

Office of the Chairman, Tribunal, Haryana,
(Under Act No.41 of 1963)
Room No. 129-130 1st Floor, New Sectt., Building,
Sector-17, Chandigarh.

Dated: 4-12-13

No.C.Tri.2013 464

To

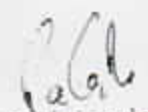
1. Director General,
Town & Country Planning Deptt. Haryana, Chandigarh.

2. District Town Planner (E),
Ambala

✓ 3. Saivism Kirpal Rubani Mission, Darshan Ashram,
on T. Road, Near Dhillon Petrol Pump, Shahpur,
Ambala Cantt. Through its President Shri Jasbir Singh
4. Municipal Corporation
Ambala

Subject: Orders Appeal No. 54/2007

It is submitted that the copy of order dated 20-9-2013 passed by the
Hon'ble Chairman, Tribunal is enclosed for further necessary action at your end.


Superintendent
For Chairman, Tribunal,
Haryana, Chandigarh.

Sawan Kirpal Ruhani Mission, Darshan Ashram, G.T. Road, Near Dhillon Petrol Pump, Shahpur, Ambala Cantt. Through its President Shri Jasbir Singh.

...Appellant

Versus

1. State of Haryana through the Secretary, Department of Town & Country Planning, Haryana, Civil Secretariat, Chandigarh.
2. Director, Town & Country Planning, Haryana, Sector-18-A, Madhya Marg, Chandigarh
3. District Town Planner, Ambala, District Ambala.

...Respondents

Present: Mr. Sukhvinder Singh Sudan, Advocate, Counsel for the Appellant.

Mr. Vijay Verma, Assistant District Attorney, for the respondent.

ORDER

The present appeal has been filed against the impugned notice dated 01.09.2000 and final orders dated 14.09.2000 wherein the appellant has been ordered to restore the land to its original position. The appellant is Registered Society under Society Registration Act having its main office at 2-5-7, Karnal road, Vijay Nagar, Delhi and branch Office at Darshan Ashram/Darshan Academy near Dhillon Petrol Pump, village Shahpur, District Ambala. It is stated that appellant Society has been formed for preaching universal brotherhood of man and fatherhood of God whereas Darshan



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It is stated that to achieve the objectives of the Society and to impart education based on Syllabus approved by Central Board of Secondary Education to the children, some land was purchased in May, 1998 & June, 1998 in the village Shahpur, Near Dhillon Petrol Pump, Ambala Cantt. on which land there were already certain buildings, which building according to the appellant was even in existence prior to year 1981 and the same building was almost being used for the purpose of schooling to give education to the children and the school came into being, namely Darshan Academy, consisting of 24 rooms including classrooms, office & laboratory in triple storey in the area about 4809.75 sq. yard in Khasra No. 27/1/2/3 min, 2/2, 10/1/1, 9/2/1 min, 36.

It is stated that the school is upto 10th standard and the last year result was extremely outstanding with 100% first division. The school is affiliated with C.B.S.E vide Annexure A-1.

Even though, it is stated that the Show Cause Notice including the final orders right from Annexure A-2 to Annexure A-5 had not been received and the action being taken was against the Principals of natural justice but there is hardly any need to go into this matter for the reasons stated hereinafter.

It is alleged that the distance of school building is more than 70 metres from the G.T. Road and it is a charitable institution to provide education to the children especially the rural children. It has also been mentioned that the school has applied for Change of Land Use permission but it was not granted till the time of filing of present



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filed by present society.

It is stated that impugned orders are totally non-speaking and there is no contravention either of Section 7 or Section 10 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

It is also one of the ground that the notification under Section 4(1) of the Act was not published in accordance with the Law nor any Development Scheme have been prepared till the filing of appeal.

It is apprehended by the appellant that the Respondent, even though, had demolished the part of the building but active steps are being taken by the Respondent for demolishing the building and for closing of the school where more than one thousand students are studying. Prayer has been made to quash the impugned orders.

The appellant has attached the Annexure A-1 i.e. Building Plan, the Show Cause Notices at Annexure A-2 to A-5 and final order, Annexure A-2 is addressed to Sawan Kirpal Ruhani Mission whereas other Show Cause Notices at Annexure A -3 & A-5 are addressed to one Sh. Rajinder Singh.

In Show Cause Notice at Annexure A-2, it has been mentioned that the appellant has contravening Section 3 or Section 6 and conditions as imposed under Section 8 or Section 10 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. Similarly, in the Show Cause Notice dated 01.09.2000 at Annexure A-3, it is mentioned that it is violating Section 6 or Section 8 or Section 10 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.



and so is in Show Cause Notice at Annexure A-4, it is mentioned that it is violating the Section 3 or Section 6 and Section 8 or Section 10 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. Similarly, is the position of Annexure A-5 wherein it is mentioned that there is violation of Section 3 or Section 6 and Section 8 or Section 10 of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

But in none of the above said notices, (photocopies of which have been attached), there is any mention of any date or notification or violation of any notification or as to when it was declared as Controlled Area.

Reply has been filed by District Town Planner-Ambala, wherein, it is mentioned that the land falls in the Controlled Area, Ambala Cantt. as declared on 14.07.1970 and published on 08.09.1970 and Show Cause Notices were issued, (copy of which is attached) for the unauthorized building. Other facts are more or less admitted.

An Application No. 60 of 2012 was moved for appointment of Local Commissioner to visit the place and to report on certain matters and after hearing the parties a Local Commissioner was appointed with the following directions:-

1. Local Commissioner would measure distance from the berm of the GT road to the building boundary in question.
2. Distance between the Govt land adjoining GT road till the boundary of building of the appellant.
3. A rough plan shall also be prepared.
4. Local Commissioner may also briefly specify other buildings on both sides of the school to the extent of $\frac{1}{2}$ Km. to 1 Km by writing the name of the building which shall be pointed out by both the parties."

The Local Commissioner had visited the place on 29.03.2011 after informing the parties and had submitted his report. The material part of his report is reproduced as under:-

- 1) "The distance from the berm of G.T. Road to the boundary of the building (as per J.E. The Govt Land is upto this point) is 30.20 meters. I did not see any pillar there.
 - 2) Distance from the alleged Govt. Land adjoining G.T. Road upto Boundary of the building is 37.2 metre.
 - 3) Rough plan in respect of above is attached as Annexure 'A'.
 - 4) I inspected some of the buildings within one Km on both sides of the appellant's building with the following results:
 - a) M/s Reebok have constructed their factory towards Ambala side. Its boundary wall is 26.9 M from the berm of the GT Road. The building starts from this very point. A photo of the same is Annexure B.
 - b) Next to this is the Asa Ram Public School. It has been built inside the old wall of the physically challenged school which is housed in an old building. This old wall is 31 meters from the berm of G.T. Road. The building is 29 meters inside this wall. Photograph taken are Annexures C & D.
 - c) Next to the appellant's building on Delhi side is a petrol pump called Dhillon Petrol Pump. The owner of this petrol pump is constructing a structure alongside the petrol pump. This is almost at the same distance as the appellant's building.
 - d) Next to the petrol pump is shopping complex. Photograph of which is annexure E. The portion marked X in the photograph is 17 meter from the berm of the GT Road while the portion marked Y is 23 meter from the berm of the GT Road. There is Gurdwara here."
- "Besides the structures on the same side of the GT road and that of the appellant, I also inspected some structures on the other side of the GT road with the following results:-"
- i) "There is building of Maruti which is 33 meter from the berm of GT Road.
 - ii) There is another building constructed by GATI Couriers. This building is also 33 meters from the berm of the GT road.
 - iii) Besides above, there are many godowns constructed by different parties in the same straight line, boundaries of which are only 33 meters from the berm of the GT road."

A rough site plan in respect of 4(a) to (d) and (i) to (iii) was attached as Annexure F with the report.



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The appellant has also moved an application CM No. 26 of 2013 in September, 2013 to the fact that this very land now falls in the Municipal Corporation-Ambala city as an extended area to the Municipal Corporation, Ambala Cantt. as per Haryana Government Notification dated 17th March, 2010 (by moving CM No. 26 of 2013). Copy of which application was given to the Respondent and it is not denied that at present, the area falls in the Municipal Corporation.

It was also one of the plea of the District Town Planner-Ambala to the fact that the land of the appellant falls under 60 meters wide green belt alongwith National Highway and as such it was not permitted to run a school, even the CLU can also not be granted. However, this Tribunal has nothing to say about any aspect of CLU.

Mostly the arguments being advanced are:-

- (i) The orders passed are not speaking order.
- (ii) The action is discriminatory.
- (iii) The Final Development Plan now published in 14.08.2008 is not applicable to the case of the appellant as the Buildings/construction was about more than ten years prior to the notification of Plan.
- (iv) The area now falls under Municipal area and the District Town Planner has no jurisdiction.

1. In regard to the fact whether the notice or final orders are speaking or not and are vague, the facts are borne out from the record. As detailed above in the body of the judgment, the



Department had issued notices stating therein the alleged violations under Section 3 or Section 6 or Section 8 or Section 10 but without mentioning details and nature of any of the

that even the Department is not sure as to which section out of Section 3 or Section 6 or Section 8 or Section 10 has been violated and to what extent. It was bounded duty of the Department to provide proper details in the notice and also in the order, sending of the notice only mentioning the sections without there any details in the notice and on printed form does not amount to compliance of the mandatory provisions of law and violates principle of natural justice.

2. Local Commissioner, as appointed on the application of the parties, had inspected the site and has given the report that on the same side in, the area about 1 Km and even on the other side of the road, there are industries i.e. M/s Reebok, other schools, petrol pumps, shopping complex, Maruti Building and so many other establishment which are quite near to the road in comparison to the present appellant. It is not known as to how and why only a school of the appellant was selected for the purpose of demolition as submitted by the Counsel for the appellant and none of the other building much close to the Road has not been touched. However, there is hardly any need to go further in the matter as it is not point involved for determination for me in regard to the validity of notice and the final order passed against the appellant.

3. To the contentions about non-availability of the plan and that the construction was made in year prior to 1998 and the green belt declared in year 2008 is not applicable, District Town Planner says that the Final Development Plan-2021 AD which was notified only on 14.08.2008 by the Government and the 60 meter green belt was provided; The relevant para of this



3. That as per the published Final Development Plan 2021 AD the land of appellant falls predominantly under 60 meter wide green belt along NH-1, in which change of land permission for setting up of school cannot be considered. Only a small pocket of 125 sq m falls in conforming zone, which is not adequate as per norms.
5. That as per letter memo. No. K-14011/33/2006-NCRPB dated 03.08.2007 received from National Capital Region Planning Board, New Delhi, has recommended a 60 meter belt on either side of the National Highway-1 to be measured from the row. The copy of the said letter is enclosed at **Annexure-R-II**.
6. That the Final Development Plan 2021 AD Ambala was notified on 14.08.2008 by the Government in which 60 mtr. wide green belt along the National Highway No. 1 (Delhi-Amritsar Road) was proposed. The copy of Final Development Plan 2021 AD Ambala is enclosed **Annexure R-III**.

It is also surprising that even though it is stated that the Controlled Area was declared in the year 1970 but as reproduced above, the District Town Planner states that the Final Development Plan was published on 14.08.2008 wherein 60 meter wide green belt has been prescribed. It is a fact that the construction is made in the year 1998 or even prior to that as alleged and declaration of green belt of 60 meter from the road cannot effect the construction already made before the publication of the Final Development Plan in the year 2008 i.e. the Final Development Plan of 2021 AD as published on 14.08.2008 is not to effect construction made prior to this date subject to condition that construction does not violate any other law.

4. The counsel submits that the District Town Planner of the Town & Country Planning Department has no jurisdiction as the area falls under the Municipal Corporation-Ambala Cantt. as notified on 17.03.2010.

It is contended by the appellant that the District Town



Division Bench Judgement of Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 17048 of 2007 titled as Rajat Kuchhal V/S State of Haryana, which was decided on 23.08.2012 and has held as under:-

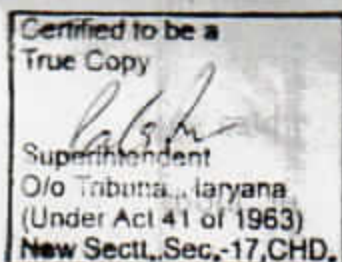
" Though the provisions of 1973 Act are clear and categorical that the Director, Town & Country Planning shall have no jurisdiction to initiate proceedings in the erstwhile controlled area now forming part of Municipal Area, but the provisions of 1994 Act are somewhat ambiguous. The Municipal Corporation is generally upgraded to that status from an existing Municipal Council. The interpretation suggested by Mr. Hooda cannot be accepted as the action within the area of Municipal Council can be initiated only by the Director, Urban Development Department in view of the express provisions of the said Act, but in case, the arguments of Sh. Hooda is accepted then the effect would be that within the limits of the Municipal Corporation, it would be the Director, Town & Country Planning to initiate action for violation of controlled area. Such interpretation would do violence to the statutory provisions and will defeat the harmonious and purposive construction. A Municipal Corporation, after its upgrading from Municipal Council cannot be reverted to a status as that existed even prior to the Constitution of the Municipal Council".


For the above said reasons, I hold that the impugned orders are bad and also without jurisdiction in view of Civil Writ Petition No. 17048 of 2007 titled as Rajat Kuchhal V/S State of Haryana judgment.

The appeal is allowed.

The copy of the order be communicated to the concerned parties.

Record if any, be returned.




Justice J.C. Verma (Retd.)
Chairman, Tribunal,
Haryana, Chandigarh
20.09.2013

