

(2000) 11 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10471 of 2000

State of Haryana	Vs	APPELLANT
Pals and Kins (India) Pvt. Ltd.		RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 7

Citation : (2000) 11 P&H CK 0016

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : D.P. Singh, D.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The State of Haryana and the Director, Town and Country Planning, are the petitioners. They challenge the order

dated July 5, 1999 passed by the Commissioner and Secretary to Government Haryana, Town & Country Planning Department, by which

petitioner No. 2 has been directed ""To grant permission for change of land use for setting up a motel as applied for"" by respondent No. 1.

2. We have heard Mr. D.P. Singh, learned counsel for the petitioners.

3. The case was listed for hearing on August 10, 2000. On that day learned counsel for the petitioners had prayed for an adjournment ""to enable

him to place the material on record to show that the case of present respondent No. 1 is materially different from those of other persons to whom

permission qua change of user in land was granted"". The case was adjourned.

4. Now an affidavit has been filed by Mr. N.C. Wadhwa, I.A.S., Joint Secretary to Government, Haryana. In this affidavit it has been inter alia

averred that it is ""being filed in compliance of the said directions of the Hon''ble High Court"". This averment is factually incorrect and against the

record. The Court had never directed the petitioners or any Officer to file an affidavit. It was only on request of the counsel for the petitioners that

the case had been adjourned.

5. On merits it has been inter alia averred as under :

(a) That the request of M/s. Penguin Resorts Pvt. Ltd. for grant of permission for change of land use for setting up of a restaurant in village

Uchana in controlled area, Kamal was rejected vide letter dated 4.1.95 on various grounds including that the proposed land falls in the agriculture

zone where commercial activities are not permissible. However, on representation the said firm was advised to apply afresh after removing all

impediments on which the permission was refused.

(b) That the applicant after removing all impediments applied afresh vide application dated 10.4.97. As all the grounds of rejection were removed

except that the site falls in agriculture zone, therefore the matter was referred to the Government for granting permission in relaxation of the

provisions of the zoning regulation, because as per the provisions of Section 7(A) of the Act of 1963 and conditions of zoning regulations only the

Government is competent to relax the provisions of zoning regulation. The Government allowed the relaxation on 22.5.97. Therefore, the

permission for change of land use was granted to M/s. Penguin Resorts Pvt. Ltd. vide letter dated 22.7.97 by the Director, Town & Country

Planning, Haryana.

(c) That similarly the request dated 2.9.98 of M/s. Pals and Kins Pvt. Ltd, for grant of permission for change of land use in the controlled area of

Gharaunda for setting up of a motel was rejected on 17.11.98 on various grounds including that the proposed site falls within the agriculture zone

wherein commercial activities are not permissible. However, on representation, the said firm was also advised to apply afresh after removing all

impediments on which the permission was refused.

(d) That M/s. Pals and Kins India Pvt. Ltd, instead of applying afresh after removing all the impediments preferred an appeal u/s 10 of Act of 1963

on 22.6.99 before the appellate authority i.e. Commissioner and Secretary to Government, Haryana, Town and Country Planning Department. It is

pertinent to mention here that as per the provisions of Section 10 of the said Act, appeal is to be filed within 60 days of the passing of the orders

whereas the present appeal was filed after a period of more than 7 months and that too without any application or request for condonation of

delay. The appellate authority vide order dated 5.7.99 allowed the appeal inspite of the fact that it was hopelessly time barred." 6. A perusal of the

above affidavit shows that in sub-para "c" the first respondent ""was also advised to apply afresh after removing all impediments on which the

permission was refused"". What were the impediments ? There is no indication. Still further, it is the admitted position that M/s. Penguin Resorts and

respondent No. 1 were seeking the change of land use in an identical situation. In cases of both, the land was agricultural. Nothing has been pointed

out to show as to how the case of respondent No. 1 is distinguishable from that of M/s. Penguin Resorts. In this situation, we are satisfied that the

finding recorded by the appellate authority that the department had acted in a discriminatory way can-not be said to be wrong.

7. Mr. D.P. Singh submits that the impediments had been pointed out to respondent No. 1 vide letter dated November 17, 1998, a copy of which

has been produced as Annexure P3 with the writ petition. However, the learned counsel very fairly concedes that these impediments had also been

mentioned in the case of M/s. Penguin Resorts to whom permission had been granted by the respondents.

8. It is clear and is not even disputed by the counsel that the case of respondent No. 1 was akin to that of M/s. Penguin Resorts. There was no

distinction. There was no legal impediment in the way of either for the grant of permission for change of land use. The appeal filed by the first

respondent before the second respondent was maintainable under the law. There was no error in the exercise of jurisdiction. In this situation, no

ground for interference is made out.

9. No other point has been raised.

10. Taking the totality of circumstances into consideration, we find no merit in this petition. It is, consequently, dismissed in limine.

11. Petition dismissed.