
(1998) 03 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13197 of 1997

State of Haryana and Another

APPELLANT

Vs

Mittal Auto Services and Another

RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 10

Citation : (1999) 123 PLR 392 : (2000) 1 RCR(Civil) 66

Hon'ble Judges : V.K. Bali, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Parmod Goyal, D.A.G, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The State of Haryana and the Director, Town and Country Planning, Haryana have challenged the order Annexure P-1 passed by the Commissioner, Hissar Division on the appeals filed by the respondent No. 1 for grant of permission to install filling station and auto service store at Charkhi Dadri.

2. The material facts of the case are that the application dated 12.10.1994 submitted by respondent No. 1 to the District Magistrate, Bhiwani for change of land use was sent by the latter to the District Town Planner, Bhiwani, who forwarded it to the petitioner No. 2. After considering the prayer of the respondent No. 1, the Director, Town and Country Planning rejected the same vide his order dated December 30, 1994 on the following grounds:-

"(i) That the title of the land is not in name of the applicant as the land has been taken on lease for 20 years only which cannot be considered a right of ownership under Rule 26-A of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965.

(ii) That the proposed site is situated on Dadri-Loharu Schedule road where the

permission for storage of petroleum product which is highly explosive in nature is not considered appropriate from traffic point of view.

(iii) That 3698.8 square mtrs. area of the site falls within 30 mtrs. restricted belt along the schedule road where no permission for the construction can be considered as per the Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

(iv) That the proposal of setting up of storage of petroleum products in highly inflammable/explosive in nature for which N.O.C. from Ministry of Environment and Forest, Government of India, under their Notification No. Z-12013/4/89-IA-I dated 28.1.1993 is prerequisite.

3. After receiving the aforesaid order the respondent No. 1 filed representation dated 24.1.1995 and 1.3.1995 and reiterated its request for grant of permission. Thereupon the petitioner No. 2 wrote letter dated 27.10.1995 to the respondent No. 1 to file certain documents along with CLU-1 form. However, instead of submitting the required documents, the respondent No. 1 filed appeal u/s 10 of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short the "Act of 1963") which has been allowed by the Respondent No. 2.

4. We have heard Shri Parmod Goyal and perused the record. The respondent No. 1 has neither filed reply nor any one has appeared on its behalf to argue the case.

5. Although the petitioners have challenged the order Annexure P-1 on various grounds set out in the writ petition, we do not consider it necessary to deal with all of them because, in our opinion, the writ petition deserves to be allowed only on the ground that the appeals filed by the respondent No. 1 were not maintainable and the respondent No. 2 has gravely erred in entertaining and accepting the same. A bare perusal of the documents filed along with the writ petition shows that the application made by the respondent No. 1 for change of land use was rejected by the petitioner No. 2 vide order dated 30.12.1994. Against that order the respondent No. 1 could have filed appeal u/s 10 of the Act of 1963 but instead of doing that it made representations dated 24.1.1995 and 1.3.1995 for grant of permission to install filling station. In response to these representations, the petitioner No. 2 asked the respondent No. 1 to submit CLU-1 form along with certain documents. By this communication the petitioner No.2 did not decide the rights of the respondent No. 1. Nevertheless, the respondent No.2 entered in the appeal and granted relief sought by the respondent No. 1. Shri Goyal challenged the correctness of the impugned order and argued that the respondent No. 2 has acted without jurisdiction in entertaining the appeal filed by the respondent No. 1. He submitted that the letter dated 27.10.1995 written by the petitioner No. 2 cannot be treated as an order passed by the Director refusing permission/licence sought/applied for by the respondent No. 1 and, therefore, no appeal could be entertained against the

same.

6. Section 10 of the Act of 1963, which contains provision for appeal, reads as under:-

"10. Any person aggrieved or affected by an order of the Director under Sub-section(2) of Section 8 granting permission or licence subject to conditions or refusing permission or licence may, within sixty days from the date of such order, prefer an appeal to the Commissioner of the Division in which the scheduled road or controlled area, as the case may be, is situated and the order of the Commissioner on such appeal shall be final."

7. A bare reading of the provision quoted above shows that the appeal can be filed only against an order of the Director granting or refusing of permission or licence. The period of limitation prescribed for filing of appeal is 60 days from the date of order. It does not provide for filing of an appeal against the direction given by the competent authority to a party to produce documents or submit prescribed proforma. Therefore, the appeal filed by the respondent No. 1 against the letter dated 27.10.1995 requiring it to submit CLU-1 Form along documents was not maintainable u/s 10 of the Act and the respondent No. 2 did not have the jurisdiction to entertain and decide the appeal filed by the respondent No. 1. Unfortunately, the respondent No. 2 lost sight of the fact that the appeal filed by the Respondent No. 1 was not only time barred but was also not maintainable because it was not directed against an order passed by the Director refusing to grant permission or licence for installation of filling station. The respondent No. 2 also overlooked the fact that the order refusing permission to the petitioner to install the filling station was passed on 30.12.1994 and no appeal was filed against the same.

8. In view of the above discussion, we hold that the order Annexure P-1 passed by the respondent No. 2 is liable to be quashed. The writ petition is accordingly allowed and Annexure P-1 is quashed. However, this order shall not prevent the respondent No. 1 from making an application in terms of the letter Annexure P-10. We also direct that any such application submitted by the petitioner along with the required documents shall be considered and decided by the competent authority in accordance with law.