

(1999) 08 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 824 of 1998

Piccdaly Hotels (P) Ltd. and Others	Vs	APPELLANT
Chandigarh Administration and Others		RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 2

Citation : (2000) 126 PLR 143 : (2000) 1 RCR(Civil) 318

Hon'ble Judges : Mehtab Singh Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Arun Nehra, for the Appellant; Ashok Aggarwal and Subhash Goyal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The questions which arise for adjudication in this petition is whether the construction of 11KV Grid Sub Station in Sector 34-A, Chandigarh is contrary to the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the Act) and the Rules framed thereunder and whether a writ in the nature of prohibition deserves to be issued at the instance of the petitioners for restraining the respondents from constructing the said electric substation.

2. At the outset, we may notice the relevant facts:

Petitioner No. 2 is a private limited company registered under the Companies Act, 1956. Petitioner No. 2 Mrs. Raj Rani, is its Director. In the auction held by the Chandigarh Administration on 23.9.1973 representative of petitioner No. 1 gave highest bid for the cinema site measuring 2346.25 square yards which was duly accepted by the competent authority. After getting the building plan sanctioned, petitioner No. 1 constructed cinema house which included a basement earmarked for parking of vehicles. The grievance of the petitioners is that the Administration of Union Territory. Chandigarh has, in complete disregard

of the Architectural Control Sheets, permitted construction of an electric sub-station on a portion of the land earmarked as parking site measuring 283 x 150 feet including pavement area measuring 118 x 72 feet. In support of their contention that the land earmarked as parking site cannot be used for any other purpose the petitioners have relied on the provisions of the Act and the Punjab Capital (Development and Regulation) Building Rules, 1952 (hereinafter referred to as the 1952 Rules). According to them, if the respondents are not restrained from constructing the electric substation, the parking area will be considerably reduced causing congestion of traffic and chaos.

3. In the written statement filed by them through Shri Balbir Singh, Executive Engineer, Electricity Construction Division, the respondents have averred that detailed planning of Sub City Centre in Sector 34-A was not finalised till 1973 but keeping in view the requirement of the general public for a cinema house, the site in question was sold in the open auction as per plan Annexure R.4/1 which was displayed at the time of auction. According to them, land use of the area marked as parking site could be changed to meet the future of the Sector and no illegality has been committed by permitting construction of 11 KV Grid Sub station. They have further averred that the land which has been used for this purpose was not meant for parking and only the metalled portion of the land is being used for the purpose of parking for the last about 25 years. Still further, the respondents have averred that the Zoning Plan has not been prepared, for Sub City Centre, Sector 34-A, Chandigarh and the petitioners do not have any locus standi to seek a restraint order against the construction of electric Sub Station which will benefit the people living in the area.

4. In their replication, the petitioners have averred that at the time of auction in 1973, the Zoning Plan was duly displayed and in the revised Zoning Plan (Annexure P.4) which was prepared in 1982 and which is duly signed by S. Surjit Singh, Chief Architect, Shri S.C. Nangia, Town Planner and Shri R.S. Lal, Senior Architect, the land measuring 219 x 345.2 feet adjoining the cinema site has been shown as reserved for parking of cars.

5. During the course of hearing of the petition on 4th And 5th August, 1999, we had repeatedly enquired from the learned counsel for the parties whether they have the copy of Zoning Plan of Sector 34-A showing the location and land use of the area in dispute. The response of Shri Arun Nehra, learned counsel for the petitioner was that the Architectural Control Sheets, which are duly signed by the Chief Architect of the Chandigarh Administration should be treated as the Zoning Plan. As against this Shri Subhash Goyal, learned counsel for the respondents stated that no Zoning Plan has been prepared so far for Section 34-A and some other parts of Chandigarh including Sector 17. In view of the statement of Shri Goyal, we adjourned the case for today with a specific direction that he should seek instructions from the Chandigarh Administration whether they are ready and willing to prepare Zoning Plans in respect of Sector 34-A and other areas for which such plans have not been prepared so far Today, Shri Ashok Aggarwal,

Senior Counsel appeared for the Chandigarh Administration and on the basis of instructions given to him, he made a statement that Zoning Plans for Sector 17, 34-A and 34-B shall be prepared and finalised within 5 months and for the remaining area of Chandigarh, Zoning Plans will be prepared in a phase manner before the other developments are carried out.

6. The first contention of Shri Arun Behra is that the plan which was displayed at the time of auction of the site should be treated as the Zoning Plan and the respondents should be held bound to use the land in accordance with the said plan. In support of this submission, he relied on the plans marked as Annexures P.1 and P.4. He further argued that even if the plan displayed at the time of auction of the site is not to be treated as Zoning Plan, the Architectural Control Sheets prepared by the respondents should be treated as regulating the land use of the area and as the disputed site was shown therein as car parking, the respondents cannot alter its user. Learned counsel submitted that if the land reserved for car parking is allowed to be used for raising other constructions, no space will be left for parking of the cars of the persons who come to watch the movie in the cinema hall of the petitioners and this will lead to traffic congestion and resultant chaos. He also invoked the doctrine of promissory/equitable estoppel and argued that after having held out a promise to the petitioners that the land abutting the cinema site is reserved for parking, the respondents cannot turn around and change the user of the said land and deprive the petitioners of their right to use the same as parking area.

7. Shri Subhash Goyal, counsel for the Chandigarh Administration opposed the prayer of the petitioners by arguing that the Architectural Control Sheets cannot be treated as Zoning Plan within the meaning of Rule 2(lvi) of the 1952 Rules and as such, the same cannot be made basis for regulating use of the land in Sector 34-A. Learned counsel argued that the Architectural Control Sheets signed by the Chief Architect cannot be placed at the pedestal of Zoning Plan which is required to be signed and preserved by the Chief Administrator, Chandigarh. Shri Goyal further argued that the land which is being used by the cinema goers for, parking their vehicles has not been earmarked for parking their vehicles and, therefore, the respondents cannot be denied the right to use the same for other purposes in larger public interest. He submitted that the construction of 11KV Grid Sub Station is necessary for maintaining the continued supply of qualitative electricity to the consumers of the area and the petitioners do not have the locus standi to challenge the right of the Chandigarh Administration to use land according to the needs of the people. Shri Goyal also submitted that neither any promise was made to the petitioners that they will be allowed to use the land in question as parking area nor any officer of the Chandigarh Administration was authorised to do so and, therefore, the petitioners cannot seek enforcement of the so-called promise made to them. In the end, he made a statement that petitioners have not only misused the land of the Chandigarh Administration for parking the vehicles of cinema goers but they have also leased out the same to third party for collecting the parking fee from the members of public. He also

highlighted the highly contumacious conduct of the petitioners in converting the basement of the cinema building which was meant for parking of vehicles into a shopping complex and submitted that this should be treated as sufficient for dismissal of the writ petition.

8. Sections 3, 5, 8-A(1), 21, 22(1) and (2)(a), (d) and (g) of the Act and Rules 2(iv), (xv), (xvi) and (lvi) and 3 of the 1952 Rules, which have bearing on the question raised by the petitioner read as under:

Section 3 of the Act.

"3. Power of Central Government in respect of transfer of land and building in Chandigarh.- (1) Subject to the provisions of this section, the Central Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under this Act, think fit to oppose.

(2) The consideration money for any transfer under sub-section (1) shall be paid to the Central Government in such manner and in such instalments and at such rate of interest as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both under sub-section (1) is paid, such site or building, or both as the case may be shall continue to belong to the Central Government."

Section 5 of the Act.

"5. Bar to erection of building in contravention of building rules.- (1) No person shall erect or occupy any building at Chandigarh in contravention of any building rules made under sub-section (2).

(2) The central Government may by notification in the official Gazette, make rules to regulate the erection of buildings and such rules may provide for all or any of the following matters namely:

(a) the materials to be used, for external and partition walls, roofs, stair cases, lifts, fireplaces, chimneys and other parts of a building and their position or location or the method of construction;

(b) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;

(c) the ventilation in or the space to be left about, any building or part thereof to secure a free circulation of air or for the prevention of fire;

(d) the number and height of the storeys of any buildings;

(e) the means to be provided for the ingress or (sic)egres to and from any

building;

(f) the minimum dimensions of rooms, intended for use as living rooms, sleeping rooms, or rooms for the use of cattle;

(g) the ventilation of rooms, the position and dimensions of rooms, or projections beyond the outer faces of external walls of a building and of doors or windows;

(h) any other matter in furtherance of the proper regulation of erection, completion and occupation of building;

(i) the certificates necessary and incidental to the submission of building plans amended and completion reports."

Section 8-A(1) of the Act.

"8A. Resumption and forfeiture for breach of conditions of transfer.- (1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, u/s 3 or has committed a breach of any other conditions of such sale, the Estate officer may, by notice in writing call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made."

Section 21 of the Act.

"21. Delegation.- (1) The Central Government may by order direct that any power exercisable by it under this Act shall be exercisable subject to such conditions, if any, also by such officers subordinate to the Central government as may be specified in the order.

(2) The Chief Administrator may delegate all or any of his powers under this Act to any officer of the Central government subject to such conditions, if any, as may be specified by the Chief Administrator."

Section 22(1), (2) (a), (d), (e) and (g) of the Act.

"22. Power to make rules.- (1) The Central Government may, by notification in the official Gazette, 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) the terms and conditions on which any land or building may be transferred by the Central Government under this Act;

xx xx xx xx xx

(d) the terms and conditions under which the transfer of any right in any site or

building may be permitted;

(e) erection of any building or the use of any site; xx xx xx xx xx

(g) the terms and conditions for the breach of which any site or building may be resumed."

Rule 2(iv), (xv), (xvi) and (lvi) of the 1952 Rules.

"2. Definitions.- Unless there is anything repugnant in the subject or context.- xx
XX XX XX XX XX XX XX XX XX XX

(iv) "Architectural Control Sheets" shall mean sheets of drawing with directions signed by the Chief Administrator and kept in his office showing the measure of architectural control which shall be observed in the special areas, xx xx xx xx xx
xx xxx xx xx xx

(xv) "Class of building" shall mean a building in one of the following four categories:

(a) Residential building.

(b) Commercial building.

(c) Warehouse and Industrial Building.

(d) Public building.

(xvi) "Commercial Building" shall mean a building used or constructed or adapted to be used wholly or principally for shops, offices, banks or other similar purposes or for industries other than factories (and shall include motor garage where general repairs are done.) xx xx xx xx xx

(lvi) "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 by other means the specified land use, building lines, permissible heights of buildings, site coverage and such other restrictions on the development of land or buildings as may be prescribed."

Rule 3 of the 1952 Rules.

"3. Application.- (a) A person who erects or re-erects or occupies any building shall comply with these rules and in addition shall comply with the restrictions shown on the Zoning Plans.

(b) A person who erects or re-erects a building in special area listed in the Schedule I shall in addition to these rules also comply with the restrictions given in the "Architectural Control Sheet" and any other directions that may be issued by the Chief Administrator.

(bb) A person who erects or re-erects a building in a Frame Control Area shall, in addition to these rules also comply with the restrictions given in the Frame Control Drawings and any other directions that may be issued by the chief Administrator.

(c) These rules shall be applicable if any material change of use is proposed in an existing building.

(d) A person who executes work or installs sanitary fittings in connection with a building shall comply with the requirements of rules included in Part V (relating to drainage control) in so far as they are applicable."

An analysis of the provisions reproduced above shows that the Central Government or its delegate can sell lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the government in Chandigarh. Such transfer of land is subject to the Rules made under the Act as well as the terms and conditions incorporated in the letter of allotment/transfer. Section 5 of the Act imposes a bar on construction of buildings in contravention of Building Rules. Section 8-A empowers the competent authority to resume the site in case of non-payment of dues or violation of the conditions of allotment/transfer. u/s 22(2), the Central Government is empowered to frame rules for carrying out the purposes of the 1952 Act. The Expression "Architectural Control Sheets" means sheets of drawing with directions signed by the Chief Administrator and kept in his office showing the measure of architectural control to be observed in special area. Rule 2(xv) classifies building into two categories, i.e. residential building, commercial building, warehouses and industrial building and public building. The phrase "commercial building " means a building used or constructed or adapted to be used wholly or principally for shops, offices, bank or other similar purposes. "Zoning Plan" has been defined in Rule 2 (lvi). It means 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. Among other things which are required to be reflected in the Zoning Plan is the land use, building lines, permissible heights of buildings etc.

9. It is, thus, clear that the land falling in the various Sectors carved out under the Master Plan of Chandigarh is to be used as per the Zoning Plan. The Architectural Control Sheets do not show anything except the measure of architectural control which shall be observed in special areas defined in Rule 2(lvi) of the 1952 Rules. They do not deal with the land use etc. Therefore, the same can neither be treated as Zoning Plan nor a substitute of Zoning Plan. As a logical corollary to this conclusion, the argument of Shri Arun Nehra that the Architectural Control Sheets should be treated as Zoning Plan within the meaning of Rule 2(lvi) cannot be accepted and they cannot be relied upon for restricting the use of the land in question as parking area attached to the cinema site of the petitioners.

10. We are further of the view that in the absence of any Zoning Plan the respondents are entitled to use the land available at their disposal as per the requirement of the Sector. The construction of 11 KV Grid Sub Station for regulating the qualitative supply of electric energy to the consumers of the area is certainly such a need. It is also in larger public interest and, therefore, we do not find any valid reason to restrain the respondents from erecting electric sub-station on a portion of the land shown as parking area in Annexures P.1/P.4.

11. The Doctrine of promissory estoppel is also not available to the petitioners for compelling the respondents to allow the use of the disputed land as parking area because they have failed to prove that any promise was, in fact, made by the competent authority of the Chandigarh Administration that the land in question will be served for use as a parking area for the cinema goers. One of the fundamental postulates of the doctrine of promissory estoppel is that a public authority, who is empowered to do so, must have made some promise to a person inducing him to act in a particular manner and that person must have acted on that promise for putting himself in a particular situation. In that event the public authority is estopped from taking an action prejudicially affecting such person. However, even in such cases, the doctrine of promissory estoppel cannot be invoked for compelling a public authority to act in violation of the statutory provision.

12. In the present case, no evidence has been produced to prima facie prove that the respondents had made a promise to the petitioners that if they gave bid for the cinema site, they will be entitled to use the adjacent land as parking area. Therefore, we do not find any valid ground to restrain the respondents from using a portion of the disputed land for construction of 11 K.V Grid Sub Station.

13. For the reasons mentioned above, the writ petition is dismissed.

14. Before parting with the case, we deem it necessary to record our disapproval of the conduct of the concerned authorities of Chandigarh Administration who have for last many years, refrained from enforcing the provisions of law against the petitioners who have not only used land belonging to the Administration without paying a single penny for this purpose, but have also given contract to some person for collecting the parking fee. No explanation has been offered by the respondents as to why the concerned authorities did not take action in the matter to plug the pilferage of revenue which the Administration would have earned by giving contract of the parking site. Equally surprising is the failure of the concerned authorities to take steps for stopping the misuse of the cinema building by the petitioners who have converted the basement, which was meant for parking, into a shopping complex. Is this so because of the "right connections" of the petitioners? Answer to this malady must be found by the authorities of the Administration on whose shoulders lies the responsibility of enforcing the provisions of law and in whom trust has been posed by the people that they will enforce law without being influenced by the status of the defaulter. They must remember that in a system governed by rule

of law no one can claim immunity from the enforcement of the provisions of law and it is their pious duty to secure compliance of the statutory provisions in their letter and spirit uninfluenced by the status of the person concerned and in no case, the impression should be given to the members of the public that provisions of the statutes have different meanings for different sets of people. Only an unbiased and faithful implementation of the provisions of law will install confidence in the people that ours is a country which is governed by the rule and not by rule of thumb. We, therefore, direct the Chandigarh Administration to rigorously enforce the provisions of law in the two matters of which we have taken cognizance and submit a report to this Court within six months on the basis of action taken by them.

15. The Registry is directed to list the case on 15th of February, 2000.