
(2012) 11 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14130 of 2007

Shalimar Estates Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2012) 11 P&H CK 0053

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : M.L. Sarin, with Mr. Nitin Sarin, for the Appellant; Sanjiv Bansal, Advocate for Respondent Nos. 3 to 6 and Mr. Arun Walia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—In this writ petition, petitioner-Shalimar Estates Pvt. Ltd. has laid challenge to the orders dated 27.08.2007 and 05.09.2007 passed by the Haryana State Pollution Control Board (respondent No. 4). The petitioner purchased in auction a "Shopping Mall Site No. 5 with basement" in the month of March, 2004 offered by the Haryana Urban Development Authority (hereinafter referred to as the "HUDA") in City Centre, Sector 5, Panchkula. Allotment letter in the name of the petitioner was issued by the HUDA on 17.06.2004. The petitioner submitted building plans to HUDA and after obtaining the "No Objection Certificates" from various departments viz. Town and Country Planning, Fire and Public Health Department etc., started construction of the shopping mall in the month of November, 2004. While construction was going on, the petitioner received a notice dated 09.02.2005 from the Environmental Engineer, Panchkula Region, Panchkula, asking as to why requisite clearance has not been obtained under the notification dated 27.01.1994 as amended by notification dated 07.07.2004 issued by the Ministry of Environment and Forests. The said notice was duly replied by the petitioner on 16.02.2005 alleging that there was no requirement of getting any site clearance at the time of auction or

even at the time of sanction of the building plans by HUDA. As per the petitioner, the respondents issued a fresh show cause notice dated 16.05.2005 by giving reference to the notification dated 07.07.2004 asking it to file its reply within 15 days, which was duly submitted with supporting documents stating that the notification dated 07.07.2004 is not applicable to the building in question and no site clearance is required. When the proceedings were pending and no final decision was taken, a draft notification was published by the Ministry of Environment and Forests inviting objections and suggestions from the public at large with a view to supersede the earlier existing notification dated 07.07.2004 as there were certain inherent defects and contradictions in the said notification. Ultimately, the Ministry of Environment and Forests approved and issued a fresh notification dated 14.09.2006 by which the earlier existing notification dated 27.01.1994 and amended notification dated 07.07.2004 were superseded and in terms of the said notification, an order was passed by the respondents on 21.06.2007 which had been challenged by the petitioner by way of CWP No. 9549 of 2007 with the following order:-

We have heard the matter at length.

It has been contended by learned counsel for the petitioner that land was allotted to the petitioner on 17.06.2004, the building plan was sanctioned on 05.11.2004 and the first notice was received by the petitioner on 09.02.2005. Thereafter the petitioner has given its reply. Eight notices were received on the same cause of action. The petitioner replied to all and prayed for a personal hearing from the respondents. The personal hearing was granted on 15.05.2006. The petitioner appeared and placed all the relevant documents before the respondents. However, the respondents took almost one year two months and eleven days in passing the impugned order dated 21.06.2007.

There is a checked history of this case as the first notification is of 1994 and certain parameters were set out therein for compliance which were different from those set out in notification dated 05.11.2004 and which have now sought to be invoked by the environment protection agency of the Government of India.

The question is whether on the date when the impugned order dated 21.06.2007 was passed by the respondent a revised notification passed by the Government of India dated 14.09.2006 was already in vogue. If that were so and certain guideline had come in existence which prescribed certain norms, then the impugned order passed on the basis of 2004 notification suffers from patent illegality as it was after coming into force of the revised notification, the impugned order was passed while the 2004 notification stood superseded by the notification dated 14.09.2006.

Therefore, without commenting on the merits of the controversy between the parties, we quash the order of sealing and disconnection of water and electricity. The filing of this petition will be construed as a notice under the new notification.

We direct the petitioner to appear before the respondents on 07.08.2007 at

11.00 a.m. in the office of the Chairman, Haryana Pollution Control Board. The Chairman after hearing the petitioner will pass appropriate order and will grant time to the petitioner to comply with the directions.

We make it clear that any construction made on the site in question shall be at the cost and risk of the petitioner.

Petition stands disposed of accordingly.

2. According to the aforesaid order, the Haryana State Pollution Control Board was to decide the matter afresh as to whether the petitioner is covered under the new notification dated 14.09.2006 or not. According to the new notification, two conditions were to be fulfilled by the petitioner for the purpose of site clearance, namely, (a) the built-up area should be more than 20,000 sq. meters; and (b) the construction project should be a new project.

3. The petitioner submitted its objections/written submission on 07.08.2007 bringing to the notice of the respondents that the notification dated 14.09.2006 is not applicable in their case because the built-up area/covered area of the shopping mall in question was less than 20,000 sq. meters and the construction had already completed way back in November, 2005. Certificates regarding completion of construction by the Architect and the Contractor were also attached. However, the Haryana State Pollution Control Board sought for a report of the Committee constituted by it with regard to the applicability of the notification dated 14.09.2006 in the case of the petitioner which was submitted to it and the petitioner also filed its objections on 24.08.2007 to the said report, but ignoring the submissions raised on behalf of the petitioner and without considering the same in detail, the impugned order dated 27.08.2007 was passed directing the petitioner to obtain necessary environmental clearance and to obtain consent to establish the shopping mall within 14 days, failing which it was ordered that the shopping mall would be sealed and water and electricity shall be disconnected. The petitioner immediately submitted representation against the order dated 27.08.2007 bringing it to their notice that the built-up area has not been properly calculated because it is less than 20,000 sq. meters for which no environmental clearance is required to be taken, but despite that the representation was rejected vide order dated 05.09.2007 which are subject matter of challenge before this Court in this writ petition.

4. At the time of notice of motion on 11.09.2007, the Division Bench of this Court had passed the following order:-

Limited to the question of measurement of basements, notice of motion be issued to the respondents, returnable on 24.09.2007. Dasti.

Till the next date of hearing, disconnection of water and electricity connections and sealing of premises of the petitioner is stayed.

5. After the pleadings were completed, order dated 10.12.2007 was passed by this Court permitting the petitioner to inaugurate the mall and make it

operational, subject to the passing of the further orders. The said order is reproduced as under:-

In the affidavit filed by respondent No. 7, specific averments have been made to the following effect:

it is necessary to point out here that as per the report of the Committee (Annexure P-17), consisting of the officers of Estate Officer, Haryana Urban Development Authority, Panchkula, Regional Officer, Haryana State Pollution Control Board, Panchkula Region and representative of Chief Engineer of EIC, PWD B&R (but now below the rank of XEN) carried out the inspection of the petitioner site and as per the report submitted by the Committee, the measurement for the built-up area of the project i.e. built up area (floor wise) as well as the area which is open to the sky in the premises of the plot at site, the total built-up area covered in the building including floor-wise is 21017.42 Sq. meters. However, in view of the statements of detail (Annexure R-1) of area not built/covered at site and are to be deducted from the built up area reported by the Committee which is included by the Committee wrongly by mistake is 1057.92 Sq. meters. Therefore, it is to be deducted from the total of 21017.42 Sq. meters. Hence, the covered area comes out to be 19959.50 Sq. meters.

Further in the said affidavit, it has been stated by Haryana Urban Development Authority that the provisions of Notification dated 14.09.2006 are not applicable in this case.

On the other hand, learned counsel appearing for the Haryana State Pollution Control Board stated that petitioner had earlier filed a Civil Writ Petition No. 9549 of 2007 which was disposed of by this Court on 02.08.2007 directing the Chairman of Haryana Pollution Control Board to pass an appropriate order. It is contended that pursuant to our order, the Chairman, Haryana Pollution Control Board had appointed a Committee, reference to which has been made in the affidavit of respondent No. 7, extract of which has been reproduced above.

In view of the categorical averment made in the affidavit by Haryana Urban Development Authority that provisions of Notification dated 14.09.2006 are not applicable to this case, the issues raised in this writ petition that impugned orders are illegal, will take some time to be examined. However, in view of the specific aforesaid averments made in the affidavit by Haryana Urban Development Authority with regard to non-application of notification dated 14.09.2006, we permit the petitioner to have the Mall inaugurated and make it operational subject to further orders by this Court.

Re-notify for hearing on 05.02.2008.

Interim order to continue.

6. The only question involved in this writ petition was, thus, about the factual position as to whether the built-up/covered area is more than 20,000 sq. meters for which environmental clearance is necessary in terms of the notification dated

14.09.2006. In this regard, the Estate Officer, HUDA, Panchkula filed an affidavit on 04.12.2007 in which the following averments have been made:-

it is necessary to point out here that as per the report of the Committee (Annexure P-17), consisting of the officers of Estate Officer, Haryana Urban Development Authority, Panchkula, Regional Officer, Haryana State Pollution Control Board, Panchkula Region and representative of Chief Engineer of EIC, PWD B&R (but now below the rank of XEN) carried out the inspection of the petitioner site and as per the report submitted by the Committee, the measurement for the built-up area of the project i.e. built up area (floor wise) as well as the area which is open to the sky in the premises of the plot at site, the total built-up area covered in the building including floor-wise is 21017.42 Sq. meters. However, in view of the statements of detail (Annexure R-1) of area not built/covered at site and are to be deducted from the built up area reported by the Committee which is included by the Committee wrongly by mistake is 1057.92 Sq. meters. Therefore, it is to be deducted from the total of 21017.42 Sq. meters. Hence, the covered area comes out to be 19959.50 Sq. meters.

7. In view of the aforesaid averments, an order was passed by this Court on 22.11.2012, which reads as under:-

Mr. Sarin, learned Senior counsel appearing for the petitioner has drawn our attention to the affidavit filed on behalf of Haryana Urban Development Authority, Panchkula, wherein it is categorically admitted that the mall constructed by the petitioner is 19959-50 sq.mt. wide and as the same is less than 20,000 sq.mt., HUDA has conceded that provisions of notification dated 14.09.2006 shall not be applied in the case of the petitioner. He has also referred to orders dated 10.12.2007 passed by a Division Bench of this Court based on the aforesaid affidavit of the HUDA whereby the petitioner was permitted to inaugurate and make the said Mall operational.

The submission is that once HUDA itself concedes that notification dated 14.09.2006 is not applicable, the petition warrants to be allowed as in such a case no environmental clearance from the Pollution Control Board is required.

Learned counsel appearing for the Pollution Board wants one day's accommodation to take instructions on this aspect.

On his request, adjourned to 23.11.2002.

8. Learned counsel for the Pollution Control Board though had argued vehemently to justify that the construction of the mall is over more than 20,000 sq. meters for which environmental clearance is necessary in terms of the notification dated 14.09.2006, but he could not dispute that the Committee has wrongly included an area of 1057.92 sq. meters in the total constructed area which has been specifically mentioned in Annexure R-1 attached to the counter affidavit filed by the Estate Officer, HUDA, Panchkula dated 04.12.2007. If the area of 1057.92 sq. meters is deducted from the total area assessed by the

Committee which is to the tune of 21017.42 sq. meters, then the total area comes to 19959.50 sq. meters, the notification dated 14.09.2006 becomes inapplicable and the petitioner is not required to take environmental clearance and consent to establish the shopping mall, as directed by the Haryana State Pollution Control Board. In view of the aforesaid discussion, the present writ petition is allowed and the impugned orders dated 27.08.2007 (Annexure P-26) and 05.09.2007 (Annexure P-28) passed by the Haryana State Pollution Control Board are set aside being illegal.