
(1996) 10 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11947 of 1992

Social Welfare Association

APPELLANT

Vs

Haryana Urban Development Authority, Panchkula

RESPONDENT

Date of Decision : 14-10-1996

Acts Referred:

Citation : (1997) 1 PLJ 209 : (1997) 1 PLR 171 : (1997) 2 RCR(Civil) 163

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. Rameshwar Malik, Advocate, Mr. Rakesh Gupta, Advocate.,
Advocates for appearing Parties

Judgement

R.L. Anand, J.—Social Welfare Association, S.C.F. No. 46, Near Bus Stand, Pehowa, through its General Secretary Amar Chand, and Ashwani Kumar son of Kulwant Rai, petitioners, have filed the present writ petition earlier against respondents Nos. 1 to 4, but later on respondents Nos. 5 to 7 were added, and the prayer contained in the writ petition filed under Articles 226 and 227 of the Constitution of India is for the issuance of the writ of mandamus directing the official respondents (i.e. respondents Nos. 1 to 4) to develop and maintain the space as green belt in the Shopping Complex No. 1 and 2, and also provide other amenities as laid down in the enclosed map (P4) and a further direction be issued to respondents Nos. 1 to 4 to prevent the encroachment of the space meant for these amenities by the illegal khokhawalas, who have constructed their khokhas in an illegal manner over the area earmarked for green belt in the scheme.

2. The case set up by the petitioners is the plot/house owners/S.C.F. owners of Shopping Complex No. 1 and 2, New Mandi Township, Pehowa, have formed as association known as Social Welfare Association with its office in S.C.F. No. 46, Near Bus Stand, Pehowa. The petitioner Association vide its resolution dated 31.7.1990 has decided to file the present writ petition and has authorised its General Secretary Shri Amar Chand to file the same. Petitioner No. 2 is the owner of S.C.F. No. 44, which is located in the same area and he is filing the

present writ petition in his individual capacity being a plot holder.

3. of petitioner No. 2 vide his bid in the auction held on 24.7.1970 purchased S.C.F. No. 44 in the New Mandi Township at Pehowa. Subsequently the Urban Estates in the State of Haryana came under the jurisdiction of Haryana Urban Development Authority (for short "the HUDA"). The petitioners approached the HUDA for the transfer of this plot and the plot was transferred in the name of petitioner No. 2 vide Annexure P2. Petitioner No. 2 was to abide by the terms and conditions of the allotment letter and also the provisions of Haryana Urban Development Authority Act, 1977, and the instructions/guidelines and the rules and regulations thereunder. The conditions of reallocation are contained in Annexure P3. Petitioner No. 1 is the association in which all the plot owners in shopping Complex No. 1 and 2 of New Mandi Township Pehowa, are members and they have united together in order to see that this area is developed by the authorities concerned and necessary amenities are provided as detailed in the layout plan. The scheme under which the plots were allotted is laid in/described by the respondent authority in the plan (Annexure P4), which is self-explanatory and speaks of roads, verandah, pavement road, parking places and green belt etc., which are to be used by the plot holders. The respondent authorities earmarked the open space between the Shopping Complex No. 1 and Ambala Hissar Road, which has been shown in green colour in the map, and this is to be developed as green belt. The spots shown in red colour were to be developed as parking places. The respondents on the basis of the plan (Annexure P4) again auctioned more sites in the year 1990 in New Mandi Township, Pehowa, and the concerned officers promised at the time of the auction that the complex would be developed as laid down in the plan (Annexure P4), but nothing was done. The space meant for being developed as green belt was used by respondent No. 3 as Chara Mandi and respondent No. 4 encouraged the encroachment of the space meant for green belt and parking places by khokhawalas. The drainage system was not developed, roads were not constructed, pavement was not constructed and no water supply and electricity was provided. Without providing any of the amenities respondent No. 1 sent the penalty notices for nonconstruction, to the plot holders who had not constructed their plots.

4. Petitioner No. 1 made a representation on 5.12.1990 to respondent No. 1 bringing to its notice the inaction on the part of the Department by not providing the necessary amenities. In this letter (Annexure P5) it was specifically brought to the notice of the authorities about the pitiable condition of the Complex. It was also brought to the notice of the authorities that in Shopping Complex No. 2 neither electricity nor water supply, nor proper drainage of water had been provided. The illegal encroachment by the Khokhawalas and the Chara Mandi people has not been removed in spite of repeated requests in respect therewith. In spite of the representation given to respondent No. 1 personally, and in spite of the fact that assurance was given, nothing was done. Reminders were given to respondent No. 1. On the reminders some official communication took place between respondents Nos. 1 and 2 and some action was also taken by the

respondents and a few amenities were provided, but the development of Green Belt/Parking Places was not done at all. In fact, slowly and with the passage of time the place meant for green belt and the parking area was encroached by the illegal khokhawalas and it became a den of antisocial elements, with the active/passive connivance of the respondent authorities. The matter was brought to the notice of respondent No. 2 about the nuisance created by the khokhawalas and the trespassers. The authorities were requested to develop this area as green belt, but no action was taken in spite of the letters of request, copies of which have been annexed with the writ petition. In para No. 12 of the writ petition it has been specifically averred by the petitioners that the respondents have not provided the necessary amenities, nor they have develop the space meant for development as green belt in spite of numerous deputations and several written requests; rather the authorities are conniving with the khokhawalas, by putting the space for some alternative use. In para No. 13 of the writ petition a plea has also been taken that the act of respondent No. 2 would encourage in ecological and environmental imbalances and respondent No. 1 is encouraging the illegal encroachment on the open space, which can result in traffic hazards. The indecent acts on the part of the khokhawalas make it difficult for the young girls and the housewives to pass through the streets.

5. With the above averments, prayer has been made that the respondents be directed to set up the green belt and the respondents be also restrained from putting the land in question for some other alternative use during the pendency of the writ petition.

6. Notice of the writ petition was given to the respondents. Respondents Nos. 1 and 2 filed a written statement and it was, inter alia, pleaded that the matter in issue pertained to the area, which was alleged to be under encroachment by certain khokhawalas. In the absence of the persons who are likely to be affected with the outcome of this writ petition, it is liable to be dismissed for their not having been joined as necessary parties. It may be stated here that on this objection, respondents Nos. 5 to 7 were added, who are representing the different khokhawalas. It was also pleaded by respondents Nos. 1 and 2 that the khokhawalas, who encroached upon the land in question, filed Civil Writ Petition No. 7789 of 1991, pleading that some similarly situated khokhawalas have been accommodated on the adjoining land by allotting certain booths/shop sites and that they may accordingly be also accommodated on the land in question. Some of the khokhawalas, who were on the land owned by the Market Committee, Pehowa near Anaj Mandi, have been accommodated by the Market Committee by selling shop/booth sites. C.W.P. No. 7789 of 1991 was disposed of by the Division Bench of this Court on 10.9.1992 by giving directions to the official respondents that in case the writ petitioners of that writ petition apply for allotment of plots, the respondents would consider their request for allotment of plots/sites as has been done with respect to the other khokhawalas. Pursuant to the aforesaid directions, the matter is under process on the representation of the khokhawalas. Since there is no other land available with the HUDA for accommodating the

khokhawalas and the green belt as per zoning plan cannot be interfered with, it may not be possible to accommodate the khokhawalas. It was averred by these respondents that it has become difficult for them to remove the khokhawalas from the green belt, which they have encroached upon. On merits it has been pleaded that the area on the main road as per site plan (Annexure R1 equivalent to P1) was meant to be kept as green belt, it was also admitted in para No. 4 of the reply that in some portion of the green belt on the main road some "chara trucks" are off loaded but that may be due to inaction on the part of the inhabitants of the shopping centre, who should also ensure that such things do not happen. Also it was averred that the matter regarding removal of encroachment on the green held is linked with the accommodation of khokhawalas in accordance with the directions of this Court, already referred to above. It has been specifically pleaded by respondents Nos. 1 and 2 that there is no other land available with them and for this reason the matter with respect to accommodation of khokhawalas could not be finalised. It was also stated that the answering respondents were making all efforts to clear the encroachment but the khokhawalas brought the matter to the High Court, due to which it has become not possible to clear out the encroachment as there is no land available with the HUDA for allotment to the khokhawalas, as demanded in their writ petition. It has been admitted by these respondents that open space/green belt has been left in front of the shopping centre, which has been encroached upon by the khokhawalas and the matter in this respect is pending consideration. Respondents Nos. 1 and 2 further pleaded that the plot holders are entitled to their area, which was allotted to them, but they have no vested right in respect of the green belt/open space which can be used by the competent authorities in the manner in which they consider it appropriate. There is no application of the principle of promissory estoppel, as alleged by the writ petitioners. With the said main averments, respondent Nos. 1 and 2 have prayed for the dismissal of the writ petition.

7. On behalf of the added respondents a separate written statement was filed by Shri Sohan Lal who stated that the present writ petition is a case of bare necessity versus luxury. The khokhawalas are earning their livelihood. The petitioners are seeking the fulfilment of their desire for development of the land in question in the form of park etc. The khokhawalas would not be able to earn their livelihood in case the claim of the petitioners is accepted and in view of the said circumstances the writ petition may be dismissed. It was pleaded that the added respondents and other khokhawalas are doing small business for the last more than 20 years on the site in dispute, to the knowledge of the petitioners and there was no objection on their side. Moreover, respondent No. 4 had been collecting tax from them in the form of Teh Bazari. The Haryana State Electricity Board has also provided electricity connections to a number of khokhawalas without an objection. The answering respondents and other khokhawalas are not to be blamed as they are not at fault under any circumstances. The filing of earlier writ petition, i.e. CWP No. 7782 of 1991, was admitted and it was pleaded

that in pursuance of the directions given by the Hon''ble Division Bench of this Court, the Khokhawalas applied to respondent Nos. 1 and 2 for the allotment of shop sites. The matter is under active consideration of the competent authorities. The claim of the answering respondents was genuine. Some of the petitioners have not raised the construction as per the approved site plans and as such they are themselves responsible for the present state of affairs. Some of the plotholders are facing penal consequences because of their unauthorised construction.

8. No separate written statement was filed on behalf of respondents Nos. 3 and 4.

9. I have heard Shri Rakesh Gupta, Advocate on behalf of the petitioners and Shri Rameshar Malik Advocate, on behalf of the added respondents Nos. 5 to 7. No assistance has been provided on behalf of the respondents Nos. 1 to 4.

10. Learned counsel for the petitioners has invited my attention to the approved plan (P4) and also to the written statement filed on behalf of respondents Nos. 1 and 2, and contended that it is established that the petitioners are the holders of the plots and they have constructed their shopcumresidences. The approved original plan (Annexure P4) clearly establishes that certain spaces were earmarked for the development of green belt and parking areas. The petitioners while paying the price of their plots have also acquired an interest in the spaces earmarked for the purpose of green belt and parking because while claiming the development charges and while calculating the price of the plots, the authorities always take into consideration the areas which are to be left for the purposes of development, such as roads, parks, green belts etc. It has been pleaded that it is no excuse on the part of respondents Nos. 1 to 4 or on the part of respondents Nos. 5 to 7 to allow the creation of unauthorised khokhas nor the khokhas could be constructed or installed over those sites which have been earmarked for green belt. By installing these khokhas a nuisance is being caused because the petitioners cannot make proper use of the properties of which they are full owners. So much so, an imbalance has been created in the atmosphere with the noncommitment of the obligation on the part of the authorities by not creating a green belt.

11. On the contrary, it has been submitted by Shri Rameshwar Malik that his clients and other khokhawalas are in existence for the last 20 years to the knowledge of the petitioners and it was never objected by the petitioners for the removal of the khokhas at the time of the purchase of the plots by them and now it is not open for them to seek any directions from the Court regarding the removal of the khokhas and for the creation of the green belt. It is also submitted by Shri Rameshwar Malik that earlier some of the khokhawalas approached this Court and sought directions against the HUDA to allot sites for the booths, like the other khokhawala who were accommodated and the High Court gave the directions to consider the representations of such khokhawalas in order to accommodate them. Shri Malik submitted that any adverse directions, if given by this Court, would seriously hamper interests of the khokhawalas, who

are small businessmen and who are earning their livelihood.

12. After considering rival contentions of the parties, this court has come to the conclusion that the submissions made by Shri Malik are more based on sympathy grounds, rather than on legal premises. It is established on the record that the writ petitioners are the owners of the plots. The approved lay out plan clearly establishes that some areas were earmarked for green belts and some areas were earmarked for parking purposes. The initial purpose for which these areas were earmarked could only be changed by the authorities with the approval of the State Government and it is not on the record that the HUDA authorities have obtained the permission from the State Government for the change of the user so as to accommodate the khokhawalas. It, rather, becomes the duty of HUDA authorities to stand by their own commitment because when the site was auctioned or allotted to the various persons, a categorical undertaking was given that a particular site would be converted into a green belt or would be used for parking purposes. By allowing the persons to put up khokhas in an illegal or unauthorised manner would tantamount to encouraging a nuisance and by nonconversion of site into a green belt would create ecological imbalance, which is not permitted under the law. The added respondents have failed to establish on the record that they are occupying the green belt area under any valid allotment. The HUDA authorities have also not been able to establish that any approval was obtained from the State Government for the conversion of the earmarked spaces. In *Bangalore Medical Trust v. B.S. Muddappa and others*, AIR 1991 S.C. 1902, it was held that a writ petition by the inhabitants of the locality is maintainable if there is a conversion of a development scheme by converting a public park into a private nursing home. The Hon'ble Supreme Court also held that the executive or administrative authorities must not be oblivious of the fact that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exercisor of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Here in the present case the interests of the plot holders of the scheme are involved. The sites were left for the benefit of the inhabitants of the surrounding areas with a clear commitment on the part of the authorities that it would be converted into a green belt and the authorities cannot show their helplessness by making an excuse that it has been encroached up by the khokhawalas. It is the specific stand of respondents Nos. 1 and 2 in their written statement that the sites in question were earmarked to be developed as green belt and in these circumstances it was obligatory on the part of the authorities to preserve that area for the said purpose and not to encourage the encroachment or allow any person to encroach the area meant for green belt or parking purpose.

13. Attention of this Court has also been invited to *Virender Gaur and others v. State of Haryana and others*, (1995) 109 P.L.R. 591 (S.C.), wherein it was held as under :

".... Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the manmade and the natural environment as a whole. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the manmade environment and the natural environment."

In this very citation it was held that once the land having been taken from the citizens for a public purpose to maintain ecology, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents and it cannot be used for any other public purpose. It cannot be used or allotted for building purposes though housing is a public purpose. In the present case once the area has been earmarked for a green belt with a purpose for the preservation of environment, ecological balance free from pollution of air, it cannot be allowed to be used by the khokhawalas or by any other person who tries to put the use in a different manner under garb of poverty etc.

14. In *The Ambala Urban Estate Welfare Society, Ambala City v. Haryana Urban Development Authority and another*, (1994) 108 P.L.R. 630, it was held that when the petitioners were given the plots as the respondent authorities had not provided the amenities resulting in pollution of environment, directions should be given to the authorities to provide all the amenities so that the "right to life" as guaranteed under the Constitution do not become illusory.

15. Mr. Rameshwar Malik, learned counsel appearing for respondents Nos. 5 to 7, relied upon *Olga Tellis and others v. Bombay Municipal Corporation and others*, 1986 RRR 290 (SC) : AIR 1986 S.C. 180, and submitted that this Court can watch the interests of the khokhawalas in the eventuality of their removal from the site earmarked for the green belt. Mr. Malik submitted that his clients and other khokhawalas have also the right to live and in case they are deprived of their livelihood, they would face starvation. Mr. Malik submitted that in spite of the directions given by the High Court, the case of his clients as well as other khokhawalas has not been considered so far and some directions should also be given to the HUDA authorities or to the Marketing Board to dispose of the representations within a specified time by allotting suitable sites, so that his client may be able to run the business. As already observed above, the

submissions of Mr. Rameshwar Malik are on moral grounds rather than on legal grounds. In the writ petition filed by the khokhawalas, in which some directions were given, the plottolders were not parties. These plottolders/owners of the boothscumflats are basing their claim on a vested legal right provided to them by the authorities when the scheme was carved out and the planning was done. Simply that the added respondents would suffer hardship along with their colleagues, i.e., khokhawalas, is no ground to reject the relief claimed in the present writ petition. Equally it is true that there is a solemn duty upon this Court to watch the interests of the citizens of this great country, for which I am inclined to pass some directions in the subsequent portion of this judgment. At this stage I have to say that the citation relied upon by the learned counsel for the respondents is not applicable to the facts in hand.

16. Learned counsel for the respondents has also pressed into service *Union of India and others v. Hindustan Development Corp. and others*, AIR 1994 S.C. 988, and my pertinent attention has been invited to paras Nos. 27, 28 and 33 to 36 thereof. The counsel also relied upon *Consumer Education and Research Centre and others v. Union of India and others*, 1995(4) SCT 631 (SC) : AIR 1995 S.C. 922. With due respect to the learned counsel, all these citations have given the guidelines which may not come to his rescue, keeping in view the peculiar facts and circumstances of the present case. An encroacher cannot defeat the legitimate right of a lawful owner and the vested rights of the holders of the property which have been acquired by them in a legal manner.

17. In the light of the above discussion, this writ petition is allowed. Directions are hereby given to respondents Nos. 1 to 4 to make concerted and joint efforts to develop the green belt, parking places and to provide other basic amenities as shown in the approved plan (Annexure P4). Directions are also given to the respondent authorities to take such necessary steps permissible under the law within six months from the date of the passing of this order for the removal of all the encroachments in the shape of khokhas or any other encroachment over the site earmarked for green belt and parking areas. Further directions are given to the authorities not to allow further encroachments in order to complicate the matters.

18. It is further expected from the respondent authorities to give proper respect to the directions given by this Court in C.W.P. No. 7789 of 1991, and the respondent authorities would try to accommodate the khokhawalas on such land as is available to them so that they may also earn their livelihood in a respectful manner. The authorities can also consider the viability to acquire some land so that these oustees may be accommodated in due course of time. It is also expected that necessary legal action would be taken against the trespassers/encroachers of the green belt area by resorting to legal methods within the stipulated period referred to above. This Court further expects that due sincere and earnest efforts would be taken by the respondent authorities for the development of the scheme, which was earlier carved out for the benefit of the

plot holders.

19. There will, however, be no order as to costs.