
(2013) 09 P&H CK 0506
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 26011 of 2012

M/s. Namit Industries

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 173 PLR 590

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench : Division Bench

Judgement

Mahavir S. Chauhan, J.—Petitioner, who is owner-in-possession of land measuring 7689.01 Sq. Meters in village Sikrona, District Faridabad, intended to build a warehouse on it and, vide his application dated 08.08.2008 (Annexure P-1) requested the Director, Town and Country Planning, Haryana (Respondent No. 2) to grant permission to change use of the land (CLU) which was granted vide memorandum dated 12.02.2009 (Annexure P-2) subject to payment of conversion charges amounting to Rs. 99,960/- and certain other conditions, including a condition (No. 7) that the permission would be valid for two years from the date of issue of the memorandum dated 12.02.2009. Building plan submitted by the petitioner was also approved vide memorandum dated 29.09.2009 (Annexure P-3). Owing to recession in the market and indisposition of his son, petitioner could not commence construction of the warehouse and compelled by the circumstances he, vide his application dated 01.02.2011 (Annexure P-5), enclosing therewith a demand draft for Rs. 61,520/- towards extension fee, requested the 2nd respondent to extend the period of permission for change of land use. His request, however, did not find favour with the 2nd respondent and, as such, was rejected vide memorandum dated 15.04.2011 (Annexure P-6) on the ground that the land in question could not be put to use and was still lying vacant. The petitioner, instead, was advised to apply afresh, along with requisite fee, for permission to change use of the land. The demand draft for Rs. 61,520/- towards extension fee was, however, got encashed by the 2nd respondent.

2. Aggrieved by order dated 15.04.2011 (Annexure P-6), petitioner preferred an appeal before Principal Secretary, Department of Town and Country Planning, Haryana, but the appeal came to dismissed vide order dated 06.07.2012 as conveyed to the petitioner vide memorandum dated 04.09.2012 (Annexure P-11).
3. To seek quashing of orders dated 15.04.2011 (Annexure P-6) and 06.07.2012 (Annexure P-11) and to seek issuance of a mandate to the respondents to extend permission for change of land use suitably, the petitioner has approached this court by way of the instant civil writ petition under Articles 226 and 227 of the Constitution of India.
4. In the counter filed by the respondents, it has been admitted that validity of permission for change of land use is extendable by one year under Rule 26(F) of the Pun-jab Scheduled Roads and Controlled Area Restriction of Unregulated Development Rules, 1965 (hereinafter referred to as "the Rules") but the petitioner failed to satisfy the 2nd respondent that the delay in execution of the work was beyond his control, and, therefore, extension was rightly refused to him.
5. We have heard learned counsel for the parties and have appraised the record.
6. It is argued on behalf of the petitioner that the impugned orders are arbitrary and unreasonable besides being cryptic in so far as no reasons, much less valid reasons, have been given in support of the conclusion arrived at by the respondents.
7. It is also contended on behalf of the petitioner that the 2nd respondent got encashed the demand draft sent by the petitioner towards extension fee, which amounts to implied acceptance of request of the petitioner for extension of validity of the permission to change use of the land, but has wrongly rejected the request for extension of validity of the permission without even affording an opportunity of being heard to the petitioner and appellate authority has only repeated what is stated by the 2nd respondent in his order dated 15.04.2011 (Annexure P-6) which indicates total non-application of mind.
8. Per contra, on behalf of the respondents, the impugned orders are defended and it is argued that the 2nd respondent, though competent to grant extension under Rule 26(F) of the Rules, was not satisfied that the petitioner was prevented from executing the work within the stipulated time by reasons beyond his control and it was for this reason that extension was refused to the petitioner.
9. The submission put forth on behalf of the respondents has failed to impress us.
10. Permission granted by the 2nd respondent vide memorandum dated 12.02.2009 (Annexure P-2) was to ensure till 12.02.2011 and it was before that day that the petitioner again approached the 2nd respondent, vide his application dated 01.02.2011 (Annexure P-5) enclosing therewith a demand draft for Rs. 61,250/- towards extension fee with a request for extension of validity of the permission by another year and besides laying open in the application the

circumstances that prevented him from carrying out the construction work, i.e., world wide recession in the market and indisposition of his son, also referred to Rule 26(F) of the Rules under which 2nd respondent was competent to grant the requisite extension. The 2nd respondent, on one hand, got the demand draft for Rs. 61,250/- towards extension fee, encashed and on the other, refused extension to the petitioner. At the same time, 2nd respondent did not think it necessary to grant to the petitioner an opportunity of being heard in person and to deal with the grounds put forth by the petitioner in his application dated 01.02.2011. In the order dated 15.04.2011 (Annexure P-6) there is not even a whisper about the grounds pleaded by the petitioner in his application for extension or the reasons for which these grounds were found unsatisfactory and insufficient. The order, thus, is palpably unreasonable, arbitrary and violative of well established rules of natural justice.

11. Not only this, the 2nd respondent did not state a word about the power available to him under Rule 26(F) of the Rules and to show why this power could not be used in favour of grant of extension to the petitioner even after accepting from him the amount of extension fee. It may be relevant to reproduce here Rule 26(F) of the Rules. It reads as under:--

Provided that if the owner makes an application in writing for further renewal of the change of land use permissions and if the Director is satisfied that the delay in execution of works was for reasons beyond the control of the applicant, such permission may be further renewed maximum upto a period of one year on payment of 10% of conversion charges applicable as on date in the form of a demand draft in favour of the Director.

12. The appellate authority, indisputably, was discharging quasi judicial functions while disposing of the appeal brought by the petitioner to challenge order dated 15.04.2011 (Annexure P-6) and, as such, was expected to deal with the grounds put up by the petitioner in support of the appeal but, dealing with these grounds apart, the appellate authority has not even noticed the grounds in the order dated 06.07.2012 (Annexure P-11) and has dismissed the appeal by repeating what was said by the 2nd respondent in memorandum dated 15.04.2011 (Annexure P-6) while rejecting request of the petitioner for extension. The appeal has been dismissed with the following observations:--

I have heard the representative of both the parties and also gone through the relevant record. It is not disputed that the appellant was granted CLU permission for construction of a warehouse-vide office order dated 12.2.2009. The building plans were also approved by the District Town Planner, Faridabad, on 29.9.2009. However, the appellant failed to start construction even after 15 months after approval of the building plans. As per provisions of Rule 26 framed under the Act No. 41 of 1963, the applicant is required to complete the construction within the validity period and also apply for issue of occupation certificate. The pleas of the appellant that due to recession in the market or due to financial crisis, he could not start the construction cannot be accepted at this stage as these factors

should have been taken care of by the appellant before seeking CLU permission. Though Rule 26(F) provides for extension of one year in the validity period of CLU, but that can be granted only if the Director is satisfied that the delay in execution of works was for reasons beyond the control of the appellant. However, the appellant has failed to satisfy the competent authority that the delay in execution of the works was beyond his control. Moreover, the extension cannot be claimed as a matter of legal right.

In view of above, I do not find any justification for interference in the well reasoned order passed by respondent on 15.4.2011. However, the appellant, if so desires, can apply afresh for CLU permission, which will be examined by the Department on merits. The appeal is accordingly dismissed being without any merit.

13. Neither the 2nd respondent nor the appellate authority has indicated why the 2nd respondent was not satisfied about the genuineness of the grounds pleaded by the petitioner.

14. Another very disturbing aspect of the matter is that the 2nd respondent, on the one hand, rejected request of the petitioner for extension of validity of the permission to change use of the land even after accepting the extension fee, and On the other, advised the petitioner to apply for permission afresh along with requisite fee. Such a conduct runs contrary to the concept of welfare State, which the Republic of India boasts to be. Were it that the zoning plan of the area had undergone a change or that the proposed project of the petitioner did not conform to the changed circumstances, the necessary extension, perhaps, could be refused but in the present case extension has been refused arbitrarily without giving any reasons and without discussing the plea put up on behalf of the petitioner. In the consequence, we allow the writ petition, set aside the order dated 15.04.2011 (Annexure P-6) and order dated 06.07.2012 (Annexure P-11) and extend the permission granted to the petitioner vide order dated 12.02.2009 (Annexure P-2) by another year reckonable from today. Other terms and conditions contained in order dated 12.02.2009 (Annexure P-2) shall remain unchanged. The amount of Rs. 61,250/- deposited by the petitioner along with his application dated 01.02.2011 (Annexure P-5) shall be adjusted towards extension fee and 10% conversion charges. No costs.