

party so that he may have an opportunity to have it tested in an appropriate forum.”

(8) In view of the above, the impugned order is hereby set-aside being totally non speaking in nature. The Director shall, however, be at liberty to pass an order afresh after affording opportunity of hearing to the parties. As regards factual submission advanced by learned counsel for the parties, this court refrains from expressing any opinion at this stage.

(9) Allowed in aforesaid terms.

R.N.R.

Before K. Kannan, J.

**M/S ALPHA G : CORP. DEVELOPMENT
PRIVATE LTD.,—Petitioners**

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 15822 of 2009

3rd March, 2010

Constitution of India, 1950—Art. 226—Punjab Municipal Corporation Act, 1976—S.275—Demand of change of land user (CLU) fee from petitioner at time of issuance of completion certificate—Whether M.C. is entitled to keep a regulation of the nature of construction residential, non residential or industrial without a sanctioned building scheme and insist on a claim for (CLU)—Held, no—Cl. 6 of Section 275 contemplates penalties only for persons who put property to use inconsistent with approved scheme—If Government takes its own long time to approve scheme it should only mean that it is an unregulated area and construction is possible unless such permission for construction is prohibited by any other provision of law—Mere opinion of Government as found expressed through a memo on Town Planner that a construction could be allowed to continue and CLU fees could be collected on basis of un-approved scheme is impermissible and such an opinion is clearly wrong.

Held, that from a reading of Section 275, it could be seen that Corporation shall first draw up Building Scheme for built areas and Town Planning Scheme for unbuilt areas. The scheme will provide for restriction on erection or re-erection of buildings or class of buildings. It can provide for a prescription of a building plan on either side of a street existing or proposed. It could also stipulate that land in an unbuilt area shall be required to be transferred to a Corporation for use for common benefit of people. When a scheme is drawn, the Corporation shall give a public notice providing for right of objection to any member of the public. The Corporation may consider objection and modify the scheme and then forward it to the Government. The Government may either approve the scheme or draw up a scheme and put up to public again by notification calling for objections. The Government may sanction as originally notified or modified and while sanctioning such a scheme, the Government may also impose a condition for submission of periodical reports on the progress of the scheme. Sub section 6 is important. It is a penal section that if any person uses the building for purpose other than specified purpose, after sanction there could be a conviction. The change of user, is a change after such a scheme is sanctioned.

(Para 8)

Further held, clause 6 of Section 275 provides for penalties for CLU, it contemplates penalties only for persons who puts the property to use inconsistent with the scheme that is approved by the Government. If the Government takes its own long time to approve the scheme, it should only mean that it is an unregulated area and construction is possible, unless such permission for construction is prohibited by any other provisions of law. The mere opinion of the Government as found expressed through a memo on Town Planner that a construction could be allowed to continue and the CLU fees could be collected on the basis of un-approved scheme, is impermissible and such an opinion is clearly wrong.

(Para 9)

Rajive Sawhney, Senior Advocate with Alok Jain, Advocate and
Vincet Jhanji, Advocate, *for the petitioner*.

Manohar Lall, Addl. AG, Punjab.

V. K. Sandhir, Advocate, *for respondents No. 3 and 4*.

K. KANNAN, J.

I. Claim for Change of Land Use-the dispute

(1) The point that falls for consideration in this case is whether a local body, in this case the Municipal Corporation, Amritsar is entitled to keep a regulation of the nature of construction as residential, non-residential or industrial without a sanctioned building scheme under the Punjab Municipal Corporation Act and insist on a claim for change of land user ('CLU' for short) by making reference to its own draft scheme and visit the owner with liability for a fee, which in this case was assessed @ Rs. 14.40 crores. The case could be set in a factual context as to how the scheme of building regulation could be understood and when it could be applied to fetter the rights of ownership of a land owner and to what extent the freedom of putting up construction could be controlled even without the final settlement of a building scheme.

II. Petitioner's building plans-conditional approval ?

(2) Responding to a policy settlement of State of Punjab for establishing mega projects with investments of over 100 crores, the petitioner had put in a proposal for clearance by an empowered committee of the State for a Multiplex Complex and Hotel/Tourist Development Project at Amritsar through communications dated 3rd October, 2005 and 7th November, 2005, addressed to the Principal Secretary, Industry and Commerce, Chandigarh and to the Director of Industries and Commerce, Chandigarh respectively. The Director of Industries and Commerce, Punjab, Chandigarh gave the policy details and the concessions by communication dated 21st December, 2005, which set out, inter alia, the conversion of land use from agricultural land to proposed use of land on payment of conversion charges and in accordance with the periphery policy which was under finalization for projects located in periphery areas. A building application had been given by the petitioner on 28th April, 2006 offering multiplex and Hotel Project on G.T. Road, Amritsar with a scheme 16(B) of the Municipal Corporation, Amritsar. The building application was not rejected but certain defects were found out by the Municipal Town Planner,—*vide* letter dated 9th June, 2006. He had pointed out that the proposed building plan was in violation of the layout plan of the proposed scheme and the Schedule

of Clauses thereto.” The Municipal Town Planner observed that as per the layout plan of the scheme, 30 ft. wide service road had to be provided along G.T. Road on the front side and that the construction proposed, having fallen in the rear part of the land comprising of proposed road, parks and residential plots, the construction would amount to an amendment in the scheme or change of land use and therefore, a separate application should be submitted for carrying out necessary amendments in the Scheme and the Scheme be got amended.

(3) This reply was opposed by the petitioner through his rejoinder dated 25th June, 2006, pointing that the scheme so long as it was not approved by the Government, could not be stated to be any scheme worthy of reckoning and the proposed project of a commercial use itself could be adjusted in the scheme when it was finalized at a later stage. If the communication of the petitioner did not evoke a satisfactory reply and if it was not possible for the Government to accommodate the building of the petitioner, the government would have simply stated that no construction could have come up and the question of any violation of the scheme would not also have arisen. However, the Assistant Town Planner himself had advised the Commissioner, Municipal Corporation, Amritsar through his letter dated 11th June, 2006 that an *ex post facto* approval of construction of a commercial project could be taken from the Government and therefore, before obtaining such a approval, the building plan could be got verified to ensure that in the amended plan, the ground coverage, height, F.A.R. etc. remain within permissible limits. Ultimately, the Municipal Town Planner had decided to issue a certificate to sanction the building plan. The “No Objection” has been secured from the authority, the Pollution Control Board, the Environment and Forest Industry, the Central Ground Water Authority, Ministry of Water Resources, Fire Safety, certification from Electricity Inspector, certification from Disposal of Garbage from the Municipal Corporation and ultimately after taking the technical approval of the building also from the Municipal Town Planner, the work had got completed and a letter was issued on 1st September, 2008 to the Municipal Town Planner informing that the structure of the project had been completed, with request for completion certificate.

III. Demand for CLU, the preferred justification and the grounds of challenge

(4) From this date follows the issues of divergence between the petitioner and the local bodies. The Commissioner, Municipal Corporation had informed on 1st September, 2008 that the petitioner had not paid the dues for alleged change of land use of plot area measuring 40134.11 Sq. Mtr. a demand @ Rs. 3,000 per sq. yards i.e. amounting to Rs. 14.40 crores, to which a challenge has been made in this petition. The Commissioner, Municipal Corporation himself was unsure of his action, therefore, he had sought for guidance from the Chief Town Planner, Chandigarh seeking for clarification regarding charging of change of land user fee as well as the rate thereof, for converting land from the use contemplated under the draft scheme, to how the property was actually put to use. The Commissioner himself had further informed on 2nd February, 2009 to the Principal Secretary, Local Government Department that the matter could be resolved only if the Government framed a policy regarding the manner of realization of CLU charges in the proposed town planning/building scheme. The issue of completion certificate did not materialize since the local body was demanding the payment of CLU charges and engaged the petitioner in a volley of communication dated 27th March, 2009, 16th July, 2009 and not obtaining any favourable communication, the petitioner had approached this court by means of present writ petition, challenging the reply of CLU charges on the ground that the right of full exploitation of a property by an owner cannot be prohibited by law; it could only be regulated if there was any final development regulation that dictated the nature of user. The Punjab Municipal Corporation Act, itself contained detail as to how a building scheme was to be approved and how Section 275 dealt with situation of formulation of a building scheme that would require an approval from the Government after affording to land owners a right of objection to the scheme. The further contention is, the Act predicates the mode of user only after the finalization of the scheme and the draft scheme itself cannot dictate the nature of user and enable the local bodies to claim CLU charges for use of a property inconsistent with the use contemplated in the draft scheme.

(5) The bone of contention as regards the view of the local body obtains acuity only where an attempt of the local body is to obtain legitimacy to the action by reference to its own understanding of the legal position that

the Government opined that “the terms of the proposed scheme (from the date intention was shown by the Municipality to frame scheme to date of its ultimate sanction by Government) can be implemented at the time of sanctioning of the building application of owner of land/plot situated in the proposed scheme and if the Municipality has fixed any land use change fee and the permission involves such change of land use, the fee can be claimed by Municipality.” The opinion of the Government has found expressed in the letter of the Town Planner dated 22nd September, 2009, is indeed a formulation that would require attention of this Court for a decision one way or the other on what the Government opined would literally answer the question as to whether the demand of CLU charges would be justified or not. The counsel appearing on behalf of respondents No. 1 to 3 would urge that the local body never conceded an unfettered right of use by the petitioner and would point out to the letter of Chief Town Planner dated 22nd September, 2009 while responding to the building application that a separate application for carrying out necessary amendments in the scheme has to be made and the mode of user, which the petitioner was seeking for through his building plan, amounted to change of land use.

(6) The learned counsel would also submit that the Town Planner’s recommendation for approval of building plan with the Government and the initial appraisal of the building plan could be examined with reference to other parameters regarding the ground coverage, height, F.A.R. etc. was only to avoid further delay in construction activity. Learned counsel would also refer to a policy guideline issued by the Government to the Commissioner, Municipal Corporation regarding conversion of land use from residential to commercial by implementing the Town Planning Building Scheme for Amritsar for areas and roads mentioned in Annexure-III accompanying policy of the Government dated 28th July, 1994, wherein it approved the levy for sanctioned T.P. scheme area No. 25, 43, 56, 6, Building Scheme No. 4-B and 13-B. Significantly building scheme No. 16-B within which the petitioner’s property fell, is not covered by the policy. Learned counsel, therefore, would urge that the policy guidelines could be applied for other areas not included in the Annexure “on the basis of experience gained from implementation of this policy in the areas, and policy to other Town Planning Schemes and potential areas as per requirement.” The subsequent policies issued on 24th September, 1998 and 14th July, 2006 relating to the

finalization of building schemes still did not include the scheme No. 16B or the constructions at the place where the property was situated. The policy statement of the Government issued on various dates envisaged collection of CLU fees only in respect of the finalized schemes with the approval from Government and it is an admitted fact that in respect of the locality of the property where the petitioner's construction has been put up, the building scheme has not been finalized yet.

IV. Provisions of Punjab Municipal Corporation Act, as regards building Scheme-a process that lends primacy to public participation.

(7) The contention of the learned counsel for the petitioner, therefore, was by reference to the provisions of the Punjab Municipal Corporation Act to contend that the owner of a property is entitled to full use of the same and a fetter to such use could be made not by prohibition but through a regulation. The Punjab Municipal Corporation Act intends to regulate such constructions and it contemplates in Chapter XIV, two types of schemes (1) Building Schemes (2) Town Planning Scheme. Building Scheme apply to construction of building and Town Planning Schemes referred to regulation of unbuilt areas. The Act provides for step by step procedure as to how a scheme could be put in place and how regulation could be made. Section 275 of the Act sets out the procedure as to how a Building Scheme could be applied and how the issue of change of land user will arise only after it is finalized and approved by the Government. Section 275 reads as follows :—

“Section 275-Building Scheme :

- (1) The Corporation may, and if so required by the Government shall, within six months of the date of such requisition, drawn up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely :—
 - (a) the restriction of the erection or re-erection of building or any class of buildings in the whole or any part of the city, and of the use to which they may be put;

- (b) the prescription of a building line on either side or both sides of any street existing or proposed; and
 - (c) the amount of land in such unbuilt area which shall be transferred to the Corporation for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed thirty-five per cent. and the amount transferred without payment shall not exceed twenty-five per cent of any one owner's land within such unbuilt area.
- (2) When a scheme has been drawn up under the provisions of sub-section (1), the Corporation shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the Corporation in writing any objection or suggestion with regard to such scheme which he may wish to make.
- (3) The Corporation shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Government which may sanction scheme or may refuse to sanction it, or may return it to the Corporation for reconsideration and resubmission by a specified date.
- (4) If a Corporation fails to submit a scheme within six months of the being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the Government, the Government may draw up a scheme or which public notice shall be given by notification and by publication within the City together with an intimation of

the date by which any person may submit in writing to the Government any objection or suggestion which he may wish to make and the Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the Government may think fit; and the cost of such scheme or such portion of the cost as the Government may deem fit shall be defrayed from the Corporation Fund.

- (5) While sanctioning a scheme the Government may impose conditions for the submission of periodical reports to it on the progress of the scheme and for the inspection and supervision of the scheme.
- (6) If under the provisions of any scheme sanctioned under the proceeding sub-section the erection or re-erection of building in a specified area for a specified purpose is prohibited, any person who after such scheme is sanctioned user any building for such purpose shall, unless it was used for this purpose before the scheme was sanctioned, or conviction be liable to fine which may extend to one thousand rupees, and if after such conviction he continues to use such building for such purpose shall be liable to fine which may extend to fifty rupees for every day during which such use continues.”

(8) From a reading of this provision, it could be seen that Corporation shall first draw up Building Scheme for built areas and Town Planning Scheme for unbuilt areas. The scheme will provide for restriction on erection or re-erection of buildings or class of buildings. It can provide for a prescription of a building plan on either side of a street existing or proposed. It could also stipulate that land in an unbuilt area shall be required to be transferred to a Corporation for use for common benefit of people. When a scheme is drawn, the Corporation shall give a public notice providing for right of objection to any member of the public. The Corporation may consider objection and modify the scheme and then forward it to the Government. The Government may either approve the scheme or draw up a scheme and put up to public again by notification calling for objections.

The Government may sanction as originally notified or modified and while sanctioning such a scheme, the Government may also impose a condition for submission of periodical reports on the progress of the scheme. Sub-section 6 is important. It is a penal section that if any person uses the building for purpose other than specified purpose, after sanction there could be a conviction. The change of user, is a change after such a scheme is sanctioned (emphasize applied).

V. Unless a scheme is sanctioned, issue of Change of Land Use does not arise.

(9) The issue that there cannot be a full fledged regulation or a complaint of change of user, unless a scheme is sanctioned, is ingrained in the various provisions of Town Planning Act. The Municipal Corporation Act itself recognizes the primacy in the owner of right to use through several sections. For instance, Section 263 of the Act contemplates that if after the submission of a building plan no approval is obtained within a period of 60 days, the sanction is deemed to have been granted. It puts onus on a public authority to react within a particular period with a default enuring in favour of the owner to put it to optimal use in the manner he envisages, unless disapproved by the Public Body. The same way, if a public authority wants a town planning regulation to be in its place or it expects persons to use the property subject to the mode of user proposed, if the authority disapproves a plan, the owner shall have a different remedy to approach the higher forums or coming to Court immediately for redressal. If on the other hand, the construction is allowed to continue after approval of plan, the provisional decision to obtain post facto sanction from Government can only put the construction as a situation obtaining to the benefit of the owner and cannot be subject to any condition which the Act does not contemplate. Section 262 of the Act states in a mandatory form that the Commissioner shall sanction the erection of a building unless such building of work would contravene the provisions of the Act. I have already referred the Section 275 Clause 6 that even while it provides for penalties for CLU, it contemplates penalties only for persons who puts the property to use inconsistent with the scheme that is approved by the government. If the Government takes its own long time to approve the scheme, it should only mean that it is an

unregulated area and construction is possible, unless such permission for construction is prohibited by any other provisions of law. The mere opinion of the Government as found expressed through a memo on Town Planner which is extracted above, that a construction could be allowed to continue and the CLU fees could be collected on the basis of un-approved scheme, is impermissible and such an opinion is clearly wrong.

VI. Examination of hypothesis set out in Para V, in the light of decisions.

(10) The issue of how use of property could be regulated has come up for consideration in **T. Vijayalakshmi versus Town Planning Member (1)** when the Hon'ble Supreme Court while dealing with the provisions of the Karnataka Town and Country Planning Act, 1963 exhorted the right of a person to construct residential house in the residential area as a valuable right. Such right, it said, could be regulated in terms of regulatory statute but unless there exists a clear provision, the same cannot be taken away. The Hon'ble Supreme also sounded the judicial diktat that a statutory authority must exercise its jurisdiction within a reasonable time and determination of matter/question relating to permission for construction could not also be postponed far less taken away. The Hon'ble Supreme Court has set down the law in the context of delay in grant of permission. In this case, permission had been granted but with certain strings. The question is whether such strings could be attached. Here the answer perhaps lies somewhere close to a decision in **Chairman, Indore Vikas Pradikaran versus M/s Pure Industrial Cock and Chem. Ltd. and others (2)**. The decision was rendered in the context of how the right to property is still a right, which has constitutional mooring in Article 300(A) while examining the right alongside the town planning regulations. The Hon'ble Supreme Court held that the courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property on the other ; inposition of unreasonable restrictions by zoning classification, cannot be sustained. Speaking about the finalization of a town planning scheme which M. P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 provided, the Hon'ble Supreme Court had held that

(1) 2006 (8) S.C.C. 502

(2) 2007 (8) S.C.C. 705

although ordinarily when a public authority is asked to perform statutory duties within a time stipulated, it should be taken as merely directory in nature, it would obtain a different tenor if it involved valuable rights of citizens and provide for consequence, therefor. It would be then construed to be mandatory in character. Referring to the right to property under Article 300(A), the Hon'ble Supreme Court also held that the right was also not merely constitutional right but also a human right. Earlier human rights existed to the claim of individuals's right to health, right to livelihood, right to shelter, employment etc. but now human rights have started gaining multifaceted approach. The property rights are also incorporated within the definition of such human rights. The Supreme Court was underscoring the importance of finalization of the scheme for that alone, could regulate the mode of user and observed that the development plan which the Punjab Municipal Corporation Act contemplated under various sections, did not include the draft development plan. It was only when the development plan was in existence that town planning schemes could not be made. The draft plan which has not attained the finality, cannot also be held to be determinative of the rights and obligations of the parties and thus it could not be implemented. To repeat the words of Supreme Court as regards the enforceability of a draft scheme :—

“73. We do not see any force in the said argument. It is possible to enforce a draft development plan in a given case, but the statute must specifically provide for the same. But, a draft development plan which has not attained finality cannot be held to be determinative of the rights and obligation of the parties and, thus, it can never be implemented. Section 50 of the Act explicitly states that the authority may declare its intention to prepare a town development scheme which having regard to Section 2 (u) of the Act must be read to mean declaration of its implementation to prepare a scheme for the implementation of the provisions of a development plan.

74. We have come across some legislations, as for example, The Himachal Pradesh Town and Country Planning Act, 1977 where a provision has been made for preparation of an interim development plan. It is not in dispute that legislations relating to town and country planning are somewhat similar. Had the

legislature of implementation of a draft development plan, they could have also provided for an interim development plan which *ipso facto* would have been enforceable.

75. A development plan even in ordinary parlance can be implemented only when it is final and not when it is at the draft stage. i.e., susceptible to change. Not only land use may make geographical change, the other details may also undergo a change. The objections and suggestions invited from the general public as also the persons affected may be accepted. These may be realignment. It may undergo serious modification. Once the legislature has defined a term in the interpretation clause, it is not necessary for it to use the same expression in other provisions of the Act. It is well settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.”

(11) A Single Judge of this Hon’ble Court held, while referring to Punjab Municipal Corporation Act under Section 275 in **Shukan Kumar versus Municipal Corporation, Ludhiana (3)** that the Municipal Corporation cannot impose any condition which may restrict right of transferee to raise further structures in the absence of statutory scheme or rules.

VII. Conclusion :

(12) If the provisions of Punjab Municipal Corporation Act alone are the basis of levying CLU fees, it is untenable, so long as the scheme is not finalized for the property, where development has taken place. The impugned levy is illegal and the amount collected from the petitioner is liable to be refunded. The entire amount appears to have been paid during the pendency of the proceedings and the same shall be refunded with the simple interest at 9% from the date of collection by the authorities till the date of payment. The writ petition is allowed on the above terms.

R.N.R.