IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 15486 of 2010. [O&M]
Date of Decision:03rd March, 2014.

Alpine Education & Research Society [Regd.]

Petitioner through
Mr. Salil Sagar, Sr. Advocate with
Mr. Sunil Kumar, Advocate.

Versus

State of Haryana & Ors. Respondents through
Mr. Roopak Bansal, Addl.AG, Haryana.
Mr. A.K.Jaiswal, Advocate, for the applicant-intervenor.

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CORAM:HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

The petitioner is a Society registered under the Societies Registration Act, 1860. The Society owns some land in the village Bhawana, near Pinjore in District Panchkula where it has established a School, besides raising other buildings including residences. The petitioner-Society applied for the *post-facto* permission to erect the above mentioned building under Section 6 of the Punjab New Capital [Periphery] Control Act, 1952 as amended by the Punjab New Capital [Periphery] Control Haryana Amendment Act, 1971.

[2]. The Director, Town and Country Planning, Haryana vide order dated 12th October, 2009 declined the above stated permission after observing that the exemption under Section 15 of the 1952 Act can be considered only for genuine residential needs of the local residents and such exemption is not intended to regularise the un-

authorised construction of the school and other structures raised by the petitioner – Society. The appeal preferred by the petitioner - Society under Section 7 of the 1952 Act has also been turned down by the State Government vide order dated 20th July, 2010 *inter-alia* pointing out that the petitioner-Society has already lost multiple court cases and that the order passed by the Director calls for no interference. The Appellate Authority doubted the petitioner's *bona-fide* as also the collusion of the departmental authorities who failed to take action against the petitioner despite there being no stay granted by any forum.

[3]. The aggrieved Society not only impugns the above mentioned both the orders, it also seeks quashing of the notification dated 23rd March, 1972 issued by the State of Haryana in exercise of its powers under Section 3 of the 1952 Act. A consequential direction to accord permission to the Society to raise construction and to approve its building plans, has also been sought.

[4]. The 1952 Act was envisaged at a time when the erstwhile Punjab Government was in the process of building a new Capital-namely, Chandigarh. The Master Plan providing for the future extension of the Capital City was planned to spread over a much greater area than the area acquired for the construction of the new City in the first Phase. It was with a view to ensure healthy and planned development of the new City, that the 1952 Act was legislated "**to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new City"**. Section 3 of the Act empowers the State Government to declare

"Controlled Area" for the purpose of this Act by way of a notification in the official Gazette. Section 4 provides that once the "Controlled Area" is declared, the Director shall publish the plan showing the area declared to be a controlled area, signifying therein the nature of the restrictions applicable to the controlled area.

[5]. Section 5 of the Act says as follows:-

> *"**5. Restrictions in a controlled area –** Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or layout any means of access to the road, in controlled area save in accordance with the plans and restrictions and with the previous permission of the Director in writing"*

[6]. Section 6 enables a person to apply for permission for erection or re-erection of the building, excavation or means of access to a road whereupon the Director is required to hold an inquiry and pass an order in writing, granting or refusing such permission. However, the Director shall not refuse permission to the erection or re-erection of the building if it is required for the purpose subservient to agriculture. An aggrieved person may prefer appeal to the State Government under Section 7 of the Act.

[7]. Section 11 of the 1952 Act imposes prohibition on the use of land falling in the Controlled Area for its use for purposes other than those for which it was used on the date of notification of Controlled Area. Section 11 reads as follows:-

> "***11. Prohibition on use of land.-** [1] No land within controlled area shall, except with the permission of the State Government, and on payment of such conversion charges as may be prescribed by the State Government*

from time to time be used for purposes other than those for which it was used on the date of notification under sub-section [1] of Section 3 and no such land shall be used for the purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-field or brick-kiln or for quarrying stone, bajari or kankar, or manufacturing surkhi, or stone crushing, or for other similar extraction or ancillary operation except under and in accordance with the conditions of a licence to be obtained from the Director on payment of such fees and on such conditions as may be prescribed in or as may be specified in the order.

[2] The renewal of such licence may be made after three years on payment of such fees as may be prescribed.

[3] No person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by the refusal to issue or renew a licence, except in case where such kiln was in existence at the time of the notification under sub-section [1] of Section 3 and in which case an application shall lie to the arbitrator within three months or the order or refusal in the manner provided in Section 9".

[8]. Section 15 of the Act, however, grants exemptions to certain buildings from the provisions of the Act and it reads as follows:-

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

[a] any building erected or re-erected for bonafide personal residential purposes and not above the height of eleven meters or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records and the area adjacent to the abadi area of any village which the Government identified for village expansion through a notification published in the official Gazette,

> ***specifically to this effect subject to the condition that this area shall not exceed sixty percent of the existing village abadi area;***
>
> *[b] the erection or re-erection of a place of workshop 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 [1] 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".*

[9]. It is an admitted fact that the land falling within a distance of ten miles from the periphery of Chandigarh has been notified as the 'Controlled Area' by the State of Haryana. A similar notification has been issued by the State of Punjab as well. Vide notification dated 21st March, 1972, the State of Haryana in exercise of its powers under Section 3 of the 1952 Act declared the revenue estates of various villages specified in the Schedule appended to the notification, to be the Controlled Area for the purposes of the Act. The said Schedule admittedly includes village Bhawana at Sr. No. 66.

[10]. There is also no denial to the fact that the School building or other structures including residences constructed by the petitioner – Society were not in existence on the date of issuance of the above stated notification. Each and every brick has been laid by the petitioner – Society much after the issuance of the above stated notification dated 21st March, 1972.

[11]. The petitioner impugns the denial of permission for

erection of the buildings as also lays its challenge to the notification dated 21st March, 1972, *inter-alia,* on the grounds that –

[a] the distance between the periphery of Chandigarh and village Bhawana has been wrongly measured by the crow-fly distance and it should have been measured on the basis of the length of the road;

[b] the action of the respondents is discriminatory as several other newly raised constructions in village Bhawana have not been demolished;

[c] the land is situated within the periphery of village Bhawana and the Gram Panchayat of the village had accorded permission to raise the construction;

[d] the impugned notification amounts to unreasonable restriction on the petitioner's right to enjoy its property;

[e] the permission sought by the petitioner for the erection and the re-erection pertains to the residential structures only which are exempted under Section 15[a] of the Act;

[12]. The State of Haryana has filed written statement through the District Town Planner, Panchkula explaining that the land in question falls within the Controlled Area declared under Section 3[1] of the 1952 Act as it is adjacent to and within a distance of ten miles on all sides from the outer boundary of the land acquired for Chandigarh as it existed immediately before 1st November, 1966. The petitioner is said to have raised unauthorised construction without obtaining any prior permission of the Competent Authority. The written statement unfolds that the School run by the petitioner

society was actually set up by the Bhagwat Gita Foundation Society and when action was taken against the said unauthorised construction, that Society filed the Civil Suit which was dismissed up to the High Court in ***RSA No.1596 of 2006 decided on 27th September, 2007 [2008(1) HRR, 51]***. This Court held as follows:-

> "*The argument that the revenue estate of village Bhawana does not fall within the Periphery of New Capital of Chandigarh is misconceived. Firstly, the appellant has not challenged the declaration of Controlled Area in respect of the revenue estate of village Bhawana and secondly the argument raised that in terms of the General Clauses Act, the distance from the boundary of the new capital to revenue estate of village Bhawana is more than 16 Kms is not again tenable. According to Section 9 of the General Clauses Act, the distance has to be measured in straight line on the horizontal plan. Thus, the distance of 16 Kms as argued by the learned counsel for the appellant is distance to be covered by a road, but not a distance which is required to be measured in a straight line in horizontal line. Therefore, the argument that revenue estate of village Bhawana could not be declared as a controlled area can not be tenable".*

[13]. The written statement further reveals that "*the land involved in the present writ petition is comprised in Khasra No. 257, 258, 259, 260 and 261 of the revenue estate of village Bhawana, Tehsil Kalka, district Panchkula. The part of land under consideration was initially owned and possessed by Marigold Leasing [India] Ltd. who had sold the land in consideration to Shri Bhagwat Gita Foundation [Society], Bhawana Pinjore, Tehsil Kalka, District Ambala [now Panchkula] vide sale deed No. 1699 dated 15.1.1993 on the*

basis of an agreement to sell executed between the parties on 30.06.1992. However, even before the execution of sale deed, Shri Bhagwat Gita Foundation started raising the unauthorised construction and erected a school building in the name of Alpine Public School without the prior permission of the Director, Town and Country Planning, Haryana, Chandigarh as per the statutory requirement".

[14]. It is thus evident from the above stated facts disclosed by the official respondents that the petitioner – Society and Shri Bhagwat Gita Foundation Society have some interests and properties in common. The said Society has also moved a separate application in this petition to "protect the property and interest of ...." that Society.

[15]. As regard to the exemption sought under Section 15, the respondents have explained that "*the provisions with respect to extension around village Bhawana for exemption under Section 15 of the Act was only for the genuine residential needs of the local residents and hence not intended to regularise the unauthorised construction of the school raised in violation of the provisions of the Act of 1952. The petitioner society is running a school which is non-residential use and Section 15 of the Act is not applicable to facts of the case of the petitioner and hence application/representation of the petitioner for compounding of unauthorised construction was rightly rejected".*

[16]. We have heard learned counsel for the parties and gone through the record.

[17]. We have no hesitation in observing at the outset that the

writ petition is clearly an abuse of process of law and the petitioner – Society has not approached this Court with clean hands. The question : whether village Bhawana falls within the Controlled Area notified on 21st March, 1972 and whether the said village is located beyond ten miles of the periphery of Chandigarh already stands adjudicated by this Court in the civil suit filed by Shri Bhagwat Gita Foundation Society. It appears that both the Societies are controlled by the same set of people and there is nothing new in the petitioner's claim except that it has masqueraded as a new Society.

[18]. Be that as it may, we have reconsidered the petitioner's contentions regarding exclusion of village Bhawana out of the controlled area but we are of the view that the respondents have adopted a well known scientific method of measuring the distance and have rightly included village Bhawana within the distance of ten miles from the outer limit of Chandigarh City. No cogent material to cast doubt on the measurements carried out or relied upon by the respondents has been placed on record. We thus do not find any ground to interfere with the notification dated 21st March, 1972.

[19]. As regard to the power to impose restriction within the controlled area, suffice it would be to say that the validity of the 1952 Act has already been upheld. The provisions enabling the State Government to impose restrictions in the peripheral area are salutary in order to save the regulated and planned growth of Chandigarh. No meaningful argument could be advanced as to why such restrictions be not imposed when the legislative intent is so explicit to save Chandigarh from the haphazard growth in its surroundings.

[20]. Similarly the petitioner's plea of discrimination must be noticed and rejected. Assuming that there are some more unauthorised constructions raised in the revenue estate of village Bhawana, it no way licenses the petitioner to raise wholesome unauthorised constructions purely for commercial venture. The petitioner can sustain its claim by making out a case of positive discrimination instead of harping upon the vague and evasive allegations of inaction by the Authorities against other illegal and unauthorised constructions.

[21]. In all fairness, an additional affidavit dated 01st March, 2014 has been filed on behalf of the petitioner, *inter-alia*, claiming that the school was set up in the year 1994 after obtaining No Objection Certificate from the Education Department, Haryana. It is averred that once Education Department has recognised the petitioner – School under the Haryana School Education Rules, 2003, the respondents can not be heard to say that the school has been established unauthorisedly. It is also averred that as per the information received under the Right to Information Act [P-19], there are 25 private recognised schools in Kalka Sub Division of District Panchkula, hence the petitioner alone can not be branded as an unauthorised creation. It is also claimed that since the State Government has decided to redefine and expand village *Phirni* [outer-boundary], the petitioner's structures would fall within *abadi-deh* of the village where 1952 Act does not apply.

[22]. None of the additional pleas raised by way of above mentioned affidavit carry any weight. The petitioner's own admission

is that the school building or other structures have been raised much after issuance of the Controlled Area notification dated 21st March, 1972. The information regarding other 25 schools placed on record is totally cryptic and misleading. Their locations or the fact whether or not requisite permissions were obtained from the Town and Country Planning Department, are not disclosed. The petitioner in any case has to make out a case of positive discrimination, which it has failed to do so.

[23]. Likewise, the petitioner's attempt to take shelter behind Section 15[a] must also fail for the reason that the exemption under the said provision can be granted in respect of a house used for *bona-fide* personal residential purposes or for purposes subservient to agriculture in the *abadi-deh* of the village. The petitioner has contrarily created its own empire by way of a school building and several other structures in a devil-may-care manner without even applying for the statutory permission, what to talk of obtaining such permission before the start of construction. The application under Section 6 of the Act was also moved post-facto with malicious intention to prolong the consequential penal actions.

[24]. It goes without saying that the laudable legislative object behind the 1952 Act has been acknowledged by this Court in several cases while mandating it for the authorities of States of Punjab and Haryana to prevent haphazard constructions keeping in view the need for a planned integrated development of Chandigarh City. **[*Ref.:Alok Jagga Vs. Union of India & Ors., 2012[2] RCR [Civil], 748]*.**

[25]. A Full Bench of this Court in ***Dheera Singh Vs. UT Chandigarh Administration & Ors., 2012[4] RCR [Civil], 970*** also considered the impact of the Capital of Punjab [Development and Regulation] Act, 1952 and the Punjab New Capital [Periphery Control] Act, 1952 and observed that:-

> "*12. The legislative policy to develop not only a planned New Capital City but also to prevent haphazard unregulated clusters on its periphery upto a distance of 5 miles, can be unequivocally foreseen from an integrated reading of these two contemporaneous Legislations".*

[26]. For the reasons afore-stated, we do not find any merit in this writ petition which is accordingly dismissed. We make it clear that if Shri Bhagwat Gita Foundation Society or any one else has raised any unauthorised constructions in village Bhawana, the Authorities must take action against such illegal and unauthorised constructions also, in accordance with law.

[27] It was a fit case to impose exemplary cost on the petitioner equivalent to the value of its illegal structures, which we have not imposed at this stage. The respondent – authorities, however, must swing into action forthwith against every violator including the petitioner and in the event of further abuse of legal process by them, to rely upon this order to seek compensatory costs.

[28]. Dismissed. *Dasti*.

(SURYA KANT)
JUDGE

March 03, 2014. ***(AMOL RATTAN SINGH)***
dinesh ***JUDGE***