the Architect's Department of Chandigarh Administration and not by respondent No. 2. The Zoning Plan has been defined under the Punjab Capital (Development and Regulation) Building Rules, 1952(hereinafter referred to as the "Rules") and under Rule 3, the person who wants to erect any building, has to comply with the restrictions shown in the Zoning Plan. In the Zoning Plan of Sector 11, no such restrictions have been provided as to the use of a particular shop for a particular purpose. The object of the layout plan is merely to indicate the situation of the shops in the market and the use indicated in it for any particular shop does not amount to a restriction within the meaning of the Zoning Plan as defined in the Rules, because layout plan is not a statutory plan like the Zoning Plan. The Administration, while indicating the trade for a particular shop, did not make a representation the said shop was to be used for that particular trade for all times. Considering the stage of development and the needs of the locality, the Administration had the right in the exercise of its executive discretion to specify the trade for which the particular shop was to be used. This could not be termed to be in the nature of representation made to the citizens. The Chief Administrator is empowered under Rule 117 of the Rules to modify or waive the terms and conditions as thought fit by him. There is no provision in the Zoning Plan that there will be only one halwai shop and one restaurant in the market of Sector 11. Respondent No. 3 had been permitted a change of the trade from general to halwai, after a thorough processing of the case. The matter was examined at the highest level and the comparative statement of the number of halwais' shops in different sectors was drawn up and examined along with the circumstances of acute hardship mentioned by respondent No. 3 in his application. The Chief Architect, Chandigarh Administration, was consulted and he gave an opinion that the

change of trade does not involve any change in the Zoning Plan. The town planners also expressed the view that there could be no objection to the request of respondent No. 3 being acceded to on his fulfilling the conditions laid down by the Administration for such cases.

3. The first contention of the learned counsel for the petitioners is that the Government gave an undertaking while preparing a layout plan of Section 11D that there would be two shops, one for halwai and the other for restaurant. Petitioners Nos. 1 and 2 and grandfather of petitioner No. 3 purchased the shops on the aforesaid representation. The main attraction for purchasing the shops by them was that there would be only one halwai shop and one restaurant. The learned counsel for the respondents states that no representation was made that there would be only one shop for halwai and one restaurant. He also submits that the petitioners have no legal right to challenge the order passed by respondent No. 2 for changing the nature of business in the shop.

4. The first question that arises for determination is as to whether the petitioners have got a right to challenge the order of respondent No. 2 for conversion of the purpose of the shop for which it was earmarked. In the Zoning Plan of the sector, the area where the shops have been constructed is shown as reserved and its use was to be determined by the Chief Administrator. The definition of Zoning Plan is given in sub-rule (1vi) of Rule 2 of the Rules as follows:--

" "Zoning Plan" shall mean the numbered plan signed by the Chief Administrator and kept in his office defining the layout of any numbered sector of the Master Plan of Chandigarh showing the streets, boundaries of building plots, open spaces, position of protected trees or other features, and showing in colour or by other means the specified land-use, building lines, permissible heights of buildings, site coverages and such other restrictions on the development of land or buildings as may be prescribed."

Clause (a) of Rule 3 of the Rules says that a person who erects or re-erects any building shall comply with the Rules and in addition shall comply with the restrictions shown on the Zoning Plans. Clause (c) of Rule 3 points out that the Rules shall also be applicable if any material change of use is proposed in the existing building. Rule 19 of the Rules relates to Zoning Plan. According to the said rule, the erection or re-erection of every building shall comply with the restrictions of the zoning plan and the schedule of clauses appended there to and the architectural control sheets, if applicable. Rule 117 is regarding the power of Chief Administrator to sanction or refuse erection or re-erection of the buildings. The said rule is as follows:--

"Power of Chief Administrator to sanction or refuse erection or re-erection of buildings:--

(1) The Chief Administrator shall refuse to sanction the erection or re-erection of any building in contravention of any of these rules, provided that the Chief Administrator shall have the authority to modify or waive, upon terms and

conditions as thought fit, any requirements of any of the rules, provided further that applications for such waivers are made to him in writing and accompany the application to erect or re-erect under Rule 7.

(2) The Chief Administrator may refuse to sanction the erection or re-erection of any building for any other reason to be communicated to the applicant which he deems to be just and sufficient as affecting such building.

(3) Subject to the provision of clause (i) of this rule the Chief Administrator may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the rules as he may deem fit."

From the perusal of Zoning Plan, it is clear that the site where the shops have been constructed had not been earmarked for the said purpose. It had been left at the discretion of the Chief Administrator to determine the use of the said area for any purpose. Under the Rules the restrictions in the Zoning Plan and the schedule of clauses appended thereto are to be complied with it has not been stated in the Rules that the layout plans have got any statutory sanction behind them. If there is any breach in the user of the building, no person under the Rules has got a right to come to this Court under Article 226 of the Constitution of India. It is only the infringement of legal right which can be enforced under Article 226 of the Constitution of India. It has been observed in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, that the right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warrant this rule may have to be relaxed or modified. A similar matter came up for decision before this Court in *Aggarwal Timber Store etc. v. Chief Commr., Union Territory, Chandigarh*, Civil Writ No. 3027 of 1969, decided on 27-3-1970(Punj). In that case, the layout and Zoning Plan of Timber Market, Sector 26, showed that there was a vacant space between the building line of Timber Market and building line of Grain Market. In the Zoning Plan of the Timber Market, some area was shown as reserved towards the north. It was stated in the petition that place marked "X" in the Zoning Plan C/1 could not be used for any purpose whatsoever as the Zoning Plan had shown the same to be open. The Capital authorities had allowed installation of a Petrol Pump/Service Station at that site. The petition was filed for issuing a writ of mandamus or any other writ prohibiting the construction of the Petrol Pump/Service station by some of the persons who were having timber shops in the Timber Market. An objection was raised that they had no legal right to institute a writ petition as no legal right had been infringed. The learned Single Judge observed that the petitioners in that writ petition had no right to challenge the action of the authorities. Similar observations were made in *V.K. Jain Vs. Union of India and Others*, by a Division Bench of this Court. In that case, Dewan Sumer Nath was the owner of a shop-cum flat in Sector 19, in which he had installed a chakki (flour mill) which was worked by a 7 H. P. electric motor. Later, he sold the property to Jatinder Kishore who installed another chakki with an electric motor

of 15 H. P. in partnership with Mohan Lal. The Estate Officer issued notices to Jatinder Kishore and Mohan Lal asking them to show cause why the site of the shop-cum flat be not resumed. On their representation, the Estate Officer came to the conclusion that they were being unnecessarily harassed. He, consequently, withdrew the notice. One Mr. V. K. Jain, owner of another shop-cum-flat, filed an appeal before the Chief Administrator who ordered that Jatinder Kishore etc., should remove the machinery within 30 days. Against, that order, Jatinder Kishore and Mohan Lal both went up in revision before the Chief Commissioner, who accepted the same. V. K. Jain filed a writ petition against the said orders in this Court, which was dismissed in limine. He filed an application for leave to appeal to the Supreme Court. It was contended by the respondents that he had no right to come to this Court. The learned Bench, after hearing the arguments, made the following observations:--

"From the facts stated above, it is not quite understandable as to what particular right the applicant had, which he wanted to be enforced by means of the writ petition. On being asked repeatedly, the learned counsel could only vaguely suggest that he had some sort of a right that the respondent, namely, Jatinder Kishore and Mohan Lal, might not use their premises in a manner, which was against the conditions of their allotment and by their so doing, his rights were being infringed and those rights he had valued at more than Rs. 20,000/-. As I have said, if the respondents were doing anything against the conditions of their allotment, the authorities to take notice thereof were the Estate Officer or his superior Officers. From what I have already mentioned, it is clear that the Chief Commissioner had ultimately held that the respondents were not guilty of any breach of those conditions and the notice originally issued to them by the Estate Officer was cancelled. In face of this decision, it is not understood as to what breach the respondents had committed and what rights the applicant had, which he was trying to enforce through the writ petition."

In the present case, the right which is stated to be vested in the writ petitioners is that they were carrying on a similar business and that no other person can carry on that business in that locality as no other shop had been earmarked for that purpose. It has been stated by the respondents Nos. 1 and 2 that the petitioners will not suffer in any way as they have taken a decision after considering the changed circumstances. It is given in the return that the matter was examined at the highest level and the comparative statement of the number of halwai shops in different sectors was drawn up and examined along with the circumstances of acute hardship mentioned by respondent No. 3 in his application. The Chief Architect, Chandigarh Administration, was consulted who gave an opinion that the change of trade did not involve any change in the Zoning Plan. After observing the aforesaid formalities the permission was granted. In view of the aforesaid facts I am of the view that the writ petitioners' legal right has not been infringed and they have no right to file a petition in this Court.

5. The second question that arises is as to whether and undertaking was given by the authorities on account of which some right has accrued to the petitioners. From the perusal of the definition of Zoning Plan and Rule 19 of the Rules, it will be clear that only breach of Zoning Plan will give a cause of action. If in layout plan it has been mentioned that particular piece of land will be used for a particular purpose, that can be changed in accordance with the Rules. Under Rule 117, the Chief Administrator has been given a power to modify or waive upon terms and conditions as thought fit, any requirements of any of the rules. In the present case, it is the Chief Administrator who, after considering the various facts, has changed the user of the shop in dispute. It was not urged before me that Rule 117 is ultra vires. If the rule gives power to any authority to allow change in the user of any plot or the shop, no person can make a grievance if change has been allowed to him. The learned counsel for the petitioners has placed reliance on *The Union of India v. Anglo Afghan Agencies* AIR 1968 SC 718 wherein it has been observed that where a person acted upon representations made in an Export Promotion Scheme that import licenses up to the value of goods exported will be issued, and had exported goods his claim for import licence for the maximum value permissible by the scheme could not be arbitrarily rejected. It was further observed that even though the case did not fall within the terms of Section 115 of the Evidence Act, it was still open to a party who had acted on an representation made by the Government to claim that the Government would be bound to carry out the promise made by it, even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. The facts of that case are distinguishable and the observations therein will not be applicable to the present case. As already stated above, the Rules in the present case authorize the Chief Administrator to modify the use of any plot or shop. The Rules aforesaid are statutory. In case any power has been given to any authority under a statute or the Rules, it cannot be said that any action taken by the authority would be illegal on the ground that the action was against the representation of the authority concerned. In the circumstances I hold that the respondents Nos. 1 and 2 had right to order the change of user of the shop in dispute.

6. The learned counsel for the petitioners then urges that they should have been given a notice before ordering change of user of the shop. I have already held that the petitioners have no legal right to challenge the impugned order. Therefore, no notice was necessary to be issued to them. The learned counsel for the private respondents has urged that the right to carry on business is a fundamental right and no restrictions can be imposed by any law on it. In support of his contention he places reliance on *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, . He has also submitted that monopoly cannot be created in a particular trade in favour of some persons. He further urges that such an order violates Articles 14 and 19 of the Constitution of India. In support of his contention he referred to *Rashbihari Panda etc. Vs. State of Orissa*, . As I am dismissing the petition on other points,

therefore, I do not consider it necessary to give a decision on the aforesaid contentions of Mr. Jewanda, learned counsel for the private respondents.

7. For the reasons recorded above, this writ petition fails and the same is dismissed with costs. Counsel's fee Rs. 150/- which shall be shared equally by the State and the private respondents.

8. Writ petition dismissed.