

Present: Mr. D.S.Patwalia Advocate Vs. Union

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Court : Punjab and Haryana

Decided On : Sep-30-2013

Appellant : Present: Mr. D.S.Patwalia Advocate

Respondent : Union

Judgement :

C.W.P.No.3157 of 2008 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ***** C.W.P.No.3157 of 2008 Date of Decision: 30.09.2013 A.G.Clinic and Nursing HomePetitioner Versus Union Territory, Chandigarh and othersRespondents CORAM: HONBLE Mr.JUSTICE SATISH KUMAR MITTAL HONBLE Mr.JUSTICE MAHAVIR S.

CHAUHAN Present: Mr.D.S.Patwalia, Advocate, for the petitioner.

Mr.K.K.Gupta, Advocate, for respondent Nos.1 to 4.

None for respondent No.5.

MAHAVIR S.

CHAUHAN, J.

Petitioner, A.G.Clinic and Nursing Home, besides seeking issuance of a writ of certiorari quashing order dated 14.02.2008 (Annexure P- 14).whereby its request for amalgamation of Houses No.18 and 19 in Sector 28-A, Chandigarh, for running

a nursing home, has been declined, has also sought issuance of a writ of mandamus to direct the respondents to grant it permission for running a nursing home in Houses No.18 and 19, Sector 28-A, Chandigarh, in pursuance of policy/notification dated 04.01.1999 (Annexure P- 4) as amended vide notification dated 24.01.2000 (Annexure P-5) or in the alternative a writ of certiorari quashing order dated 04.01.2008 (Annexure P- Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -2- 12) and policy/notification dated 04.01.1999 (Annexure P-4) to the extent it prescribes 500 Square Yards as the minimum plot area for running a nursing home in a residential premises.

Case of the petitioner, as laid open in the petition, is that the Union Territory, Chandigarh (for short 'UTC') promulgated a policy decision dated 04.01.1999 (Annexure P-4) in exercise of powers conferred by Proviso to Rule 9 of the Chandigarh (Sale of Sites and Building) Rules, 1960 (hereinafter referred to as 'the 1960 Rules').laying down parameters for permitting use of residential buildings in various sectors as nursing homes.

One of the conditions stipulated under the policy was that plot size should be equal to 500 Sq.

Yards or more and it should be located on V-4, V-5 or V-6 road.

Aggrieved by this policy, the petitioner and a few other nursing homes filed C.W.P.No.20271 of 2004, 'Deep Nursing Home and others versus Union Territory, Chandigarh and others', which came to be disposed of by this Court vide order dated 31.07.2006 (Annexure P-9) in the following terms:- In these circumstances, Sh.

Patwalia states that the present petition be disposed of with a liberty to the petitioners to approach the respondent-Administration making the aforesaid grievance.

In view of the stand taken by the petitioners.but without commenting upon the merits of the controversy.at all, we dispose of the present petition with a liberty to

the petitioners to file a detailed and comprehensive representation, in a representative capacity, before the Chief Administrator, U.T., Chandigarh-Respondent No.2, by appending all the relevant documents along with the said representation, within a period of 4 weeks from the Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -3- date a certified copy of this order is received.

On receipt of the aforesaid representation, the Chief Administrator, Union Territory, Chandigarh-Respondent No.2, shall afford an opportunity of hearing to a representative of the petitioners and thereafter take such appropriate decision as may be deemed appropriate under the facts and circumstances, by passing a detailed and speaking order.

We further notice that vide order dated March 31, 2005, the parties were directed to maintain status quo till further orders. Keeping in view the fact that the petitioners have chosen to approach the authorities once again, we direct the aforesaid interim order passed by this Court shall continue to operate till the matter is finally decided by the Chief Administrator, and for a period of 3 months thereafter.

In terms of order dated 31.07.2006 (Annexure P-9) passed by this Court, the petitioner and other nursing homes made representations before the respondents supporting their claims with detailed grounds.

When the aforesaid representations were pending consideration, the petitioner, which was operating from House No.19, Sector 28-A, Chandigarh, having an area measuring 281 Sq.

Yards, also purchased House No.18, Sector 28-A, Chandigarh, which has been constructed upto 2 story and has an area measuring 281 Sq.

Yards, to the extent of 50% share vide registered sale deed dated 20.07.2007 (Annexure P-10) and also entered into a deed of settlement dated 24.01.2008

(Annexure P-11) with the co-owner of that house to the extent of remaining 50%, to the effect that the possession of ground floor, including back courtyard, would remain with the petitioner and Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -4- brought it to the notice of the Chief Administrator, UTC, during the couRs.of hearing of its representation that after acquisition of House No.19, Sector 28-A, Chandigarh, coupled with the area of House No.18, the petitioner fulfilled the condition of having an area admeasuring 500 Sq.

Yards or more.

However, vide order dated 04.01.2008 (Annexure P-12).the representations of the petitioner and other nursing homes were rejected.

After rejection of the representation, the petitioner, vide another representation dated 31.01.2008 (Annexure P-13).made a specific prayer that it may be allowed to operate a nursing home from House Nos.18 and 19, Sector 28-A, Chandigarh, as area of the two houses, if amalgamated, comes to more than 500 Sq.

Yards.

However, this representation of the petitioner was also rejected vide order dated 14.02.2008 (Annexure P-14).As aforesaid, the petitioner, by way of instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeks quashing of order dated 14.02.2008 (Annexure P-14) and issuance of a direction to the respondents to permit operation of nursing home from House Nos.18 and 19, Sector 28-A, Chandigarh, or in the alternative for quashing of policy dated 04.01.1999 (Annexure P-4) and order dated 04.01.2008 (Annexure P-12) to the extent of prescribing the plot area of the size of 500 Sq.

Yards or more, for running a nursing home in a residential building.

Respondents in their counter have stated that the petitioner has not attributed any mala fides to the respondents and the policy dated 04.01.1999 (Annexure P-4) is neither unfair nor arbitrary, rather is in consonance with the Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document

High Court Chandigarh C.W.P.No.3157 of 2008 -5- requirements of running a nursing home and, therefore, cannot be interfered with.

As regards the representation made by the petitioner, it is stated in the written statement that the representation was found to be contrary to the policy as amalgamation of the houses is impermissible under the 1960 Rules and, therefore, it has been rightly rejected.

We have heard learned counsel for the parties and have perused the record.

It is argued on behalf of the petitioner that the policy dated 04.01.1999 (Annexure P-4) is totally illegal and arbitrary as it has no nexus with the object thereby sought to be achieved and the only reason for prescribing a condition of 500 Sq.

Yards plot seems to avoid traffic problems but this alone is not sufficient to put a restriction on the operation of the nursing home in a residential building.

Another reason given in support of the policy by the respondents, according to the petitioner, is that houses constructed on plot measuring 500 Sq.

Yards or above are semi-detached type houses and the construction on plots less than the size of 500 Sq.

Yards is in the form of row houses.

This distinction according to the learned counsel for the petitioner is artificial and imaginary as even houses built on 500 Sq.

Yards plots are row-typed houses and the houses under the occupation of the petitioner have sufficient parking space in their front to accommodate the vehicles used for transporting the patients.

In the alternative, it has been argued that after the two houses, i.e., House Nos.18 and 19, Sector 28-A, Chandigarh, are amalgamated, the Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -6- requirement of the policy dated 04.01.1999 (Annexure P-4) shall be met as in that eventuality the total area

available to the petitioner would be more than 500 Sq.

Yards and, indisputably, the two houses are located on V-6 road.

Therefore, the ground adverted to by the respondents to reject representation of the petitioner vide order dated 14.02.2008 (Annexure P-14) is non-existent.

It has also been contended that the order dated 14.02.2008 (Annexure P-14) is a cryptic order as no reasons in support of the conclusions arrived at have been indicated.

Per contra, on behalf of the respondents, it is argued that the policy dated 04.01.1999 is based on the requirements of running a nursing home and it has been prepared after due deliberations and the grounds put up on behalf of the petitioner are far from being sufficient for setting aside the said policy.

As regards the rejection of representation of the petitioner, it is contended by learned counsel for the respondents that the amalgamation of houses is not permissible and, even otherwise, even the amalgamation of the houses, under occupation of the petitioner, can not fulfill the criteria laid down in the policy dated 04.01.1999 (Annexure P-4). Nothing more has been urged on either side.

The policy dated 04.01.1999 (Annexure P-4) has been formulated under Proviso to Rule 9 of the 1960 Rules.

It allows use of residential buildings in various sectors of Chandigarh-The City Beautiful, for running nursing homes in residential premises, subject to fulfillment of certain conditions.

Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -7- Clauses 3 and 4 of the notification dated 04.01.1999 (Annexure P- 4) reads as under:- 3.

Permission shall be granted only to those Nursing Homes functioning in the Residential Premises on the date of issue of this Notification having minimum size of Plot equal to 500 sq.

yards located on V-4, V-5 or V-6 roads in the Sect ORS.in respect of which the Chief Administrator is satisfied that such a use will not create any undue traffic or other problem for the locality.

4.

Each such building in respect of which permission is sought should have a parking space for vehicle equal to the number of indoor beds plus two provided that if there are no indoor beds there must be a parking space for at least five cars/jeeps.

The said parking space may be inside and outside of the building or both.

The parking space outside the building will be public parking space which will be maintained by the Municipal Corporation, therefore, the Municipal Corporation will be at liberty to charge fees from those who park their vehicles thereupon.

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The notification dated 04.01.1999 (Annexure P-4) has been amended vide notification dated 08.02.1999 (Annexure P-8).and orders dated 24.01.2000 (Annexure P-5).26.02.2001 (Annexure P-6) and 14.07.2003 (Annexure P-7).By way of order dated 24.01.2000 (Annexure P-5).Clause 12 has been added, which is to the following effect:- 12.

The existing Nursing Homes which do not fulfill the criterion fro conversion of the existing sites of purchasing the sites from the Administration or re-open their Nursing Homes at site of their choice which is acceptable to the Administrator Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -8- in accordance with the said property of 4th January, 1999 shall be allowed to purchase accommodation of one kanal or more in the same or adjacent sectors of their functioning on V4/V5 road with suitable parking space and shift their existing practice into these new premises after paying the requisite conversion charges within a period of one year from the date of issue of this order.

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Vide order dated 14.07.2003 (Annexure P-7).it has been ordained that Permission shall be granted only to those Nursing Home functioning in the residential premises having minimum size of plot equal to 500 square yards located in V-4, V-5 or V-6 roads in the sect ORS.in respect of which the Chief Administrator is satisfied that such a use will not create any undue traffic or other problem for the locality.A perusal of the aforesaid clauses of the notification dated 04.01.1999 (Annexure P-4).as amended from time to time, brings out that the intention of the policy is that the premises from where the nursing home is operating should have two sides open so as to provide sufficient ventilation, which is of paramount importance for the indoor patients and operation of OPDs etc.Such a ventilation is not available in row houses.

It is also the intention of the policy to have sufficient space for parking of vehicles/ambulances etc.and at the same time to avoid traffic congestion and resultant inconvenience to the residents of the locality.

Even the Chief Administrator, UTC, while passing order dated 04.01.2008 (Annexure P-12) has noted, inter alia, the following reasons for rejection of the representations made by the petitioner and other nursing homes:- Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -9- 1.

That the demand for allowing running of Nursing Homes in the residential premises less than 500 Sq.

Yards also cannot be accepted for the reasons: (i) That the plots of 500 Sq.

Yards have semi-detached type of houses whereas the plots less than 500 Sq.

Yards are row type houses and there is no side set back and the front and rear set backs in these houses as compared to 500 Sq.

Yards.

(ii) That it will create traffic problem in the area which is already a highly density area as compared to 500 Sq.

Yards houses.

(iii) That the documents appended with the representation about the legislation on the issue of running of Nursing Home on the plot measuring 209 Sq.

Meter is inadequate being a press cutting and cannot be taken into consideration unless and until an appropriate legal document is produced for the purpose.

XXX XXX XXX XXX6 That the demand of allowing a chemist shop in the Nursing Home is not acceptable being it is a commercial activity and this facility has also not been allowed in independent Nursing Home sites.

The Nursing Homes can take up this issue with the Health Department for allowing one Chemist Shop in each Sector to remain open for 24 hours to meet the requirement of medicines in emergency situations.

7.

That the demand for removal of stipulation of the functioning of Nursing Homes only on V4, V5 and V6 roads is considered and is not acceptable as under the orders allowing use of residential buildings in various sectors for Nursing Homes, the residential buildings measuring 500 Sq.

Yards or above have been allowed for the purpose and all such buildings are Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -10- located on the aforesaid roads.

No residential buildings are located on V1, V2 and V3 roads.

This stipulation was imposed so as to avoid opening of the gates by the Nursing Homes who have their back on these roads of the residential buildings on these roads.

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In view of the above, the contention that the policy/notification dated 04.01.1999 (Annexure P-4) as amended from time to time, has no nexus with the object is found to be misconceived and, is therefore, rejected.

As regards the second contention, i.e., amalgamation of House Nos.18 and 19, Sector 28-A, Chandigarh, suffice it to say that such amalgamation is prohibited under Rule 14 of the 1960 Rules, which reads as under:- 14.

Fragmentation.

-[Section 3 and 22(2)(a)].- [No fragmentation or amalgamation of any site or building shall be permitted: Provided that amalgamation of two or more adjoining sites shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto: [x x x].] [Provided further that fragmentation of sites shall be permitted only in case of the persons applying for conversion under the Chandigarh Conversion of Land Use of Industrial Sites into Commercial Activity/Services in Industrial Area Phase I and II, Chandigarh Scheme, 2005, notified vide No.28/8/51-UTFI(3).2005/6658-6662, dated 19.09.2005.]. Amalgamation of the premises is also prohibited under Rule 16 of Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -11- the Chandigarh Estate Rules, 2007, which is to the following effect:- 16.

Fragmentation/Amalgamation: No fragmentation or amalgamation of any site or building shall be permitted: [Provided that amalgamation of two or more adjoining sites with the same ownership shall be permissible only in the case of commercial or industrial sites subject to the condition that the revised plans are approved by the competent authority, prior thereto.]. Provided further that fragmentation of any site shall be allowed if such fragmentation is permitted under any scheme notified by the Administration.

Nothing to the contrary has been shown during the couRs.of arguments.

Undeniably houses under reference do not come under the category of commercial or industrial sites and do not have same ownership.

With regard to the contention that the order dated 14.02.2008 (Annexure P-14) is a cryptic and non-speaking order, it only needs to be stated that detailed reasons have been indicated in the order dated 04.01.2008 and after rejection of representations of the petitioner and other nursing homes in spite of the fact that as per case of the petitioner itself, the petitioner had supplemented its representation, by bringing to the notice of the Chief Administrator, UTC, the fact that it had acquired adjoining House No.18, Sector 28-A, Chandigarh, having been rejected vide order dated 04.01.2008, the second representation dated 31.01.2008 by petitioner was unnecessary and seems to have been made by the petitioner only to make out a ground to challenge the rejection order by filing the instant writ petition.

Even otherwise, Virender Singh Adhikari 2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court Chandigarh C.W.P.No.3157 of 2008 -12-a perusal of order dated 14.02.2008 (Annexure P-14) rejecting representation dated 31.01.2008 (Annexure P-13) would show that a valid reason has been given to reject the representation saying that rules governing the allotment of land do not permit amalgamation of residential buildings.

Even after purchase of House No.18, Sector 28-A, Chandigarh, to the extent of half share, the petitioner does not fulfill the condition of notification/policy dated 04.01.1999 (Annexure P-4) because requirement of the policy is ownership of a plot of the size of 500 Sq.

yards or more and it does not talk of more than one plot having total area of 500 Sq.

Yards or more.

Still, the co-owner of House No.18, Sector 28-A, Chandigarh, shall use it to the extent of 50% for his residential purposes and this may not be conducive for running a nursing home.

In the consequence, the writ petition fails and is, hereby, dismissed.

No costs.

(SATISH KUMAR MITTAL) (MAHAVIR S.

CHAUHAN) JUDGE JUDGE3009.2013 अधिकारी Virender Singh अधिकारी
2013.10.09 11:03 I attest to the accuracy and integrity of this document High Court
Chandigarh

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