
(21) In the circumstances, we agree with the contentions of the learned counsel for the petitioner that for making the recruitment against the post where grant-in-aid is sought from the State Government, the Government approves the post for grant-in-aid and it is not that the services of the employee working on temporary basis have to be terminated and only then the Government would approve the post. Further, the college is also to give a certificate to the Director Public Instructions (Colleges) to the effect that "no court case is pending against that post." It is only thereafter that the Director Public Instructions sends his nominees for the selection. Therefore, in the circumstances of the case, we are of the view that the justification given for terminating the services of the petitioner is only of a ruse to otherwise dispense with his services.

(22) In the circumstances, the writ petition is allowed and the order dated 29th June, 2002 Annexure P-9 is quashed and the petitioner shall be entitled to continue in service in accordance with the terms of his appointment letter dated 28th July, 1998 Annexure P-2. There shall however, be no order as to costs.

R.N.R.

Before R.L. Anand & S.S. Saron, JJ

ECONOMICALLY WEAKER SECTION OF SOCIETY HOUSES
WELFARE ASSOCIATION—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

CWP No. 13077 OF 2002

29th November, 2002

Constitution of India, 1950—Arts. 21 & 226—PUDA carving out plots of the area which the members of the EWS Society were using as open space/park/green belt for more than 25 years—Challenge thereto—Area in dispute not shown as park/open/green belt in the master plan and earmarked for construction of residential houses—Neither any illegality, irrationality nor procedural impropriety in providing plots from the area in dispute—No violation of any statutory

provision—High Court has no jurisdiction to enquire as to whether the lay out plan drawn by the authorities is improper—Writ dismissed.

Held, that the lay out plan having been drawn as far as back as on 6th August, 1975 and the same having been approved by the Chief Town Planner, Punjab, i.e. much earlier to the purchase of plots and construction raised by the members of the petitioner-Association, it would not be proper to disturb the said planning in exercise of the writ jurisdiction of this Court.

(Para 9)

Further held, that it is not in the domain of this Court nor the scope of judicial review to embark upon an enquiry as to whether the lay out plan drawn by the authorities is improper. In the matter of planning the area for construction activities and for providing open spaces is the domain of the Town Planning authorities. This Court does not sit in appeal over the administrative decisions of the Town Planning authorities. Judicial review is not to be mistaken for an appeal against the administrative authorities. In judicial review the Courts are mainly concerned with the competence of the authority and the mode in which the authority takes the decision and not the decision itself taken by the authority. The Courts do not substitute their opinion or decision in place of the decision taken by the authority.

(Para 13)

P.K. Gupta, Advocate for the Petitioner

Govind Goyal, Advocate for respondents No. 2 & 3

R.L. Batta, Senior Advocate, with HPS Ghuman, Advocate
for the added respondents

JUDGEMENT

S. S. SARON, J.

(1) Petitioner—Economically Weaker Section of Society Houses Welfare Association (for short the Association), is a registered association and in this petition prays for quashing order dated 18th June, 2002 (Annexure P 4) whereby the Estate Officer, Punjab Urban Development Authority (PUDA), SAS Nagar, Mohali, has rejected the representation

filed by the petitioner-Association regarding there being a green belt/park near the houses of the members of the Association on which 11 plots all of a sudden been carved out by PUDA. The petitioner-Association also seeks a direction to the respondents to comply with the observations dated 22nd February, 2002 (Annexure P-2) of the Punjab State Human Rights Commission, Chandigarh in which the Commission observed to consider the question of certain minimum facilities on the lines as indicated by the Commission in the said order. Lastly, the petitioner-Association seeks direction against the respondents to leave the area of pocket falling on the North-East of the EWS Houses as open space/park/green belt which is being enjoyed by the members of the Association for more than 25 years.

(2) It is contended by the petitioner-Association that there are about 432 houses of Economically Weaker Section Society built in phase 7 Mohali (also known as part of Sector 61), SAS Nagar. The houses are double-storied built in the area of about 2 marlas. More than 2000 persons are living there and the total area covered is about 5.36 acres. This is said to be insufficient for the residents of the EWS Houses who are mostly senior citizens, Ex-servicemen, Government servants, Housewives and small children. This area has not been provided any park, green belt or open space by the respondents. The residents of the locality have been using the area/open space/park on which several 10 marlas plots have been carved out by the respondents. It is contended that the respondents have carved out 10 marlas plots on the open space/park/green belt adjoining the houses of the members of the petitioner-Association and that now 11 plots have been carved out each measuring 10 marlas. If those plots are constructed, which are likely to be three-storied buildings, then natural air and sun-light would be obstructed and there would be darkness in the EWS Houses. This would affect the welfare and health of the inhabitants of the area. This area is also used by the inhabitants of the area for the last 25 years and Akhand Path, Jagrata and other ceremonies are performed on this land.

(3) Notice of motion was issued to the respondents. Written statement has been filed by the official respondents through the Estate Officer, PUDA, Mohali.

(4) During the pendency of the petition, the allottees to whom 10 Marlas plots have been allotted were also impleaded as party.

(5) In the written statement filed by the Estate Officer, PUDA, it is stated that the area in question was not meant to be a park and that as per the drawings of PUDA which were duly approved by the Chief Town Planner, Punjab on 6th August, 1975, Plots No. 1318 to 1329 each measuring 10 marlas existed at the site. The said plots had been auctioned and allotted. The allottees thereof are entitled to utilize the plots as per their sanctioned plan. It is also stated that the members of the petitioner-Association had purchased EWS Houses with their eyes wide open with reference to the sanctioned lay out plan and master plan of Urban Estate, Phase 7, Mohali in which the area in question has been shown as residential plots. Therefore, the members of the petitioner-Association are estopped from questioning the correctness of the said master plan in the present proceedings. Besides, it is also contended that regarding Town Plan lay out plan etc. is a matter of policy for which the petitioner-Association is not entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. Even in proceedings before the Punjab State Human Rights Commission it was held that in the plan the area in dispute was not shown as park and had in fact been shown to be meant for residential plots.

(6) The petitioner-Association filed replication to the written statement filed by the respondents in which stand taken in the petition has been reiterated.

(7) We have heard the learned counsel for the parties and with their assistance have gone through the records of the case.

(8) The primary contention of the learned counsel appearing for the petitioner-Association is that the members of the Association are entitled to the area which is presently a vacant site for use as open space and as park. The construction of houses in that area is detrimental to their well-being and would affect their rights under Article 21 of the Constitution of India. As against this, the learned counsel for the respondents contend that this area had been earmarked for the construction of 10 marla houses as per drawing No. D.T.P. (Mohali) 75/6 which was duly approved by the Chief Town Planner, Punjab on 6th August, 1975. Besides, it is contended that in fact the respondents after considering the request of the petitioner-Association reduced the

number of plots from 12 to 11. Even, the width of open space in the area has been doubled from 77 ft 3 inches to 154 ft. The added respondents have also filed a written statement in which it is stated that the lay out plan No. DTP-Mohali 75/6 dated 6th August, 1975 shows that the residential area existed for the plots in question. The members of the petitioner—Association purchased the houses much after this plan of 1975 and, therefore, they were well aware that the residential area will be sold for the construction of houses. It is denied by the respondents that the area meant for 10 marla plots was shown as a park. Plots were sold to the private respondents by way of auction held on 27th April, 2001 and allotment letters have been issued and possession has been given to them.

(9) During the course of hearing, we were taken through the various drawings filed by the respective parties to the petition. The drawings produced on record show that plots from serial No. 1317 to 1327 each measuring 10 marlas, are depicted and shown for construction at the site. Besides, there is a 44 feet dividing road between the houses of the members of the petitioner—association and plots No. 1317 to 1327 that have now been auctioned by the respondent-PUDA. There is also some vacant space for utilization by the members of the petitioner—Association. Towards the side of plot No. 1327, there is an open space of the width of 77.3” this has been now doubled by providing a width of 154. Thus, the lay out plan having been drawn as far as back as on 6th August, 1975 and the same having been approved by the Chief Town Planner, Punjab, i.e. much earlier to the purchase of plots and construction raised by the members of the petitioner—Association, it would not be proper to disturb the said planning in exercise of the writ jurisdiction of this Court. The members of the petitioner—Association were always aware that this area had been earmarked for the construction of 10 marla houses. The development in the area does take time and when the PUDA has auctioned the plots and the allottees have been given possession and some of them have even started construction, it would be improper to stall the said development work which we find is being carried out in accordance with law.

(10) The learned counsel for the petitioner further contended that the area in question adjoining the houses of the members of the petitioner—Association is liable to be left open as initially PUDA was to allot 271 EWS plots on the ground floor and after including flats

on the first floor, a total of 406 flats were to be allotted. However, after advertisement Annexure P-10, the respondent—PUDA agreed to provide facilities like open park, shopping centre etc. to the EWS houses. This resulted in change of the drawing dated 6th August, 1975 and as per new drawing instead of 271 EWS flats on the ground floor, the number was increased to 288 and on the first floor it was increased to 144 flats. In this manner, the total number of plots on the ground floor and first floor became 432. This resulted in the change of scheme and accordingly, the PUDA cancelled plots 1318 to 1329 and allowed the petitioner—Association to use this site as park which is being used by them since 1977 till the auction of the plots by PUDA.

(11) We have considered the above contention of the learned counsel for the petitioner. There is nothing on record to substantiate the said stand of the petitioner. A mere bald assertion has been made by the petitioner with regard to change of the drawing of 6th August, 1975. It is no-where the stand of the respondents that plots No. 1318 to 1329 were left open as park for the use of the members of the petitioner—Association. Rather this aspect of the matter has been duly considered by the Estate Officer, PUDA, S.A.S. Nagar (Mohali), in his order dated 18th June, 2002 (Annexure P-4) while considering the representation of the petitioner-Association. The Estate Officer observed that the lay out plan of 432 EWS Houses prepared by the Punjab Housing Board (i.e. the predecessor of PUDA) has also been the lay out plan of the said pocked which was prepared vide drawing No. 01 job No. M-8 dated 30th October, 1975 based on which 432 EWS Houses were constructed and subsequently allotted. It was further observed that the perusal of the said plan also indicates the existence of 10 marlas plots of the North East side of the EWS houses. The petitioner—Association has not shown as to how this finding of the Estate Officer, PUDA in his order dated 18th June, 2002 (Annexure p-4) is erroneous. Therefore, the contention as raised by the petitioner-Association is without any merit.

(12) The direction sought by the petitioner-Association on the basis of the observations dated 22nd February, 2002 (Annexure p-2) of the Punjab State Human Rights Commission is also without any force. The learned Commission took cognizance of the matter on a complaint received from the petitioner—Association. It was alleged

therein that there was park planned to be developed next to the houses of the petitioner—Association which had been suddenly converted into plots which were sold. The learned Commission after examining the matter held that the area in dispute was not shown as a park in the plans produced before it and in fact, was shown to be meant for residential plots. It was further observed that merely because the area had been left vacant and may have been utilized as common facilities by the existing occupants of the adjoining houses, it does not follow that it has now to be converted into a park. No wrong or *mala-fide* had been proved on the part of the authorities. The Commission asked the authorities to consider on their own the provisions of certain minimum facilities on the lines indicated in the order while planning this area as well as other similar areas. Therefore, the Commission in its order dated 22nd February, 2002 (Annexure p-2) also found that there was no park or open space in the area which the petitioner—Association now claims to be a green belt in which construction activities are liable to be prohibited. As already noticed above the respondent-authorities have reduced the number of plots from 12 to 11 and have also doubled the open space from 77.3” to 154.”

(13) In the circumstances, we are of the view that this case calls for no interference. It is not in the domain of this Court nor the scope of judicial review to embark upon an enquiry as to whether the lay out plan drawn by the authorities is improper. In the matter of planning the area for construction activities and for providing open spaces is the domain of the Town Planning authorities. This Court does not sit in appeal over the administrative decisions of the Town Planning authorities. Judicial review is not to be mistaken for an appeal against the administrative authorities. In judicial review the Courts are mainly concerned with the competence of the authority and the mode in which the authority takes the decision and not the decision itself taken by the authority. The Courts do not substitute their opinion or decision in place of the decision taken by the authority. It has not been shown by the petitioner—Association that there has been any illegality, irrationality or procedural impropriety in providing 10 marlas plots numbering 11 on the area of pocket falling on the North East of the EWS Houses of the petitioner—Association. In other words, no violation of statutory provision has been shown. It is also not shown that the power has been exercised for an irrelevant

consideration or for improper puposes and neither is it shown that any material fact which was required to be considered has been left out of consideration or that irrelevant and inconsequential factors have been taken into account. There is no breach of principle of natural justice inasmuch as the representation of the petitioner which was directed to be disposed of by the respondent—authorities by order dated 18th March, 2002 by this Court passed in earlier civil writ petition No. 4615 of 2002 filed by the petitioner—Association, has been duly considered and disposed of in terms of order dated 18th June, 2002 (Annexure p-4). Besides, the decision to earmark the 10 marla plots in the area which the petitioner—Association claims they are entitled to use as open space is not shown to be one which an authority could not have reached on the basis of material available before it, in fact, the decision to earmark 10 marla plots was taken as far back as on 6th August, 1975.

(14) Therefore, in the circumstances noticed above, we find no merit in this writ petition and the same is hereby dismissed leaving the parties to bear their own costs.

R.N.R.

Before S.S. Nijjar & M.M. Kumar, JJ

M/S INDERJIT POULTRY FARM & OTHERS—Petitioners

Versus

STATE BANK OF PATIALA & OTHERS—Respondents

C.W.P. NO. 15870 OF 2002

2ND DECEMBER, 2002

Constitution of India, 1950—Art. 226—Code of Civil Procedure, 1908—0.23 Rl.1—Non-Payment of loan amount—Debt Recovery Tribunal allowing the claim of the Bank—Appellate Tribunal rejecting the claim of the petitioner for being given the benefit of the revised RBI guidelines—Challenge in the High Court—Withdrawal of the writ petition—Whether another writ petition on the same cause of