
(2012) 08 P&H CK 0170
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14263 of 2012

M/s Madhuban Electronics Private Limited	APPELLANT
Vs	
State of Haryana and Another	RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 2, 3, 4, 6, 7

Citation : (2012) 08 P&H CK 0170

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J

Bench : Division Bench

Advocate : D.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has sought a writ of Certiorari for striking down and declaring Part IV-A of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (for short 'the Rules'), more particularly Rules 26-C, 26-D and 26-E as ultra vires of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short 'the Act'). Challenge is also to the order dated 21.10.2011 demanding External Development Charges (for short 'the EDCs'), as a condition for permission to change of land use. The petitioner is a Company incorporated under the Companies Act, 1956. The petitioner has purchased the land measuring 13 kanals 2 marlas situated in village Mewla Maharajpur, Tehsil and District Faridabad, vide registered sale deed dated 7.9.2005 from M/s Escorts Limited. The land purchased by the petitioner formed part of controlled area u/s 4 of the Act.

2. Earlier M/s Escorts limited applied for change of land use in the year 1991, which was allowed vide letter dated 26.3.1993 (Annexure P.9) on the conditions, inter-alia, to the following effect:-

(i) That you will have to pay conversion charges @ Rs. 2/- per sq. yards on the total land measuring 13 kanal 2 marla (7611.6 sq. yards) and also give an undertaking on the non-judicial stamp paper to the effect that as and when the Govt./HUDA/F.C.A., Faridabad, will enhance the conversion charges the same will be payable by you, duly attested by the First Class Magistrate.

Xx xx xx

(iii) That an amount of Rs. 33,865/- be deposited with the Admn. towards composition fee for the following unauthorized constructions existing at your site:-

Xx xx xx

(iv) That you will pay External Development Charges @ Rs. 4.5 lacs per gross acre on land measuring 13 K-2 marla.

3. The predecessor-in-interest of the petitioner filed a suit for declaration to the effect that the demand made by the Faridabad Complex Administration, predecessor-in-interest of the Municipal Corporation, Faridabad, in respect of the development charges for change of the land use, is illegal, void and arbitrary. The said suit was dismissed by the learned Trial Court on 22.10.2002 vide judgment and decree (Annexure P.11). The appeal against the said judgment and decree was dismissed on 17.12.2004, wherein it was recorded to the following effect:-

20. For the reasons recorded above, it is evident that the impugned demands of compounding fee, conversion charges and external development charges are legal and valid, and so, finding of learned trial court on issue No. 1 is affirmed.

4. Regular Second Appeal No. 1915 of 2005 was filed by the hearing on 30.10.2007 along with an application filed by the petitioner herein for substitution. The said application was opposed by the plaintiff. However, on the statement of the counsel for the petitioner that the petitioner would not claim any development charges imposed by the Faridabad Complex Administration/Municipal Corporation, Faridabad from its vendor, the application was not opposed by the vendor and consequently, the same was allowed. Thereafter, the counsel for the petitioner made the following statement as recorded in the order dated 30.10.2007:-

Mr. G.C. Dhuriwala, learned counsel appearing on behalf of appellant i.e. M/s Madhuban Electronics Private Limited, states at the bar that the appellant would pay the External Development Charges and composition charges as claimed by the Faridabad Complex Administration which is subject matter of appeal within one month from today. This plea of the learned counsel for the appellant is not accepted by learned counsel for the respondent.

It is the stand of the appellant that the amount as demanded shall be paid to Faridabad Complex Administration/Municipal Corporation, Faridabad (demanding

authority).

In view of this, this appeal does not survive. However, it is made clear that on deposit of demanded amount by the appellant M/s Madhuban Electronics Private Limited, the bank guarantee executed by M/s Escorts Limited shall be released by the respondent.

It is agreed between the parties that if the plan is not being sanctioned for want of payment of external development charges and composition charges, the same shall be sanctioned on the receipt of the said amount.

Appeal, thus, stands disposed of in the above terms.

5. Thereafter, the petitioner filed an application in the Second Appeal in respect of non-acceptance of the EDCs and composition charges. On the said application, the Court passed the following order on 6.2.2009:-

Learned counsel appearing on behalf of the applicant has handed over a cheque bearing No. 000023 dated 6.2.2009 drawn on Yes Bank Ltd. Fortune Global Arcade, Sikanderpur, Mehrauli, Gurgaon Road, Gurgaon, amounting to Rs. 7,70,740/- (Rupees Seven Lac Seventy Thousand Seven Hundred Forty Only) towards External Development Charges and Composition charges, which is accepted by the learned counsel for the non-applicant, subject to realization.

CM stands disposed of.

6. It appears that thereafter, the petitioner as successor of M/s Escorts Private Limited, sought permission for change of land use. The said request was declined on 4.3.2010, inter-alia, for the reason that the petitioner has neither applied for permission for the change of the land use in prescribed form CLU-I along with required documents nor has deposited the payable charges/fee towards CLU permission for the change of land use. It was said to the following effect:-

As per record of this office, you have neither applied for permission for change of land use in prescribed form CLU-I along with required documents nor have deposited the payable charges/fee towards CLU permission for the land measuring 13 kanal 2 marla mentioned as per subject. Therefore, you are hereby advised to apply for CLU permission in prescribed form under the rules immediately so that permission for change of land use for the above land can be processed and allowed accordingly in pursuance of Hon"ble High Court orders dated 30.10.2007 and subsequently modified orders dated 6.2.2009.

7. Such assertion was reiterated in the communication dated 21.10.2011 (Annexure P.6), wherein demand of scrutiny fee, services charges, conversion charges, EDCs for 125% FAR was sought. It is thereafter, after serving a legal notice, the petitioner has invoked the writ jurisdiction of this Court.

8. Learned counsel for the petitioner has vehemently argued that in terms of Section 7 of the Act, the respondents can claim only conversion charges and there is no provision for imposition of EDCs in Section 7 of the Act, therefore,

Rule 26-D of the Rules contemplating payment of proportionate development charges is against the statutory provisions and thus, not sustainable in law. It is contended that Rule 26-D is beyond the scope of the statutory provisions, therefore, the rule making authority, has traveled beyond the scope of statutory provisions and thus, such provisions are illegal being ultra vires of the Statute.

9. Before we consider the said argument, certain statutory provisions, would be necessary to be reproduced:-

Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963.

Section 2. Definitions....

(1) to (7) xx xx xx

(8) "Prescribed" means prescribed by rules made under this Act;"

xx xx xx

4. Declaration of controlled area.- (1) The Government may, by notification in the Official Gazette, declare any area outside the limits of municipal town or any other area, which in its opinion has the potential for building activities, industrial, commercial, institutional or recreational estates/activities and uses sub-servient to the above, to be a controlled area for the purposes of this Act.

(2) The Government shall also cause the contents of the declaration made under sub-section (1) to be published in at least two newspapers printed in a language other than English.

xx xx xx

7. Prohibition on use of land in controlled area. - (1) No land within the controlled area shall, except with the permission of the Director, and on the payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4, and no land within such controlled area shall be used for the purposes of a charcoal-kiln, pottery kiln, lime kiln, brick-kiln or bricks field or for quarrying stone, bajri, surkhi, kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.

Provided that any fee or charges leviable, if not paid within the specified period, shall be recoverable as arrears of land revenue.

xx xx xx

8. Application for permission etc. and the grant or refusal thereof. (1) Every person desiring to obtain the permission referred to in Section 3 or Section 6 or Section 7 or licence u/s 7 shall make an application in writing to the Director in

such form and containing such information in respect of the land, building, excavation or means of access to a road to which the application relates as may be prescribed.

(2) On receipt of such application the Director, after making such enquiry as he considers necessary, shall by order in writing either:-

(a) grant the permission or licence subject to such conditions if any, as may be specified in the order, or

(b) refuse to grant such permission or licence.

xx xx xx

25. Power to make rules.- (1) The Government may, by notification and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) to (c) xx xx xx

(d) the conditions on which the licences u/s 7 shall be granted or renewed and the fees to be charged for the grant and renewal thereof;

xx xx xx

(f) the principles and condition under which applications for permission or licence under this Act may be granted or refused;

Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Rules, 1965.

26-A. Application for permission u/s 7 in case of a person other than colonizer.- Every person other than colonizer intending to change the existing use of the land in a controlled area for the purpose of developing the said land into buildings for residential, industrial, commercial or other purposes shall make an application in writing along with scrutiny fee of Rs. 10 (ten rupees only) per square meter in the form of bank draft to the Director in Form CLU-1, accompanied by -

(1) a survey plan of the land on scale of 1" to forty feet showing the existing means of access to the land for the nearest public road and building and their nature falling within 100 yards of the said land on its four sides; and

(2) A copy of the deed showing the title of the applicant to the said land.

26-B. Information necessary to validate application under Rule 26-A.- No application under Rule 26-A shall be considered to be valid until a plan and a copy of the deed required by rule 26-A have been furnished to the satisfaction of the Director. In case of failure of such compliance, the application together with

the plan and copy of the deed shall be returned to the applicant for resubmission in accordance with these rules.

26-C. Applicant to be called upon to fulfill certain conditions. - (1) If, after scrutiny of the plan and other necessary enquiry which the Director may deem fit, he is satisfied that the application is fit for the grant of permission, he shall, before granting permissions, call upon the applicant to fulfill the conditions laid down in rule 26-D within a period of thirty days from the date of notice given to him under a registered cover.

(2) If the applicant fails to fulfill these conditions within the period specified in sub-rule (1), the permission shall be refused.

26-D Conditions required to be fulfilled by the applicant. - The applicant shall -

(a) furnish to the Director a bond guarantee in the amount equal to twenty five percent of proportionate estimated cost of the development works as certified by the Director and enter into an agreement in Form CLU-II for fulfilling the conditions contained herein in accordance with the permission finally granted.

(b) undertake to pay proportionate development charges which shall be a first charge of the said land as and when required and as determined by the Director in respect of external development works which may be carried out in the area for the benefit of the said land.

(c) undertake to be responsible for making arrangement for the disposal of affluent to the satisfaction of the Director.

(d) undertake to get the plan approved from the Director before commencing any construction on the said land.

(e) undertake not to sell the said land or portion thereof unless the said land has been put to use permitted by the Director and to use the said land only for the purposes permitted by the Director; and

(f) undertake to start construction on the said land within a period of six months and complete the construction within a period of two years from the date of issue of order permitting the change of land use:

Provided that where the existing use of land in a Controlled Area is to be changed for the purpose of developing the said land into buildings for industrial purposes, no bank guarantee referred to change (a) shall be required to be furnished and in such a case paragraph 3 of the agreement in Form CLU-II shall not apply. And

(g) furnish to the Director a demand draft on account of conversion charges as per rates prescribed in the Schedule IV to these rules.

26-E. Grant of permission and form of order of grant or refusal to grant permissions.- (1) If the applicant has fulfilled all the conditions laid down in rule 26-D to the satisfaction of the Director, the Director shall grant the permission.

(2) Every order passed under sub-section (2) of section 8 on an application submitted under Rule 26-A shall be in form CLU-III.

10. We have heard learned counsel for the petitioner and find no merit in the present writ petition.

11. It appears that the petitioner wants to take benefit of a statement made before this Court in the Regular Second Appeal filed by the vendor of the petitioner to obtain permission of change of land use granted earlier to its vendor.

12. A perusal of the judgment and decree in a Civil Suit filed by the vendor of the petitioner shows that the claim of the EDCs and conversion charges was disputed by the vendor of the petitioner. Such suit has remained unsuccessful before the trial Court as well as before the first Appellate Court. The Second Appeal has been disposed of for the reason that it did not survive. The judgment and decree passed by the Courts below have not been set aside when the petitioner agreed to pay EDCs and composition charges raised against its vendor, subject matter of challenge in the suit. By deposit of such charges by way of a demand draft subsequently without any demand from the defendant, the petitioner seeks to step into the shoes of its vendor. In terms of the provisions of the Act and the Rules framed thereunder, the petitioner on the basis of its title, has to apply for change of land use in its own name and on the strength of its title.

13. The said aspect that the petitioner has to apply for change of the land use, is not impliedly disputed when the petitioner disputes the levy of EDCs stating the same to be beyond the legislative competence. If the petitioner has stepped into the shoes of its vendor, the levy of EDCs and that of the conversion charges have remained unsuccessful in the second appeal. Therefore, the petitioner cannot be permitted to wriggle out of the finding recorded by the Civil Court, and challenge the same in the present writ petition.

14. Having said so, and assuming that the petitioner has an independent right to seek permission for change of land use, we have examined the challenge to the legality of the provisions levying EDCs.

15. A Division Bench of this Court in *Trishul Industries v. State of Haryana and others*, 2006 (3) PLR 222, interpreted Section 7 and 8 of the Act as well as Rule 26-D of the Rules, the subject matter in the present writ petition as well. However, it may be noticed that in the aforesaid case, the counsel for the petitioners disputed the conversion charges only stating that though the petitioners could be asked to pay EDCs for the development work done in the area on the actual basis. But in the present case, learned counsel for the petitioner does not dispute levy of conversion charges, but disputes the levy of EDCs alone.

16. In the aforesaid case, the Court examined the levy of conversion charges in terms of Section 7 of the Act, as it existed prior to amendment in Section 7 vide Haryana Act No. 16 of 1996 with effect from 13.12.1996 and after the

amendment as well. Prior to the amendment, the permission of the Director was required for change of land use, but after the enactment of Haryana Act No. 16 of 1996, the permission can be granted on payment of such conversion charges as may be prescribed by the Government from time to time. The Court held that Section 7 is in two parts. The first is the permission to change the user of the land and the second part is licence on payment of conversion charges as may be prescribed on payment of such fee as may be prescribed. It was held that since the terms and conditions of the licence are prescribed in the Rules more particularly Rule 26-D of the Rules, the claim of conversion charges is permissible. The relevant extracts from the judgment read as under:-

42. We also do not find much substance in the submission of Mr. Sarin that the additional conversion charges are in the nature of tax or a fee. The conversion charges have been levied to permit the petitioners to convert the natural user of purely agricultural land into purely urban land and/or for running commercial, leisure and hospitality enterprises. As explained by the respondents, the levy or conversion charges is part of the distributive justice process, as underlined by the Supreme Court in the case of Central Inland Water Transport Corporation Limited (*supra*). The Supreme Court has clearly held that regulation in addition to taxation is a legitimate means of ensuring distributive justice. Thus, there is merit in the submission of the learned Advocate General that conversion charges are neither tax nor fee. These charges are levied by the State as a balancing factor for losing vital agricultural resources. The money recovered as conversion charges, will ultimately be used for the development projects undertaken by the Government. The change of land user is not granted to the petitioners as a matter of right. It has been granted in relaxation of the zoning regulations. In case of non-levy or notional levy of conversion charges, the very purpose of declaring any area as a controlled area would be defeated. In our opinion, since the conversion charges are neither tax nor fee, the judgments cited by Mr. Sarin are not relevant.

43. Even otherwise, the respondents have given valid justification in the written statement for imposition or the conversion charges. Mr. Hooda, in our opinion, has rightly pointed out that once a defined area is declared as a "Controlled Area", the development therein has to be strictly regulated to prevent haphazard growth. Change of land user in Controlled Area is not a right vested in the land owner. At best, it is a concession. The owner of the land cannot claim the right to change the user of agricultural land to nonagricultural either as a Fundamental Right or as a Statutory Right. The change of land user is permitted only to ensure controlled or regulated development within the area

17. In the present case, the petitioner requires permission for the change of the land use in terms of the first part of Section 7 and also a permission or licence in terms of Section 8 of the Act. In terms of Section 8 of the Act, the licence or permission can be granted by the Director on such fee under such circumstances so prescribed under Rule 26-D of the Rules. Rule 26-C of the Rules contemplates

that before granting permission or change of land use, the applicant is to fulfill the conditions laid down in Rule 26-D. Condition (b) of Rule 26-D, is undertaking to pay the proportionate development charges which shall be the first charge on the land as and when required and determined by the Director in respect of the external development works, which may be carried out in the area for the benefit of the said land. Thus, the demand of EDCs is a condition of permission for land use. The Division Bench in Trishul Industries" case (supra), has noticed the purpose of claim of EDCs and conversion charges. The findings recorded therein though pertain to the conversion charges, but are *pari-materia* applicable in respect of the claim of EDCs.

18. Chapter IV-A in the Rules has been introduced with effect from 31.7.1968 which deals with the levy of EDCs. Such claim of EDCs is in terms of Section 8 of the Act as also in terms of Rule 25(2)(a) and (f). Section 8(2)(a) contemplates grant of permission or licence, subject to such conditions, if any, as may be specified in the order. Therefore, the levy of EDCs is within the scope of Sections 8(2)(a) and 25(2)(f) and (d) of the Act. In view of the above, there is no merit in the present writ petition. Hence, the same is dismissed.