
(2010) 01 SHI CK 0087
In the High Court Of Himachal Pradesh
Case No : CWP No. 738 of 2006

Samrat Nigam and Another	Vs	APPELLANT
State of H.P and Others		RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Himachal Pradesh Municipal Corporation Act, 1994 — Section 258
Himachal Pradesh Town and Country Planning Act, 1977 — Section 39, 39(3), 39(5)
Himachal Pradesh Town and Country Planning Rules, 1978 — Rule 19

Citation : (2010) 01 SHI CK 0087

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—By means of this writ petition the Petitioners have prayed that the building known as Leela Bhawan be used only for residential purposes and the portion of the building which is being used for commercial purposes may be sealed and closed. It has further been prayed that penal action be taken against the persons who have used the residential premises for commercial purposes. During the pendency of the petition the Petitioners also moved an application for amendment of the writ petition whereby it is prayed that provisions of Section 39, 39(3) and 39(5) of the H.P Town and Country Planning Act, and Rule of 19 (e) of the H.P. Country and Planning Rules, in so far as they permit compounding of such violations be quashed.

2. At the outset, it may be mentioned that the writ petition was filed by two persons, i.e. Samrat Nigam and Smt. Sarita Shreedhar. It is not disputed that as far as Petitioner No. 1 is concerned, he has sold off the premises in question and is, therefore, no longer a necessary party to the proceedings.

3. Briefly stated the facts are that the Petitioner No. 1 purchased a set in Leela Bhawan, Khalini, Shimla in the year 1998. The building in question was built by Smt. Leela Kainthla wife of late Shri Hari Dutt Kainthla. It is not disputed that as

per the plan submitted to the Municipal Corporation and the Town and Country Planning Authorities, the building was to consist of four storeys with two residential flats on each floor. According to the Petitioners the building was not constructed as per the sanctioned plan and the ground floor of the building was put to commercial use. The flats in the various floors were sold to different persons. On the ground floor Respondent No. 10 Shri R.K. Khosla constructed a show room for sale of sanitary goods under the name and style of R.K. Traders. The flats on the top floor were owned by the children of original owner who rented out the same to BSNL for commercial use. Reference on behalf of the Petitioner was made to the provisions of the H.P. Municipal Corporation Act, especially, Section 258 which does not permit the change of user of the land of building without permission of the Municipal Commissioner. It is also prayed that since the building has been constructed in contravention of the permission granted, penal action be taken. The case of the Petitioners is that by permitting the residential premises to be used for commercial/non-residential use the Petitioners who are occupying the second floor are suffering great hardship.

4. The Respondents in the reply have taken the plea that the area in question is not a residential zone. Further more they have stated that all the buildings in the vicinity are being used both for commercial as well as for residential purposes. According to the Respondents they have also moved the authorities for grant of permission to change the user of the premises from residential to commercial. A preliminary objection has been raised by the Respondents that the petition is not maintainable since the Petitioner No. 2 was aware about the fact that the premises were being used for non-residential purposes when she purchased her portion of the building in the year 1998. At that time the show room of Respondent No. 10 was already in existence. In fact according to the Respondents the Petitioners have purchased the material for the furnishing and renovation of her flat from the said Respondents. It is also stated that they have submitted the revised completion plan showing that a show room had been constructed on the ground floor to the Municipal Authorities on 12th January, 1995 and the composition fee was also paid on 14th February, 1995. The Municipal Corporation was also aware about the fact that the Respondent No. 10 is running a shop since a communication was sent by the Municipal Corporation on 26th October, 1994 directing the said Respondents to obtain permission for running a sanitary goods show room. According to Respondent No. 10, he has also applied to the Municipal Corporation for permission to change the user of the premises.

5. In an affidavit dated 21st December, 2006 filed by the Director, Town and Country Planning, in response to a direction given by this Court on 4th December, 2006 it has been stated that the building falls in an area which has been designated as a residential zone.

6. In the reply filed by Respondent No. 8, it is stated that the entire top floor of the building as well as the area in the ground floor falling to the share of the said

Respondent was rented to BSNL for running an office on 24th January, 1997. The BSNL vacated the office in their possession in the ground floor in the year 2002 and on 31st August, 2006 vacated the top floor of the building also. According to the said Respondent when the premises were rented out to BSNL, electricity connections for commercial purpose were taken and the Petitioners never raised objection to such office(s) being run. The Respondent thereafter rented out the premises vacated by BSNL to Bajaj Auto Finance Limited.

7. Shri Rajnish Maniktala, learned Counsel for the Petitioners, has drawn our attention to various provisions of the Municipal Corporation Act as well as the Town and Country Planning Act and has urged that conversion of residential premises to non-residential purposes cannot be allowed. He has also cited the Judgments of the Apex Court reported in M.C. Mehta Vs. Union of India (UOI) and Others, and M.C. Mehta Vs. Union of India (UOI) and Others,

8. We need not go into the various legal questions involved since we feel that the petition can be disposed of on the preliminary objection raised by the Respondents that the Petitioner is not entitled to invoke the writ jurisdiction of this Court. Even as per the Petitioner, she had purchased the second floor of the building but in the petition no date of purchase was given. The Respondents have stated that the building was purchased by the Petitioner in the year 1998. The Petitioner till date has not placed on record the sale deed to show which is the exact date when she purchased the building. The show room of Respondent No. 10 had already been established in building in question and a major portion of the building was being used by the BSNL for commercial purposes. The Petitioner was aware about this. Despite this, till the year 2006 the Petitioner took no action and the writ petition was filed only on 28th August, 2006. The petition has not been filed in the public interest but the Petitioner specifically claimed that she is facing nuisance due to the change of the residential premises to commercial purpose. This plea cannot be accepted since the Petitioner was aware at the time when she purchased the building that the same is being used for commercial purposes. It has also come on record that next to the building of the Petitioner a number of other commercial premises have come up including the Keonthal Banquet Hall but the Petitioner has not taken any action to stop the proliferation of commercial building in her area except for the Respondents who were already using premises in question for commercial purposes prior to her purchasing the flat. A person who buys the premises knowing fully well that some portion of the building is being used for non-residential purpose cannot later complain that these persons should be stopped from doing so. This was something which the Petitioner should have thought of when she purchased the building.

9. Secondly, even after the purchase the Petitioner remained silent for more than eight years. There is not an iota of explanation for this long delay in filing the petition. The only explanation given is that since there is violation of statutory regulations the delay should not be taken into account. When persons spend money and rightly or wrongly convert their premises from residential to non-

residential use then the party challenging the same must come to Court immediately. It cannot sit over its rights for 8 long years and complain about the same thereafter. Equity changes over such a long period of time.

10. The contesting Respondents have stated that they have already applied to the Municipal Corporation, Shimla for change of user of the premises under the requisite provisions of law. The Municipal Corporation shall decide these applications strictly in accordance with law totally uninfluenced by the observations made here-in.

11. The writ petition is accordingly dismissed. No order as to costs.