

BHAG SINGH AND ORS.
v.
STATE OF PUNJAB AND ORS.

JANUARY 5, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Urban Development:

Master Plan—Plea based on New Master Plan 2000-2021 that factories/industries in question fell within residential area and hence liable to be closed—Tenability of—Held, not tenable—Old Master Plan continues to be in force—Since New Master Plan not notified, effect thereof cannot be considered.

Appellants filed writ petition before High Court alleging that the factories/industries in question were operating in residential areas and were therefore liable to be closed. High Court dismissed the writ petition. It is contended by the appellants that in terms of the New Master Plan 2000-2021, the factories in question fall within earmarked residential area. Respondents contested the allegation on basis of the Old Master Plan contending that in terms thereof the factories/industries in question were situated in an industrial area.

Dismissing the appeal, the Court

HELD: Since the Master plan which forms the foundation of the appellants' challenge has not yet been notified, the effect thereof cannot be considered at this juncture. When the writ petition was filed the old Master Plan was in force and continues to be in force. If, as and when there is any change introduced by any subsequent Master Plan, the effect thereof has to be considered in terms of the Notification of the said Master Plan. [Para 7] [190-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1054 of 2005.

From the final Judgment and Order dated 23.5.2002 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 8199/1994.

A Devendra Kumar Singh, Binay Kumar Jha and Mali Ram Bidsar Advs.
for the Appellants.

Annam D.N. Rao, Mrs. Rachana Joshi Issar and Sudhir Nandrajog
Advs. for the Respondents.

B The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. : Challenge in this appeal is to the order
passed by a Division Bench of the Punjab and Haryana High Court
dismissing the Writ Petition filed by the appellants.

C 2. Background facts in a nutshell are as follows:

D The Writ Petition was filed in the year 1994, taking the stand that
industries by non official residents were operating in residential areas and,
therefore, they were liable to be closed. This stand was resisted by the
E respondents on the ground that the factories in question were situated in
Sector 16 which in terms of the Old Master Plan was an industrial area.
Therefore, the grievances of the writ petitioners were without substance.
The High Court asked for report of the Punjab Pollution Control Board (in
short the 'Board'). The Board's report which is re-produced in the order of
the High Court reads as follows:

F "Lastly the action taken report was filed on 8.4.2002 by the Board
showing that 61 units have complied with the provisions of the Air
(Prevention & Control of Pollution) Act, 1981. Out of remaining 27
units, 16 units have been closed down by the Board under Section
21/31-A of the Air (Prevention and Control of Pollution) Act, 1981.
8 Units have closed down their units themselves. Remaining 3
number units have not installed Air Pollution control devices.
Thereafter 2 more units have installed Air Pollution Control Devices
and 1 unit has changed its fuel from furnace oil to Liquid Petroleum
G Gas (LPG) in which Air Pollution Control Devices is not required.
Hence, all the remaining industrial units have complied with the
provisions of the Air (Prevention and Control of Pollution) Act,
1981.

Submitted for the kind information of the Hon'ble Punjab and
Haryana High Court for issue of appropriate order in the case."

3. Taking note of the report, the High Court disposed of the Writ Petition specifically directing that the pollution norms and standards have to be verified periodically and if there was found to be any deviation, action was to be taken.

A

4. In support of the appeal, learned counsel for the appellants submitted that in the new Master Plan 2000-2021 the properties in question fall within Sector 10 which is earmarked as a residential area. Therefore, the High Court's judgment is not in order.

B

5. The stand is resisted by the respondents pointing out that as yet the new Master Plan has not become operative and has not been notified and, therefore, the grievances of the appellants are without any basis.

C

6. In this connection, the affidavit filed by the State of Punjab in compliance of this Court's order dated 7.2.2005 is relevant. A few paragraphs of the affidavit need to be noted.

D

"3. That Master Plan was prepared by this department which was published in the Punjab Govt. Gazette vide Notification No.8/9/84-1HGIV/1079 dated 18.1.1989 for public suggestions/objections. However the same was non-statutory.

E

4. That Mandi Gobindgarh, the city in question, does not fall under any duly notified Controlled Area, declared under the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction) of Un-regulated Development Act, 1963, now repealed. Thus there are no Controlled Area restrictions at Mandi Gobindgarh, in view of the above legal position.

F

10. That the Secretary, Housing and Urban Development Department of the Govt. of Punjab in compliance with the orders of Hon'ble Supreme Court has also convened a meeting on 31.5.2005 to discuss the issue with the concerned Departments viz. Department of Industries and Commerce, Department of Science and Technology and Environment, Punjab Pollution Control Board, Chief Administrator, PUDA, Department of Local Government, Chief Town Planner, Punjab etc. to take an overall view of the latest position. During the course of discussion, it was unanimously

G

H

- A agreed upon that all the Departments (Punjab Pollution Control Board in particular) shall be more strict in initiating penal action against the units violating environmental laws, not only against those which are party to the present Special Leave Petition but against all those who are violating the Master Plan. This would ensure compliance of the orders of the Hon'ble High Court passed in the present case."
- B

7. Since the Master plan which forms the foundation of the appellants' challenge has not yet been notified, the effect thereof cannot be considered at this juncture. When the writ petition was filed the old Master Plan was in force and continues to be in force. If, as and when there is any change introduced by any subsequent Master Plan, the effect thereof has to be considered in terms of the Notification of the said Master Plan. That being the position, this appeal deserves dismissal which we direct. There will be no order as to costs.

- D B.B.B. Appeal dismissed.