
(2014) 07 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 11226 and 13134 to 13140 of 2013

Progress Industries

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 330, 331, 332

Citation : (2014) 176 PLR 561

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Johan Kumar, Advocates for the Appellant; Sandeep S. Mann, Addl. A.G, Advocates for the Respondent

Judgement

Paramjeet Singh, J.—The above mentioned 8 Civil Writ Petitions i.e. CWP Nos. 11226 and 13134 to 13140 of 2013 have been listed together for hearing. All the above mentioned writ petitions are being disposed of by a common judgment. Learned counsel for the petitioner has referred to the facts in CWP No. 11226 of 2013. Therefore, for the sake of convenience, facts from this case are being taken. All the aforementioned 8 writ petitions preferred by the petitioner(s) arise out of the closure of the factories by the respondents on the ground that they are running in notified residential area localities, such industrial activities cannot be permitted to ran in violation of the sanctioned zoning/master plan. The grievance of the petitioner is to the effect that it is running the industrial unit at Plot No. 61 at Dabuapali Road, extension area, NIT Faridabad and is manufacturing auto parts which are being supplied to various companies i.e. Honda, Maruti etc. Respondent No. 4 who is alleged to be also running commercial activities had given an application against the petitioner and others that the unit is running in the residential locality which is not an approved colony. The respondent-Corporation issued a notice dated 31.05.2012 to close down the unit. Thereafter, the petitioner filed a civil suit for injunction challenging the notice. Ultimately that suit was dismissed as withdrawn with liberty to file a fresh one on the same cause of action vide order dated 18.04.2013 (Annexure P/10). Instead of filing

the suit, present writ petition has been filed. It is also the pleaded case of the petitioner that there are about 1,70,000 small scale industries running in the area and the petitioner's unit is a small scale industry running since 1952. It is also pleaded that area in question is not approved residential area by the Municipal Corporation, Faridabad. Only the unit of the petitioner has been wrongly closed down, whereas, more than 500 industries are running in the said locality.

2. Upon notice, respondents No. 2 and 3 filed joint written statement and respondent No. 4 filed separate written statement. Respondent Nos. 2 and 3 in their written statement have taken objection that the petitioner is running the factory in violation of the provisions of Haryana Municipal Corporation Act, 1994 (hereinafter referred to as the "Act") specifically Sections 330, 331 and 332. Petitioner had earlier filed a civil suit which was dismissed as withdrawn. The petitioner is running a power press of 200 ton capacity without permission to run the heavy press which is causing nuisance to the neighbouring inhabitants. The petitioner was given due notice to shift its unit within 7 days from the receipt of letter dated 08.11.2012, but it had not complied with the said notice.

3. Respondent No. 4 in its written statement has stated that the factory is running in violation of Sections 330, 331 and 332 of the Act. Such factory cannot be allowed to run in the residential area. It is alleged that the petitioner is running a power press of 200 ton capacity without permission to run the heavy press which is causing nuisance and pollution to the neighbouring inhabitants.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner vehemently contended that identical writ petition i.e. CWP No. 5524 of 2009 was filed in which learned Single Judge of this Court vide order dated 05.05.2009 (Annexure P/13) has ordered the removal of the seals from the premises of the petitioners forthwith and allowed them to run the industrial unit from the same premises till a specified date. Reasonable time was granted and direction was issued that petitioners shall not use any generator set which may cause nuisance in the neighbourhood. Liberty was granted to the petitioners in that case to apply for seeking permission to run the activities in question from the same premises, if so permissible under the Municipal Act or the Bye-laws framed thereunder. Against that order, LPA No. 127 of 2010 was filed by the Municipal Corporation, Faridabad and the LPA was disposed of by the LPA Bench vide order dated 03.02.2010 (Annexure P/14) with clarification that the case of the petitioner would be considered under the Municipal Act or the Bye-laws framed thereunder at par with similarly situated units. Learned counsel for the petitioner submitted that he may be granted similar relief as has been granted by the LPA Bench.

6. Per contra, learned counsel for the respondents vehemently contended that the industrial units in the residential area are not permitted. They are causing nuisance, not only of air, water, pollution but also noise pollution is being caused

which is dangerous for the health of the residents of the area. As such, such industries cannot be allowed to run in the residential locality. Due notice was given by the authorities under the provisions of the Act and bye-laws to stop the industrial activities in the premises.

7. Be that as it may, learned counsel for the parties, specifically learned counsel for the Corporation admitted that the order passed in aforesaid LPA is being followed at the moment and the Municipal Corporation is proceeding in accordance with law. The Division Bench of this Court in LPA No. 127 of 2010 vide order dated 03.02.2010 (Annexure P/14) has passed the following order:-

"In this appeal, challenge is to order dated September 25, 2009 passed by learned Single Judge on application for modification/clarification of order dated May 05, 2009 passed in the main petition. The writ petition filed by the petitioners (respondents No. 1 and 2 herein) challenging the sealing of the residential premises of the petitioners unit by the Municipal Corporation Faridabad vide order dated 1.12.2008 was disposed of on 5.5.2009 with the following directions:-

"The writ petition is accordingly disposed of with a direction to respondents No. 2 and 3 to remove the seals from the premises of the petitioners forthwith and allow them to run the industrial unit from the same premises till 30.9.2009. However, the petitioners shall not use any generator set which may cause nuisance in the neighbourhood.

This order shall not preclude the petitioners from seeking permission of the respondent - Municipal authorities for running the activities in question from the same premises, if so permissible under the Municipal Corporation Act or the Bye-laws framed thereunder."

The appellant Municipal Corporation, Faridabad is not aggrieved with the aforesaid order passed but claims to be aggrieved with order dated 25.5.2009 modifying/clarifying order dated May 05, 2009, to the following effect:

"Having heard learned counsel for the parties and taking into consideration the stand taken by the Municipal Corporation, Faridabad in the aforesaid written statement, this application is disposed of with the clarification/modification of the order dated 5.5.2009 to the extent that if the similarly situated industries are permitted by the Corporation to operate from the residential areas, then no action shall be taken against the petitioners till the policy decision, stated to be under consideration of the Municipal Corporation, Faridabad, is taken either way".

Learned counsel for the appellants has sought to make a grievance to the effect that this order can be construed to mean that the Municipal Corporation Act or the bye-laws need not to be taken into account, while taking action in the case of petitioners (respondents No. 1 and 2 herein).

In our view order dated May 05, 2009 directed the running of the activities in question only under the Municipal Corporation Act or the bye-laws framed

thereunder and the clarification/modification vide order dated September 25, 2009 need not mean to give a direction that the Municipal Corporation Act or the Bye Laws are not to be adhered to. All that the said order construed is that if the similarly situated industries have been permitted to run in the locality, where the unit in dispute is situated, then the case of the petitioners can be considered by the Municipal Corporation, Faridabad under the Municipal Act or the Bye-laws framed thereunder at par with the cases of similar situated units.

Accordingly, the appeal stands disposed of with the aforesaid directions/clarification."

8. All the afore-mentioned eight writ petitions are disposed of in the above terms. The petitioner and the respondents shall strictly comply with the terms of the Division Bench order.

9. In addition to above, there is another prayer with regard to framing of policy for shifting such units from the residential area. This is rather dire need of the day not only in the interest of public at large, but also in the interest of the industrial units and in addition, this would avoid unnecessary litigation also. It is, therefore, directed that the Government shall do the needful after giving due publicity and after hearing all concerned. It may be noticed here that such situation may not be existing only in the area within the limits of Municipal Corporation, Faridabad. It may be existing in other parts of the State as well. Since the running of the dangerous and hazardous factories is concerned, the same cannot be allowed, specifically the pollution causing units. The policy is required to be framed for the entire State of Haryana. Needful shall be done within six months from the date of receipt of certified copy of this order. Put up for compliance report on 16.02.2015.