

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARAYANA  
AT CHANDIGARH

CWP No.18632 of 2005(PIL)

Date of Decision: February 16, 2011

Dharam Chand and another

....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MR. JUSTICE ARVIND KUMAR**

Present: Ms. Munisha Gandhi & Mr. Suvineet Sharma  
Advocates for the petitioners.

Mr. Rupinder Khosla, Addl. Advocate General, & Mr. D.S.  
Brar, Dy. Advocate General, Punjab for respondents No.1  
to 3 & 8.

Mr. Sanjeev Sharma, Senior Advocate with  
Mr. Shekhar Verma, Advocate  
for respondent No.4.

Mr. A.R. Takkar, Advocate  
for respondents No.5 and 7.

Mr. Amit Dhawan, Advocate  
for Mr. Pankaj Bhardwaj, Advocate  
for respondent No.6.

Mr. A.M. Punchhi, Advocate  
for respondent No.9.

Mr. Rajiv Atma Ram, Senior Advocate with  
Mr. Anand Chibbar, Advocate & Mr. Nikhil K. Chopra,  
Advocate  
for respondent No.11.

**HEMANT GUPTA, J.(Oral)**

The present writ petition is under Articles 226/227 of the  
Constitution of India praying for issuance of a writ in the nature of

mandamus, commanding the respondents to desist implementation or sanction of any residential housing colony, which is in violation of norms prescribed under the order dated 06.05.2005 (Annexure P-3). Further prayer is for issuance of an appropriate writ, order or direction for restraining the respondents from allowing construction of residential colonies in areas specifically acquired and demarcated for industrial use.

The present writ petition was filed on 29.11.2005. Many developments have taken place during the pendency of the writ petition such as revision of siting parameters vide circular dated 17.01.2006 (Annexure P-9) and also notification dated 7.8.2007 issued by State Government, in exercise of powers conferred under the Environment (Protection) Act, 1986. During the pendency of the writ petition, the State has also published Master Plan vide notification dated 13.11.2009 in respect of Derabassi, subject matter of writ petition.

The learned counsel for the petitioner has relied upon circular dated 25.02.2005 (Annexure P-8) issued by the Punjab Pollution Control Board that no residential colonies should be allowed to be set up within 500 meters from the boundary of any existing industry; the boundary of the designated industrial area etc; and the industry which is established in any area other than the designated industrial area, but gets its land use pattern changed from competent authority. The distance of 500 meters was modified vide office order dated 06.05.2005 (Annexure P-3) to 100 meters. Subsequently, vide another office order dated 17.01.2006 (Annexure P-9) the siting parameters were completely changed, but such siting parameters have been withdrawn during the pendency of the writ petition. The said fact is noticed by this Court, in its order dated 01.05.2008.

The State Government has issued a notification on 07.08.2007 in

exercise of the powers conferred on it under Sections 5 and 7 of the Environment (Protection) Act, 1986 (for short the Act) and rules framed thereunder, inter alia, contemplating the following:-

“...Now, therefore, in suppression of earlier guidelines framed by the Punjab Pollution Control Board, vide letter No.GPC/Gen-4/419/2006/876-96, dated 17.01.2006 and any other guidelines/notification issued by the Board from time to time and in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 read with Rule 5(1) (vi) of the Environment (Protection) Rules, 1986, the Governor of Punjab is pleased to notify the siting policy/guidelines for establishment of residential colonies, commercial establishments like shopping malls, multiplexes in the State of Punjab as under:

1. The Master Plan is the final legal solution to planned development and hence the Master Plans be prepared in a time bound manner, on priority.
2. All residential colonies, commercial establishments like shopping malls, multiplexes etc. shall maintain a minimum distance of 100 meter from the hazardous (Maximum Accident Hazard) industries notified by Director General Factory Advise Service Labour Institute (DG FALSI). This distance should be measured form the source of pollution/hazard (e.g. storage tank, gas chamber, etc) in the industrial premises to the building line as per zoning plan, of residential colonies/commercial complex. This notification would not have an overriding affect on any act/rules/orders of the Govt. of India/ State Govt. which prescribe a distance of more than 100 meters from such source of hazard and the said prescribed distance shall be maintained. The notifications/orders issued by the State/Punjab Pollution Control Board relating to siting of industries namely stone crushers, rice shellers, saila plants, brick kilns, cement plants, grinding units, hot mix plants and other industries

shall remain operative and unaffected by this policy/ notification. In order to resolve any dispute regarding measurement or other related issues, an Inspection Committee comprising of Chairman, Punjab Pollution Control Board or his nominee, Chief Inspector of Factories, Punjab or his nominee, Chief Town Planner, Punjab or his nominee and a nominee of the Department of Industries is hereby constituted. This Inspection Committee will be headed by the Chairman, Punjab Pollution Control board who will also act as convener of the said committee.”

Simultaneously, the Department of Town and Country Planning, of the State of Punjab initiated steps to prepare Master Plan under Punjab Regional and Town Planning and Development Act, 1995 (for short PUDA Act). After considering the objections from the general public, the State Government has notified the Master Plan of Derabassi in terms of Sections 5 and 7 of the Act on 13.11.2009. The relevant siting parameters in respect of setting up of residential colonies are as follows:

“6.1 Residential:

Note:

(a) to (c) xxx

(d) The prescribed distance for residential development in the industrial mixed land use zone from the existing red industries shall be a minimum of 15 metres in the form of green buffer with thick leafy trees. This 15 metres buffer shall be for both new residential and industrial projects i.e. if residential is coming near the existing red category industry then promoter of residential development shall provide 15 metres green buffer and if new red category industry is coming near existing residential the promoter of new industry shall provide 15 meter green buffer.”

Learned counsel for the petitioner argued that vide notification dated 09.01.1990, the State Government has notified Free Economic Zone (FEZ) in the revenue estate of Derabassi and the Master Plan now finalized includes the area which was earlier part of Free Economic Zone. It is pointed out that industries, including highly polluting industry has been set up in the Free Economic Zone since 1975. It is argued that sufficient distance is required to be kept between the existence industries and the residential colonies, which are being set up by the colonizers, keeping in view the proximity of the area to the developed city of Chandigarh. Since 500 meters was considered to be safe distance at one stage, therefore subsequently, the same cannot be changed arbitrarily by the State Government. Alternatively, it is argued that the State Government having fixed siting parameters for setting up of residential colonies in the proximity of the industrial units by notification dated 07.08.2007, the distance prescribed in the master plan is contrary to the distance prescribed under the Act. The distance prescribed under the Act, has to prevail over the distance prescribed under the PUDA Act. The master plan now finalized has to be in tune with the distance contemplated with the aforesaid notification and in the event of conflict, the master plan will give way to the distance prescribed under the Act. Though, it is argued that the distance of 100 meters has been further increased to 250 meters in terms of minutes dated 25.09.2007, but none of the parties could point out that any notification was published so as to amend the notification dated 07.08.2007.

Mr. A.R. Takkar, Advocate, representing Punjab Pollution Control Board argues that the Master Plan nowhere contradicts the notification dated 07.08.2007 and that while considering the setting up of residential colonies, the siting parameters fixed in the notification dated 07.08.2007 shall be adhered to. On the other hand,

Mr. Rajiv Atma Ram, Senior Advocate, representing respondent No.11 and Mr A.M.Punchi, representing respondent No 9 submitted that permission has been granted to the residential colonies/developers for setting up residential colonies prior to the issuance of notification dated 07.08.2007, therefore, in terms of Para 3 of such notification, the parameters fixed in such notification are not applicable to such developers.

Having heard learned counsel for the parties, we find that the short question which requires to be examined is “Whether the notification issued under Sections 5 and 7 of the Environment (Protection) Act, 1986 and the Rules framed there under will prevail over the Master Plan published by the State Government in terms of Punjab Regional and Town Planning and Development Act, 1995?”.

The Act is a Central Statute. In terms of Section 5 such Act, the Central Government vide notification No.S.O.389(E) dated 14.04.1988 has delegated its powers under Section 5 of the Act to the State of Punjab. In terms of such delegation, Punjab Government has issued the notification dated 13.11.2009 under the Act. Rule 5 of the Environment (Protection) Rules, 1986 empowers the Government to frame Rules in respect of proximity of the human habitation close to the industrial units. The relevant Rule 5 reads as under:

“5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.-(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

xxx                      xxx                      xxx

(vi) Environmentally compatible land use.

xxx                      xxx                      xxx

(ix) Proximity to human settlements.”

Since, the notification dated 07.08.2007 has been issued in terms of the powers conferred on the State Government by a Central Statute, the said notification will have an overriding effect over the notification issued by the State Government under the state Act i.e. PUDA Act. Though, it is not disputed that the Master Plan published under the said Act is not in conflict with the notification issued by the Punjab Government as a delgatee of the Central Government, but even if it is, it is the notification dated 07.08.2007 which will have the preference over the notification published on 13.11.2009. Hon'ble Supreme Court has held that land use plan should be prepared not only having regard to the provisions contained in the Statues and the Rules and Regulations framed thereunder, but also the provisions of other statutes enacted there for and in particular those for protection and preservation of ecology and environment in Sushanta Tagore v. Union of India, (2005) 3 SCC 16, when it said:-

“31. It is imperative that the ecological balance be maintained keeping in view the provisions of both directive principles of State policy read with Article 21 of the Constitution. Furthermore, a State within the meaning of Article 12 of the Constitution must give effect to the provisions of Article 51-A(g) of the Constitution which reads as under:

“51-A. Fundamental duties.—It shall be the duty of every citizen of India—

xx xx xx

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;”

32. It may be true that the appellants herein have their own houses within 3000 acres of land but they have been residing there for a long time. What is being objected to by them is constructions of huge residential and commercial complexes which even according to the High

Court would not only change the topography but also would change the place almost beyond the recognition of the poet.

33. It may be true that the development of a town is the job of the Town Planning Authority but the same should conform to the requirements of law. Development must be sustainable in nature. A land use plan should be prepared not only having regard to the provisions contained in the 1979 Act and the Rules and Regulations framed thereunder but also the provisions of other statutes enacted therefor and in particular those for protection and preservation of ecology and environment.

In S.Jagannath v. Union of India, (1997) 2 SCC 87, the Court held that the notification issued by the Central Government shall have overriding effect over the laws enacted by State Parliaments. It held:

“40. We may refer to constitutional and statutory provisions which mandate the State to protect and improve the environment. Article 48-A of the Constitution of India states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Article 51-A of the Constitution imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The Environment (Protection) Act, 1986 (the Act) was enacted as a result of the decisions taken at the United Nations’ Conference on Human Environment held at Stockholm in June 1972 in which India participated.

48. At this stage we may deal with a question which has incidentally come up for our consideration. Under para 2 of the CRZ Notification, the activities listed thereunder are declared as prohibited activities. Various State Governments have enacted coastal aquaculture legislations regulating the industries set up in the coastal

areas. It was argued before us that certain provisions of the State legislations including that of the State of Tamil Nadu are not in consonance with the CRZ Notification issued by the Government of India under Section 3(3) of the Act. Assuming that be so, we are of the view that the Act being a Central legislation has the overriding effect. The Act (the Environment Protection Act, 1986) has been enacted under Entry 13 of List I Schedule VII of the Constitution of India. The said entry is as under:

“Participation in international conferences, assessment and other bodies and implementing of decisions made thereat.”

The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations' Conference on the Human Environment held at Stockholm in June 1972. Parliament has enacted the Act under Entry 13 of List I Schedule VII read with Article 253 of the Constitution of India. The CRZ Notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States.”

We also do not find any merit in the argument raised by the learned counsel for the petitioners that the distance fixed either in the notification dated 7.8.2007 or in the notification dated 13.9.2009 is arbitrary, unreasonable and cannot be sustained in view of the office order issued by the pollution control Board, fixing 500 meters as the distance between residential settlements and the industry. Firstly, the office order fixing the distance as 500 meters is by the Pollution Control Board. It is not shown that such office order is in exercise of powers conferred by any statute. Still further, the question whether the distance should be 500 meters or 100 meters, falls within the jurisdiction of experts to be arrived at on the basis of scientific data and practical studies. This court in exercise of powers of judicial review, is not possessed of any expertise to say that particular

distance alone is better or is required to be maintained. Thus the distance fixed by the State Government as a delgatee of the Central Government cannot be interfered with in exercise of writ jurisdiction of this court.

Learned counsel for the petitioners have not challenged the grant of consent to the Colonizer-private respondents. Since the grant of consent is not subject matter of challenge in the present writ petition, therefore, no opinion is expressed in respect of validity of the consent granted to the private-respondents.

The present writ petition stands disposed in terms of the observation made above.

(HEMANT GUPTA)

JUDGE

16.02.2011

(ARVIND KUMAR)

vcgarg/ds

JUDGE