

**CWP No.26147 of 2015****1**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.26147 of 2015

Date of Decision: 10.01.2020

Landbase India Limited through Mr. A. Anand Rao,
Authorized Signatory, ITC Green Centre, 10,
Institutional Area, Sector 32, Gurgaon-122 001Petitioner

Versus

State of Haryana through Additional Chief
Secretary to Government of Haryana, Department
of Town and Country Planning Haryana Civil
Secretariat, Chandigarh and othersRespondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Dr. A.M. Singhvi, Sr. Advocate
with Mr. L.K. Bhushan, Advocate
Mr. Aman Bahri, Advocate
Ms. Raashi Beri, Advocate
Mr. Azeem, Advocate
and Ms. Aashna Jain, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana
and Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

DAYA CHAUDHARY, J.

The petitioner has approached this Court by way of filing the present petition for issuance of a writ in the nature of *certiorari* for quashing of impugned condition imposed by the respondents vide letter dated 14.03.2012 (Annexure P-15) and letter dated 19.01.2016 (Annexure P-20), whereby, the petitioner has been restrained from alienating four Bedroom Golf Huts and Cottages by way of sale or long term lease, built up on the land owned/possessed by him and being used as golf course and tourist resort after getting permission for change of land use (CLU).

Briefly, the facts of the case as made out in the present petition,

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are that the petitioner being owner of approximately 277 acres of land in the villages of Kota, Gangani, Khandewala and Sarai in District Gurgaon, developed a 27-hole Jack Nicklaus Golf Course along with a Social Club in the name and style of 'Classic Golf Course Resort and Country Club' (here-in-after referred to as the "Classic Golf Resort") and also a Five-Star Luxury Resort Hotel under the name "ITC Grand Bharat". The petitioner applied to the Director General of Town and Country Planning, Haryana (respondent No.2) for Change of Land Use for 238 acres for the purpose of developing a Golf Course and Tourist Resort vide application dated 12.05.1995. Since the land of the petitioner fell under the Controlled Area, the control and management of that area was with the Department of Town and Country Planning, Haryana. As per notification dated 22.01.1991, he entered into an agreement with the respondents for Change of Land Use in the Form CLU-II as specified under the Act and Rule 26D of the Rules framed thereunder. He also executed an undertaking to pay the additional amount of conversion charges on revised rates as and when demanded by the respondent authorities. Certain terms and conditions were mentioned in the agreement entered into between the parties as Annexure P-3. Thereafter, he approached the respondent authorities for sanctioning of Zoning Plan for the Golf Course and Tourist Resort proposed to be built up by him, which was approved on 18.03.1997 subject to fulfilling all the requisite conditions. In the agreement, there was a condition of construction of two bedrooms upto two storeys. He sought permission for waiver of condition imposed by the respondent authorities for construction of three Bedrooms Golf Huts and Cottages. His request of waiving off the condition prohibiting construction of three Bedroom Golf Huts and Cottages was accepted and he was allowed

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to construct of a “*maximum 4 Bedrooms Golf Huts and Cottages*” but with the condition that under any circumstances, these cottages shall not be disposed off either by way of long term lease or sale” vide letter dated 14.03.2012 (Annexure P-15).

The petitioner is aggrieved by the said condition imposed vide letter dated 14.03.2012 (Annexure P-15) as neither it was imposed while granting permission for Change of Land Use nor while sanctioning of Zoning Plan.

Learned senior counsel for the petitioner submits that the restriction imposed on the alienation of the Golf Huts by the respondent authorities is not within the scope of the ***Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963*** (here-in-after referred to as ‘the Act, 1963’) and has no nexus with the object for which the said Act was enacted. Learned senior counsel further submits that such restriction is without any law and authority and is not only arbitrary, unlawful as it was not a part of CLU or Zoning Plans approved by the respondent authorities. Even in the building plans, no such condition was ever imposed. Learned senior counsel further submits that imposition of such condition would deprive the petitioner from his constitutional right over the property in enjoyment which amounts to alienation from the property owned/possessed by him. The superstructure built on the land over the property to which the CLU was granted to him, does not amount to carve out any residential colony either under the ***Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Rules, 1965*** (here-in-after referred to as ‘the Rules, 1965’) or under the ***Haryana Development and Regulation of Urban Area Act 1975*** (here-in-after

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referred to as 'the Act, 1975'). It cannot be said to be sub-division or fragmentation of the land. It is also the argument of learned senior counsel for the petitioner that while granting CLU, an agreement was entered into between the parties and a condition was imposed not to carry out any commercial activities other than the approved ones at the site and not to allow any sub-division or fragmentation of the project site in any manner. As per building plan, two bedroom golf huts were allowed to be constructed by the respondent authorities and it continued to remain validated as on date. Meaning thereby, there was no condition either in the Zoning Plan or the Building Plans. Learned senior counsel also submits that the permission was granted for construction of maximum four bedroom Golf Huts and after a period of 16 years of grant of CLU permission, a condition was imposed that under no circumstances, these cottages shall be disposed off either by way of long term lease or sale, whereas, no such condition was imposed for two bedroom golf huts. At the end, learned senior counsel submits that the condition restricting alienation of the Golf Huts amounts to put an absolute and permanent restriction on transferring the structures over his land and just to deprive the petitioner from his constitutional right to enjoy his own property.

Learned senior counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in cases ***Tukaram Kana Joshi and others vs Maharashtra Industrial Development Corporation and others 2013(1) Supreme Court Cases 353, Mysore Minerals Ltd., M.G. Road, Bangalore vs Commissioners of Income Tax, Karnataka, Bangalore 1999 (7) Supreme Court Cases 106, Swadesh Ranjan Sinha vs Haradeb Banerjee 1991(4) Supreme Court Cases 572, Mohd. Noor and others vs***



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Mohd. Ibrahim and others 1994(5) Supreme Court Cases 562, Dr. K.A. Dhairyawan and others vs J.R. Thakur and others 1959 SCR 799, DLF Qutab Enclave Complex Educational Charitable Trust vs State of Haryana and others 2003(5) Supreme Court Cases 622, Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others 2013(12) Supreme Court Cases 649, Bhavnagar University vs Palitana Sugar Mills (P) Ltd. and others 2003(2) Supreme Court Cases 111, Chairman, Indore Vikas Pradhikaran vs Pure Industrial Coke & Chemicals Ltd. And others 2007(8) Supreme Court Cases 705 as well as judgments of this Court in cases *Trishul Industries vs The State of Haryana and another (Civil Writ Petition No.3596 of 1997*, decided on *26.05.2006*) as well as *Hari Parshad Gupta vs Jatinder Kumar 1982(1) RCR (Rent) 138* in support of his arguments.

Learned State counsel has opposed the submissions made by learned senior counsel for the petitioner and submits that the present petition is liable to be dismissed on the ground of delay and laches. The petitioner had accepted the terms and conditions imposed vide letters dated 19.01.1996 (Annexure P-2) and 14.03.2012 (Annexure P-15) and after obtaining Occupation Certificate from the respondent Department vide letter dated 27.10.2014 for construction of building, the petitioner was estopped from challenging the condition as an undertaking was given by the petitioner to abide by all terms and conditions as made in the agreement entered into between the parties. The condition of Rule 26-D of Rules, 1965 was also there at the time of granting CLU and thereafter, an undertaking was given, wherein, it was clearly mentioned that the petitioner was to abide by all terms and conditions as prescribed under Rule 26-D of Rules, 1965.

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The petitioner also filed an affidavit dated 25.01.1996 and before grant of final permission for CLU and an undertaking not to use the land other than the purposes as permitted by the Director. The permission was only for setting up a Golf Course and Resort, whereas, the petitioner after seeking permission for construction of more than two Bedroom huts/cottages wants to sell or lease out by creating third party rights which amounts to carve out the residential colony as defined under Section 2(c) of the Haryana Development and Regulations of Urban Areas Act, 1975 (here-in-after referred to as 'the Act, 1975), which is not inconsistent with the purposes for which CLU permission was granted. Learned State counsel further submits that it is a case of setting up a residential colony falling within the Urban Area as defined under Section 2(o) of the Act, 1975. As per requirement of Section 3 of the Act *ibid*, the petitioner is required to submit an application but no such application was given. Learned State counsel also submits that a specific condition was imposed while granting permission vide letter dated 14.03.2012 that the petitioner would not dispose of the cottages either by way of long term lease or sale which amounts to conversion of CLU and provisions of Rule 26-D of Rules, 1965 are attracted.

Learned State counsel has relied upon the judgments of Hon'ble the Apex Court in cases ***Panna Lal and others etc. vs State of Rajasthan and others 1975 AIR (SC) 2008, New Bihar Biri Leaves Co. and others vs State of Bihar and others 1981 AIR (SC) 679*** as well as of this Court in cases ***M/s Trishul Industries vs The State of Haryana and another 2006 (4) RCR (Civil) 367, United Riceland Ltd. Vs State of Haryana and others 1998(1) PLJ 462, S. Hardam Singh and another vs The State of Punjab***



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and others 1983 PLR 657.

Heard the arguments of learned counsel for the parties and we have also perused the impugned orders as well as other documents available on the file.

The facts regarding possession over the land of the petitioner; submission of application for grant of CLU and permission so granted as well as terms and conditions as mentioned in the Agreement to Sell entered into between the parties are not disputed. Admittedly, the petitioner had challenged the restriction imposed by the respondent authorities, whereby, a condition had been imposed in the Zoning Plan that there shall not be “Three Bed Room Golf Huts and Cottages” which was subsequently modified vide letter dated 14.03.2012, whereby, the permission was granted to construct upto maximum of 4 Bedroom Golf Huts and Cottages but by putting a condition not to sell or to give on lease basis the golf huts and cottages to third party. The challenge in the present petition is that the condition of restriction on sale or long term lease of the Golf Huts stating to be illegal, arbitrary and without jurisdiction and contrary to the provision of Act as well as Rules. The provisions of Section 7 of the Act, 1963 are relevant for the controversy in the present case, which are reproduced as under:-

“Section 7 Prohibition on use of land in controlled areas

1. No land within the controlled area shall, except with the permission of the Director and on payment of such conversion charges as may be prescribed by the Government from time to time be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of section 4, and no land within such controlled area shall be used for the



purposes of a charcoal-kiln, pottery-kiln, lime-kiln, brick-kiln or brick field or for quarrying stone, bajri, surkhi kankar or for other similar extractive or ancillary operation except under and in accordance with the conditions of a licence from the Director on payment of such fees and under such conditions as may be prescribed.

1A. Local authorities, firms and undertakings of Government, colonisers and persons exempted from obtaining a licence under the Haryana Development and Regulation of Urban Areas Act, 1975, and authorities involved in land development will also be liable to pay conversion charges but they shall be exempt from making an application under section 8 of this Act.

2. The renewal of such licences may be made after three years on payment of such fees as may be prescribed.”

As per provisions of Section 8 of the Act, 1963, the Director, DTCP is empowered to impose conditions and restrictions while granting the CLU permission even above and beyond the Rule 26D of the Rules, 1965.

In the present case, the CLU permission was granted by the Director on 13.02.1996 by putting a condition that no commercial activities other than the approved ones shall be started at the site and no sub-division or fragmentation of the project site shall be allowed in any manner whatsoever. A request for construction of more rooms/huts made by the petitioner was accepted and he was allowed to construct maximum four bedroom huts/cottages on the land for which permission for change of land use was granted in the year 1996 but with the condition that these cottages shall not be disposed of under any circumstances either by way of long lease or sale. At that time when the zoning plans were not approved by the

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respondent Department vide letter dated 18.03.1997 directed to submit the zoning plan after making corrections as pointed out in the said letter. Meaning thereby, the zoning plan was approved vide letter dated 03.03.1999. As per zoning plan which was finally approved vide letter dated 03.03.1999, the land was allowed to be utilized for the following purposes :-

- (i) The site shall be used for Golf Court and Tourist Resort Project in accordance with the permission for change of land use granted by the Department and for ancillary and appurtenant uses there as under.
- (ii) The requisite amenities facilities for Golf Course (i.e Golf Club, Golfer Huts, Sarai & Rain Shelters, Parking and workshop for Golf carts and other requisite infrastructure) and Tourist/Hotel Complex (i.e main Hotel building, Cottages/Huts, Restaurants, Banquet Halls, Conference Halls with exhibition area, Health Club, Swimming Pool, Open Air Theatre, Shopping arcade (not exceeding 5% of the covered area of the Hotel Building), Administrative offices, Accommodation for staff (not exceeding 5% of the achieved FAR), Gymnasium and sports complex, land scape features, fountains, waterfalls, mounds etc. as may be approved by the DTCP (or his authorized representative).

Said terms and conditions as mentioned in letters dated 19.01.1996 and 14.03.2012 were accepted by the petitioner and the same have been challenged on the ground that there is no provision in the Act or Rules to put such restrictions. The representation dated 26.02.2015 moved by the petitioner was examined by the respondent Department and not accepted being contrary to the terms and conditions of the agreement executed by himself at the time of grant of change of land use in the year



1996. Said condition of Rules 26-D of the Rules, 1965 was also in existence at the time of grant of CLU and undertaking given by the petitioner himself. The 1965 Rules impose certain conditions, specifically in Rule 26-D, which is reproduced herein below:

“Rule 26D. Conditions required to be fulfilled by the applicant.--The applicant shall ---

(a) furnish to the Director a bond guarantee in the amount equal to twenty five percent of proportionate estimated cost of the development works as certified by the Director and enter into an agreement in Form CLU-II for fulfilling the conditions contained herein in accordance with the permission finally granted.

(b) Undertake to pay proportionate development charges which shall be a first charge of the said land as and when required and as determined by the Director in respect of external development works which may be carried out in the area for the benefit of the said land.

(c) Undertake to be responsible for making arrangement for the disposal of effluent to the satisfaction of the Director.

(d) Undertake to get the plan approved from the Director before commencing any construction on the said land.

(e) Undertake not to sell the said land or portion thereof unless the said land has been put to use permitted by the Director and to use the said land only for the purposes permitted by the Director; and

(f) Undertake to start construction on the said land within a period of six months and complete the construction within a period of two years from the date of issue of order permitting the change of land use:

Provided that where the existing use of the land in a Controlled Area is to be changed for the purpose of developing the said land into buildings for industrial

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purposes, no bank guarantee referred to in change (a) shall be required to be furnished and in such a case paragraph 3 of the agreement in Form CLU-II shall not apply.

(g) Furnish to the Director a demand draft on account of conversion charges as per rates prescribed in the Schedule IV of these rules.”

Admittedly, the permission for establishment of a Golf Course and Tourists Resort over the land measuring 238.25 acres is falling in the controlled area and under the provisions of Act, 1963. Accordingly, by considering the request made by the petitioner, he was granted permission subject to filing an affidavit in accordance with provisions of Rule 26-D of Rules, 1965 framed under the Act, 1963. Said permission was granted on filing an affidavit dated 25.01.1996. It was an undertaking in the form of affidavit that the land would be used for the purposes permitted by the Director. The permission for CLU was granted only for setting up a Golf Course and Resorts but not for selling the huts/cottages by creating third party rights which amount to carve out a residential colony as defined in Section 2(c) of the Act, 1975. As per Clause 2 of the Zoning Plans, which was approved by the Department vide letter dated 03.03.1999, the site to be used for Golf Course and Tourist Resort Project in accordance with the permission for Change of Land Use by the respondent Department was to be used not for any commercial activity.

As per definition in Section 2(o) of the Act, 1975, the petitioner was required to submit an application for grant of licence as per requirement of Section 3 of the Act *ibid*. Section 2(o) of the Act, 1975 is reproduced as under :-

“2(o) “urban area” means any area of land within



the limits of a municipal area or notified area or the Faridabad Complex or situate within five kilometers of the limits thereof, or any other area where, in the opinion of the Government, there is a potential for building activities and the Government by means of notification declares.”

There is a provision under Section 3 of the Act, 1975 that an application is necessary to be moved for grant of license to develop a colony in the prescribed form. For taking action on such application, the separate provisions/requirement are there. Moreover, the land of the petitioner does not fall within the 'Urban Area' as defined under Section 2 (o) of the Act, 1975.

As per stand taken in the written statement filed by respondent-State, **the permission for construction of four bed room huts/cottages was granted on the ground that the accommodation would be used only for guests and a condition was imposed that under no circumstances, these cottages shall be disposed off either by way of long term lease or sale. The petitioner was never granted permission for selling the constructed residential accommodation. As per provisions of Rule 26-D (e), the entire land can be sold and not by dividing the same. As per Clause (d) of the said agreement, the premises can be used only for the purposes permitted by the Director, whereas, the permission has been sought by the petitioner for selling the constructed residential accommodation by creating third party right, which is contrary to the terms and conditions of the agreement.** The zoning plans were approved vide letter dated 03.03.1999 (Annexure R-1) and not vide letter dated 04.05.1999 as mentioned in the petition. The instructions dated 29.03.2001

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(Annexure P-9) as relied upon by the petitioner, are not applicable in the present case and it relates to Industries only. The petitioner sought permission for construction of four bedroom huts/cottages for the visiting guests/dignitaries and not for creating third party rights. The permission was granted to the petitioner for construction but not to transfer huts/cottages either on long term lease or sale. The application for waiving of such condition has been moved which appears to be for creation of third party rights and is not permissible as per terms and conditions of CLU. Moreover, as per provisions of Rule 26-E of the Rules, 1965, the Director is competent authority to grant permission but on fulfilling the conditions laid down in Rule 26-D to its satisfaction.

Same issue was there before Hon'ble the Apex Court in case ***Trishul Industries vs State of Haryana and others 2006(4) RCR (Civil) 397*** decided on **26.05.2006** and SLP filed by the petitioners was dismissed. The judgments relied upon by learned counsel for the petitioner are not applicable in the present case.

In view of the facts as mentioned above, we do not find merit in the conditions/arguments raised by learned senior counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

10.01.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No