

(2013) 08 P&H CK 0523

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17753 of 2005 (O and M)

Shalimar Estates Pvt. Ltd.

APPELLANT

Vs

The Union Territory of Chandigarh and Others

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab New Capital (Periphery) Control Act, 1952 — Section 11, 12, 12(2), 15, 3

Citation : (2013) 08 P&H CK 0523

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Augustine George Masih, J

Bench : Division Bench

Advocate : M.L. Sarin and Mr. Natin Sarin, for the Appellant; Lisa Gill for U.T., Chandigarh and Mr. Komal Bir Gill, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner, M/s. Shalimar Estates Private Limited, has filed the present writ petition under Articles 226 and 227 of the Constitution of India, seeking to assail the impugned Notice dated 24.6.2005 (Annexure P-20) purported to be only a show cause notice and the subsequent Notice dated 18.10.2005 (Annexure P-28) u/s 12(2) read with Section 15 of The Punjab New Capital (Periphery) Control Act, 1952 (hereinafter to be referred to as "the said Act") directing the petitioner to remove the unauthorised construction on the site in Abadi of village Sarangpur, U.T., Chandigarh. The petitioner-Company is stated to have purchased 11 Kanals and 17 Marlas of land vide three registered sale deeds executed on 10.11.1999, 8.12.1999 and 10.3.1999 along with delivery of possession. On demarcation by Deputy Commissioner, Chandigarh, the demarcation report dated 18.9.2000 was prepared whereby the land was found to be situated in Abadi/Lal Dora. The petitioner proposed to construct the building of residential flats and applied to the LAC, exercising the powers of the Deputy Commissioner under the said Act, for obtaining NOC for grant of water and electricity connections on 15.12.1999. The said respondent vide a communication dated 25.4.2001 informed that it had obtained an advice that no

permission was required nor was NOC necessary in the extended Abadi Deh of the village under the said Act. It would be relevant to reproduce the said communication as under:-

The Chandigarh Administration after taking advise of the Law Department U.T. Chandigarh vide their Office/Memo No. 3/3/56-UTFI (I)-2000/2698 dated 30.3.2001 u/s 11-A of the periphery control Act, 1952 has conveyed that no permission of Land Acquisition Officer, Exercising the powers of the Deputy Commissioner, Chandigarh under the aforesaid Act is required for running of Chemist shop as well as Atta Chakki, Kohlu, Rice Machine, Cotton ginning machine etc. within the phirni/extended Abadi-Der of the village. In view of above it is indicated that no objection certificate for electricity/water connection is also not necessary within the Lal Lakir/phirni/extended abadi deh of the village u/s 11-A of the periphery control Act 1952. Further water and electricity connections will be issued by the concerned Department as per their rules and regulations.

2. The electricity and water connections were also issued to the petitioner in pursuance to the application of the petitioner thereafter made on 27.4.2001. The petitioner commenced construction of 98 residential Middle Income Flats and six floors of the 9-storeyed building were raised from the period May 2001 to April 2002 when certain articles appeared in The Tribune in relation to the construction alleging violations.

3. The petitioner has averred that respondent No. 3 took action by demolishing a part of the boundary wall around the building in question as it was alleged to have been constructed outside the Abadi/Lal Dora, but no action qua the building was taken. In nutshell, the plea, thus, is that there was nothing found wrong with the construction of the building. The construction of the building is stated to have continued thereafter and was completed after spending ` 5.6 crores and in March-2004 the petitioner invited applications for allotment of residential flats. It is at the aforesaid stage that respondent No. 3 is stated to have published a Public Notice on 6.5.2004 stating that building was in the violation of the provisions of the said Act and, thus, the purchasing public would do so at their own risk. The petitioner, thus, published his own version refuting the claim of the authorities.

4. It is at the aforesaid stage that the Show Cause Notice dated 24.6.2005, impugned in the present writ petition, came to be issued which reads as under:-

Whereas it has been reported that you have contravened the provisions of the Section 5 /6 / 11 of Punjab New Capital (Periphery) Control Act, 1952 as amended by the Chandigarh (Amended) Act, 1972 in as much you have raised a huge nine storey building in the name and style of M/s. Shalimar Estate Pvt. Ltd. within Lal Dora for commercial purpose for sale of apartments for residential and other purpose within Lal Dora of Village Sarangpur Hadbast No. 347, Chandigarh in the revenue estate having been declared as "Controlled area" under the act.

Also the construction is being used for a purpose in violation of Section 11 and 15 of the aforesaid Act. You are, therefore required u/s 11 and sub section (a) and 2 of Section 12 of the Punjab New Capital (Periphery) Control Act, 1952 to show cause within a week and latest by next date why this structure should not be removed.

You are also being given an opportunity of being heard. Therefore, you are hereby required to appear before me in person or through duly authorized agent on 08.8.05 at 11 A.M. Also take further notice in case you fail to appear before the undersigned on the date fixed above ex-parte proceeding shall be taken and the order shall be passed to give to the aforesaid direction.

The cost of such measure shall be recoverable from you as arrears of land revenue.

Issued under my hand seal of this office on 24.6.05.

5. At this stage, we consider it appropriate to examine the provisions of the said Act, keeping in mind the show cause notice issued to the petitioner. The said Act was enacted as far back as 1952 and was made with the object to control and regulate the periphery of the new capital of the State of Punjab. Section 3 of the said Act declared what the controlled area was by prescribing it to be notified in the official gazette. Section 4 provides for publication of the plans of controlled area while Section 5 puts a restriction in a controlled area qua erection or re-erection of any building except with the previous permission of the Deputy Commissioner in writing. In terms of Section 6, an application for permission would be made to the Deputy Commissioner and in case the party being aggrieved against any order, an appeal is provided u/s 7 of the said Act.

6. Section 11 of the said Act puts a prohibition on the nature of land use within the controlled area for purposes other than those for which it was used on the date of notification under Sub-section (2) of Section- 3 of the said Act. Section 12 of the said Act provides for offences and penalties for contravention of these provisions. Section 15, however, carves out exemption from the Act and reads as under:-

15. Exemption.-Nothing in this Act shall apply to-

(a) any building for residential purposes or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records;

(b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a grave-yard, place of worship, cenotaph or samadhi on land which is, at the time of the notification under sub-section (2) of Section 3, occupied by or for the purposes of such place of worship, tomb, Samadhi, cenotaph or graveyard;

(c) excavations (including wells) or other operations made in the ordinary course of agriculture;

(d) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

7. It is in the conspectus of the aforesaid scheme of the said Act that we have to examine the controversy and more specifically Clause (a) of Section 15 of the said Act, as it is the say of the petitioner that once a building is for residential purposes, nothing contained in the said Act would apply to the petitioner.

8. The petitioner did submit a reply to the Show Cause Notice dated 24.6.2005 vide the reply dated 5.8.2005 and also sought certain documents. The show cause notice is, primarily, assailed on the ground that since the construction carried out by the petitioner is for residential flats, the said construction is protected by provisions of Clause (a) of Section 15 of the said Act. The allegation in the show cause notice is that the construction is within Lal Dora "for commercial purpose for sale of apartments for residential and other purpose". It is, thus, the submission of the petitioner that there is, in fact, no dispute that the apartments are meant for residential use, but the factum of the petitioner selling apartments is construed as a commercial activity and that in turn is sought to be treated as a user for commercial purpose which is completely fallacious and amounts to doing violence to the provisions of the said Act.

9. Learned counsel for the respondents has produced before us the record, but that record does not pertain to the land in question. It is the say of the learned counsel for the respondents, on instructions from Mr. Tilak Raj, Land Acquisition Officer, U.T., Chandigarh, that record is not available qua the application made by the petitioner in 1999. Learned counsel cannot also explain as to how right in the front of the eyes of authorities such a building was constructed and completed without any of the authorities noticing the alleged violation, if it was so. It is not that something came up overnight, but the construction went on for three years.

10. Another aspect unexplained is that if any illegality was found in the construction of the wall on the ground that it went beyond the Lal Dora area and that portion of the wall was demolished, how could no action be taken on the main construction if, in the perception of the authorities, there was violation of any provision of the said Act.

11. The Notice dated 18.10.2005 issued with reference to earlier Notice dated 24.6.2005 is in the following terms:-

You are again directed to remove the unauthorised construction on the site in Abadi of Village Sarangpur, U.T. Chandigarh and attend the office of the undersigned on 16.11.05 at 11.00 A.M./3.00 P.M. either in person or through authorised agent to explain your position regarding the unauthorised construction of the site as cited in the above said reference. In view of your failure to attend the office on the said date and time, exparte proceeding shall be taken in the matter.

12. In effect, what the aforesaid notice seeks to do is to direct removal of the

alleged unauthorised construction without dealing with any of the issues raised by the petitioner in the reply. In fact, the wording suggests as if there was already a direction to remove the construction while issuing the show cause notice dated 24.6.2005 which was sought to be reiterated.

13. We gave an option to learned counsel for the respondents to obtain instructions whether the respondents were willing to withdraw the impugned notices/order dated 24.6.2005 and 18.10.2005, the instructions of the learned counsel, as informed to us today, are that the respondents may be willing to withdraw the communication dated 18.10.2005, but are not willing to withdraw the Show Cause Notice dated 24.6.2005. We had given this option on the basis that if there was any cause for action against the petitioner, the respondents could do so by issuing a proper show cause notice in accordance with law, but that course of action is not acceptable to the respondents and, thus, we had have no option but to go into the merits of the controversy, as urged by learned counsel for the parties.

14. We are also conscious of the fact that normally a show cause notice is issued and a reply is filed, then one would expect a decision on the same. This is undisputedly not happened in the present case. However, the quashing of the subsequent notice/order dated 18.10.2005 (for which even the respondents are willing) cannot put the controversy to rest in the present case as the very basis of issuing show cause notice dated 24.6.2005 is in question. If this is so, there are following undisputed facts:-

- (i) a building has been constructed within the Lal Dora area;
- (ii) the construction is of residential apartments;
- (iii) no action was taken against this construction till the construction was completed over a period of three years;
- (iv) on the request made by the petitioner, electricity and water connections are granted for construction of the building, albeit temporarily;
- (v) the own case of the respondents, as per Annexure P-5, was that no permission was required from the Deputy Commissioner even though a request had been submitted;
- (vi) when some violation was alleged in the newspapers, an inspection was carried out and despite the construction of the building, the only demolition which took place was qua a wall which had gone beyond the Lal Dora;
- (vii) it is the perception of the respondents that the provisions of Clause (a) of Section 15 of the said Act do not encompass residential apartments if they are meant for sale as that would amount to commercial purpose;

15. It is really the last aspect which is material and on which we have to rule now in view of given facts and circumstances of the case.

16. Learned counsel for the respondents did seek to draw strength from the Statement of Objects and Reasons, which reads as under:-

Statement of Objects and Reasons.-The Punjab Government are constructing a New Capital named "Chandigarh". The master plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far the construction of the first phase of the Capital. To ensure healthy and planned development of the new city it is necessary to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new city. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present.

It is, thus, her submission that the objective of enacting the said Act was that the Master Plan providing for future extension of the capital would ultimately have to be made and for healthy and planned development, it is necessary to prevent unplanned construction.

17. We, however, find from the reading of the aforesaid Statement of Objects and Reasons, albeit of an Act which is now more than 60 years old and envisaged larger area for the capital, that healthy and planned development was to be ensured of the new city and it was necessary "to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new city". Certainly, the construction of a multi-storeyed residential apartment building, as per plan, would not fall in this category.

18. The aforesaid discussion is, of course, in the context that the Statement of Objects and Reasons can have only a limited purpose as an aid to interpreting the provisions of the Act, as no violence can be done to the clear wording of the provisions.

19. Section 15 clearly carves out exemption from the Act. Thus, the legislature in its wisdom deemed it proper that nothing contained in the Act would apply to the situation as enumerated in Section 15 of the said Act. Clause (a) of Section 15 specifically carves out an exception for any building for residential purposes and also carves out an exception for any building for purposes subservient to agriculture. There is no further definition or restriction as to what should be the nature of the residential building under the Act which should be in the Abadi area of the village. We are, thus, unable to accept the submission of the learned counsel for the respondents made on general terms that the objective was only to permit residences for villagers specifically in the context of word "or" used in the said provision.

20. We have already noticed that there are two separate purposes for which exemption has been carved out, i.e. for residential purpose or purposes subservient to agriculture. They are independent of each other-either/or. If the object was to prevent construction of even residential apartments, then the Act should have said so. As noticed aforesaid, even the Statement of Objects and

Reasons does not support this interpretation. The business activity of construction and sale of flats cannot make the building constructed for residential purpose as for commercial purpose.

21. We may add that apparently this is how the authorities seemed to have understood the provisions of the said Act for a considerable period of time, as nothing else would explain that inaction for over a period of 3 years when the multi-storeyed residential apartments building was being constructed and huge amount invested by the petitioner.

22. We are, thus, of the view that the impugned Show Cause Notice dated 24.6.2005 and the subsequent Notice/order dated 18.10.2005 are wholly unsustainable, as they are premised on a clearly wrong interpretation of the provisions of Clause (a) of Section 15 of the said Act, i.e., if residential apartments are constructed within Lal Dora, which are sold, that would amount to user for commercial purposes. User for commercial purposes must be clear and specific and it is the own case of the respondents that the building has been constructed only for residential purposes and that is how it was advertised.

23. The writ petition is, accordingly, allowed leaving the parties to bear their own costs. Interim order stands vacated.