

S. Gupta

Before Jasbir Singh & Rameshwar Singh Malik, JJ.

SENIOR CITIZENS FORUM(REGD.)—Petitioner

versus

**HARYANA URBAN DEVELOPMENT AUTHORITY
AND OTHERS—Respondents**

CWP No. 2171 of 2011

October 03, 2012

Constitution of India, 1950 - Art. 226/227 - Writ jurisdiction - Res-judicata -Haryana Urban Development Authority Act, 1977 - S. 79 - Conversion of open space/park by allotting it for construction of school - Land acquired in 1978 for planned development - School site allotted in 1994 - Land never reserved for park but for primary school - Petitioner encroached upon portion of impugned site by raising Temple - In defence, said area of Temple left out of allotment made in favour of school -Earlier SLP, Writ Petitions and Civil Suit in this regard already decided - Petitioner concealed factum of earlier litigation from the Court - Present Petition blatant abuse of process of law - Held, Petitioner has no respect for law and has not approached the Court with clean hands - Writ Petition dismissed with costs of Rs.1 lac.

Held, that after giving our thoughtful consideration to the rival contentions raised and in view of the peculiar fact situation of the present case, this Court is of the considered opinion that present petition is a glaring

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abuse of process of law. In this view of the matter, the instant petition is liable to be dismissed with cost for the reasons, being recorded hereinafter.

(Para 10)

Further held, that a bare reading of memo dated 8.3.1995, sent by District Town Planner, Faridabad, to the Administrator HUDA, Faridabad, would show that being conscious of the fact situation obtaining at the site, including the illegal encroachment on the school site, an area measuring 0.63 acres was left, whereupon the unauthorised temple has been constructed, by the residents of the colony and remaining area measuring only 1.5 acres, was allotted to respondent No.4., which was reserved for the primary school, as per layout plan of Sector 29, Faridabad. It has also been noted that other parks/open space, were existing for social functions, playing of children, exercise and morning/evening walk for the senior citizens in the colony.

(Para 11)

Further held, that a combined reading of the above said numerous orders, dismissing the repeated writ petitions, filed by different residents of this very colony and also Resident Welfare Association, claiming exactly the same relief against the same respondents, would make it abundantly clear that the present petition amounts to blatant abuse of process of law.

(Para 17)

Further held, that it also does not appeal to reason that the petitioner would not be aware about the numerous writ petitions filed earlier and dismissed on behalf of the individuals and the Resident Welfare Association, as well. However, the petitioner has kept conveniently silent in this regard, while filing the present petition, as if the present petition was the first one in point of time. Thus, it can be safely concluded that the petitioner has tried to overreach this Court by concealing the material facts.

(Para 21)

Further held, that the petitioner has projected the facts before this Court in a distorted manner, posing to be completely innocent, about the many writ petitions filed before this Court, before the Hon'ble Supreme Court, as well as the civil suit. Thus, it is unhesitatingly held that the petitioner

has not approached this Court with clean hands. Neither the law nor the equity is in favour of the petitioner.

(Para 22)

A.P.Bhandari, Advocate, *for the petitioner*:

Gitish Bhardwaj, Advocate for respondents No. 1 and 2.

Ashwani Talwar, Advocate for respondent No.3.

Alok Mittal, Advocate for Akshay Bhan, Advocate for respondent No.4.

RAMESHWAR SINGH MALIK, J.

(1) The petitioner, by way of instant petition under Article 226/227 of the Constitution of India, is seeking a writ in the nature of Mandamus, directing the respondents not to change the use of open space/park, situated in front of the houses of HIG Block in Sector 29, Faridabad. The petitioner seeks further direction to the respondents not to tinker with the original plan, wherein area in question was shown as open space/park, which was being sought to be changed for construction of school.

(2) Notice of motion was issued and pursuant thereto, written statement of Estate Officer, HUDA, Faridabad, was filed on behalf of respondents No. 1 and 2. A separate reply was filed by way of affidavit on behalf of respondent No.3.

(3) Learned counsel for the petitioner vehemently contended that Haryana Housing Board-respondent No.3, issued an advertisement in the year 1980, inviting applications for allotment of houses in Sector 29, Faridabad in LIG, MIG and HIG categories. Houses under different categories, noted above, were allotted to the eligible persons. However, petitioner is concerned only with the HIG category. It is contended that as per the brochure issued by respondent No.3, amenities like water, sewerage, electricity and park/open space etc., were to be provided for the use of the residents.

(4) Learned counsel for the petitioner further contended that respondents have no authority, to use the open space for setting up a school by illegally allotting, the said open space to respondent No.4. He next contended that converting the open space into school will be prejudicial to

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the interest of the petitioner, whose members are residing nearby. He also relies upon Section 79 of the Haryana Urban Development Authority Act, 1977. ('HUDA Act' for short), to contend that respondents would be violating the provisions of law contained under Section 79 of the HUDA Act, by converting the open space/park into the school. To substantiate his arguments, learned counsel for the petitioner, relies upon the judgment of the Hon'ble Supreme Court passed in **Virendra Gaur and others versus State of Haryana and others, Civil (appeal) No. 9151 of 1994**, on 24.11.1994.

(5) Finally, learned counsel for the petitioner submitted that the present petition may be allowed and the respondents be directed not to convert the open space/park into the school.

(6) Per contra, learned counsel for respondents No. 1 and 2, while referring to the preliminary submissions taken in their reply, submits that the petitioner Forum has not approached this Court with clean hands and the instant petition was liable to be dismissed with heavy costs for this reason alone. He further submits that the land in question, was reserved for the school site and not for the park, as wrongly alleged by the petitioner. The petitioner, as a matter of fact, wants to perpetuate its illegal encroachment on the part of the said land, which was a school site. The petitioner was requested many a times to remove its unauthorised encroachment on the land in question, but the same has not been removed.

(7) The land was acquired, vide Award No. 6 dated 30.3.1978 for the planned development of Sector 29, Faridabad. The school site was allotted to respondent No.4, vide order dated 28.12.1994 (Annexure R-1). The land in question was never reserved for any park but on the contrary, it was reserved for primary school site. It was further contended that although the land reserved for primary school was approximately 2 acres, yet since on some part of this school site, an unauthorised temple was constructed by the residents of the colony, putting illegal encroachment, the respondent authorities thought it appropriate to leave 0.63 acre for the park, in which the unauthorised temple has been constructed. Remaining area of 1.5 acres has been allotted for the construction of primary school. It was also clear from the layout plan of the colony that other parks and open space are existing for the social functions, playing of children, exercise

and for morning/evening walk of senior citizens in the colony. Learned counsel for respondents No. 1 and 2, refers to the communication dated 8.3.1995 (Annexure R-2), in this regard, submitting that grievance raised by the petitioner already stood redressed way back in the year 1995.

(8) Learned counsel for respondents No. 1 and 2 concluded by submitting that the present petition is a frivolous one. The same controversy raised by the residents of this very colony, has already been dealt with and found without any substance, in different writ petitions and civil suit as well, because of which the present petition is liable to be dismissed with an exemplary costs.

(9) We have heard the learned counsel for the parties and with their able assistance, have gone through the record of the case.

(10) After giving our thoughtful consideration to the rival contentions raised and in view of the peculiar fact situation of the present case, this Court is of the considered opinion that present petition is a glaring abuse of process of law. In this view of the matter, the instant petition is liable to be dismissed with cost for the reasons, being recorded hereinafter.

(11) A bare reading of memo dated 8.3.1995, sent by District Town Planner, Faridabad, to the Administrator HUDA, Faridabad, would show that being conscious of the fact situation obtaining at the site, including the illegal encroachment on the school site, an area measuring 0.63 acres was left, whereupon the unauthorised temple has been constructed, by the residents of the colony and remaining area measuring only 1.5 acres, was allotted to respondent No.4., which was reserved for the primary school, as per layout plan of Sector 29, Faridabad. It has also been noted that other parks/open space, were existing for social functions, playing of children, exercise and morning/evening walk for the senior citizens in the colony.

(12) However, it seems that the residents of the colony were still not satisfied. A Civil Writ Petition No. 13748 of 1995 came to be filed before this Court, by one Shanti Prashad resident of House No. 951-A, HIG, Sector 29, Housing Board Colony, Faridabad, for quashing of the allotment of the school site in favour of respondent No.4, claiming the said land to be land meant for park. Notice of motion was issued and parties

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filed their respective replies. After hearing the parties and finding no merits, the writ petition was dismissed by a Division Bench of this Court, vide order dated 29.1.1996.

(13) Another Civil Writ Petition No. 14472 of 1995 was filed by one Kuldep Singh Rajput, resident of House No. 873-A, HIG-II, Sector 29, Housing Board Colony, Faridabad, vide Annexure R-3, raising exactly the same issue, which has been raised by the petitioner in the instant petition. All the four respondents herein, were also impleaded as respondents in above said CWP No. 14472 of 1995 and exactly the same relief was claimed. The writ petition was dismissed by a Division Bench of this Court, vide order dated 6.3.1996 (Annexure R-4), and the same reads as under:—

“Civil Writ petition 13748 of 1995 claiming the same relief, as is sought herein, has already been dismissed by a Division Bench of this Court on 29.1.1996. In this view of the matter, no relief can be granted to the petitioner in this writ petition which is consequently dismissed.” 6.3.1996

(14) A suit for declaration with consequential relief of permanent injunction, in the form of civil suit No. 452, came to be filed before the learned civil court at Faridabad, by another registered body by the name of Shree Sanatan Dharam Mandir Sabha (Regd.), against National Education Society and others. In the civil suit also exactly the same relief was sought. The learned Civil Judge (Junior Division), Faridabad, inter alia, noting the fact that the writ petition filed by the plaintiff society had been dismissed by the Division Bench of this Court, the civil suit was also dismissed with costs, vide judgment dated 20.2.2010 (Annexure R-5). The above said judgment of the learned Civil Judge (Junior Division), Faridabad, came to be challenged in civil appeal No. 90/20.4.10, before the learned District Judge, Faridabad, but the same was dismissed as withdrawn, vide order dated 4.01.2011 (Annexure R-6).

(15) Yet another CWP No. 12458 of 2005 was filed, by the residents of this very colony, who have also formed the similar society, as the present one. The above mentioned CWP No. 12458 of 2005 was filed by the Resident Welfare Association, against the present respondents challenging the allotment of school site in favour of respondent No.4. This

writ petition was also dismissed by the Division Bench of this Court, vide order dated 11.8.2005 and the same reads as under:-

“Since the writ petition badly suffers from delay and laches, inasmuch as the petitioner, admittedly, gained knowledge of the allotment of plot to respondent No.4 in the year 1995, as far back as in the year 2002, we are not inclined to entertain the writ petition at this juncture. Dismissed.”

(16) It is also pertinent to note here that before approaching this Court by way of CWP No. 12458 of 2005, the Resident Welfare Association approached the Hon’ble Supreme Court also, by filing the writ petition (civil) No. 523 of 2004, (Resident Welfare Association versus State of Haryana and others), but the same was dismissed as withdrawn, while granting leave to the petitioner to approach this Court, by filing a petition under Section 226 of the Constitution, if advised. This order dated 27.9.2004 passed by the Hon’ble Supreme Court, in writ petition (civil) No. 523 of 2004, reads as under:-

“Upon hearing counsel the Court made the following

ORDER

The petitioner is granted leave to withdraw this petition and, if advised, to approach the High Court by filing a petition under Article 226 of the Constitution.

The writ petition is, accordingly, dismissed as withdrawn.

27.9.2004.

(17) A combined reading of the above said numerous orders, dismissing the repeated writ petitions, filed by different residents of this very colony and also Resident Welfare Association, claiming exactly the same relief against the same respondents, would make it abundantly clear that the present petition amounts to blatant abuse of process of law.

(18) We have considered the arguments raised on behalf of petitioner Forum and found the same are without any substance. Section 79 of the HUDA Act is not at all attracted in the present case. The judgment relied upon by the learned counsel for the petitioner in Virendra Gaur’s case

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(supra), is of no help to the petitioner for the reason that the same is clearly distinguishable on facts. The factual position in the present case, is just the converse. The land in question has been reserved for the school site, which is clear from the layout plan.

(19) It is the settled proposition of law that peculiar facts of the each case are to be seen first before applying any codified or judgmade law thereto. Sometimes, even the difference of a word can make the world of difference. In the given fact situation of the present case, we have no hesitation to conclude that the petitioner Forum has no respect for the law. The petitioner can not be permitted to say that the earlier petitions filed by its neighbourers or another similarly placed Welfare Association, would not be binding on the petitioner. If this contention is to be accepted, then every resident of the colony would be pursuing the similar litigation, before one or the other forum and it would be an unending litigation.

(20) In an identical situation, the Division Bench of this Court, while deciding the CWP No. 20269 of 2010 (Man Singh versus State of Haryana and others), vide order dated 9.8.2012, held as under:-

"The school's site is shown in the lay out Plan-B of Annexure P.1. The prayer of the petitioner is that if such school is shifted as per Plan-A of Annexure P.1, the open space between the back of the house of the petitioner and the school's site, would be available. On the last date of hearing i.e. 3.8.2012, after hearing learned counsel for the parties, we passed the following order:-

"Though, learned counsel for the petitioner concedes that all the issues, as raised by the petitioner in the present writ petition, have been adjudicated upon in the earlier Civil Writ Petition No. 2560 of 2008 filed by the neighbours of the petitioners which was decided on 25.3.2010, but it is stated if the location of the school is shifted as shown in Plan-B of Annexure P.1 to the location shown as in Plan-A, it will not harm the interest of any person, but will provide open space to the petitioner in the same manner as to the other allottees in the same line. Ms. Moga and Mr. Sharma, seek a week's time to get instructions. List on 9.8.2012."

Ms. Monga, learned DAG, Haryana, has stated that in fact the petitioner has opened a gate at the back of his house without permission and that is the reason he is insisting on shifting of the school's site, the lay out plan of which was finalized in the year 2000. The earlier writ petition bearing CWP No. 2560 of 2008 was filed by the immediate neighbours of either side of the petitioner. The said writ petition was dismissed on 25.3.2010, but soon thereafter, the present writ petition has been filed on 8.11.2010.

In view of the said fact, we find that the petitioner has abused the process of law by filing the present petition, as the writ petition filed by the neighbours of the petitioners raising the similar issues stands dismissed. The petitioner cannot be permitted to invoke the jurisdiction of this Court on the same issues again. Consequently, the present writ petition is dismissed with costs of Rs. 1.00 lacs (Rupees One Lac), which shall be deposited with the Haryana State Legal Services Authority, within one month."

(21) It also does not appeal to reason that the petitioner would not be aware about the numerous writ petitions filed earlier and dismissed on behalf of the individuals and the Resident Welfare Association, as well. However, the petitioner has kept conveniently silent in this regard, while filing the present petition, as if the present petition was the first one in point of time. Thus, it can be safely concluded that the petitioner has tried to overreach this Court by concealing the material facts.

(22) The petitioner has projected the facts before this Court in a distorted manner, posing to be completely innocent, about the many writ petitions filed before this Court, before the Hon'ble Supreme Court, as well as the civil suit. Thus, it is unhesitatingly held that the petitioner has not approached this Court with clean hands. Neither the law nor the equity is in favour of the petitioner.

(23) Considering the totality of facts and circumstances of the present case noted above, coupled with the reasons aforementioned, we are of the considered opinion that the instant writ petition, being bereft of any merit and without any substance, must fail.

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(24) Resultantly, the writ petition is ordered to be dismissed with costs, which are quantified at ₹ 1,00,000/- (Rupees one lac). The costs shall be deposited by the petitioner with the Haryana State Legal Services Authority, within a period of three months from today. In case the amount is not deposited by the petitioner within the stipulated period of three months, the Secretary of Haryana State Legal Services Authority, shall be competent to recover the amount of costs from the petitioner, in accordance with law.
