

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.W.P. No. 12467 of 2008
Date of Decision: November 28, 2011**

Parvati Memorial Middle School, Kutubpur, Rewari.

...Petitioner

Versus

State of Haryana and others.

...Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL,
HON'BLE MR. JUSTICE PARAMJEET SINGH.**

Present: Mr. S.S. Khurana, Advocate,
for the petitioner.

Mr. Ajay Kumar Gupta, Addl. A.G., Haryana,
for the respondents.

Paramjeet Singh, J.

Present writ petition has been filed by the petitioner seeking mandamus directing respondents No. 1 and 2 to permit the petitioner to construct the building of the school and pay damages for illegally, discriminatorily and arbitrarily demolishing the building of the school and further prayed that the petitioner be given benefit of one time relaxation of CLU/NOC as is permissible vide letter dated 27.03.2008 (Annexure P/4).

The brief facts of the present case are that the petitioner society is running a private middle school, under the name and style of Prabhu Dayal Memorial Shiksha Samiti, Qutabpur, Rewari. The District Education Officer has granted permission to start school and classes from 1st to 8th Standards as

per Rule 29(3) read with rule 3 of the Haryana School Education Rules, 2003. The school has been recognized. The petitioner had also applied for permanent recognition of the school upto the Middle Standard vide letter dated 30.10.2007 (Annexure P/3). The list of 39 unrecognized schools of District Rewari has been forwarded by the Commissioner-cum-Director General of School Education, Haryana for one time relaxation in CLU/NOC to the Town and Country Planning Department. The name of the petitioner appears in the said list at Serial No. 13.

Respondent Nos. 1 and 2 had filed written statement through District Town Planner, Rewari. They have raised preliminary objection that the area in question falls in the Controlled Area under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as 'the Act of 1963'). It has also been mentioned that the petitioner had made unauthorized construction, without prior approval of the Director Town & Country Planning, at the site in question at Rewari-Mohindergarh Road near 1.5 km. stone. The Field Officer after inspecting the site on 31.12.2007 had reported about the unauthorized construction being in contravention of Sections 6 and 7(1) of the Act of 1963. Accordingly, show cause notice dated 04.01.2008 was issued to the actual owner of the land i.e. Smt. Guru Piyari wife of Sh. Bhagwan Singh Sharma, requiring her to stop the construction and appear before the District Town Planner, Rewari. The petitioner neither appeared nor filed written reply to the notice. Hence, restoration order was passed by the District Town Planner vide his memo No. 553 dated 15.01.2008 requiring the petitioner

to restore the said land to its original state or bring it in conformity with the provisions of the Act of 1963. The petitioner did not comply with the order and the said structure which was upto the height of 4 to 5 feet was demolished as per the provisions of the Act.

We have heard learned counsel for the parties and have perused the record.

The first argument of the learned counsel for the petitioner is that the schools are exempted from the purview of the Act of 1963. There is no evidence on record to that effect. When the learned counsel for the petitioner was asked whether this notification has come after dated 21.12.2007, he stated that notification is subsequent to the demolition and issuance of notice for restoring the land to its original state. If that is so, the petitioner can approach the authorities for permission to construct and can claim exemption, if permissible under law.

Further, learned counsel for the petitioner argued that the area falls in the municipal limit and is exempted from the Act of 1963. If that is so, the petitioner can approach the Municipal Authorities for sanction of the site plan and if any objection is raised, he has alternative remedy of approaching the authorities under the Act. Admittedly, the petitioner has failed to show any sanction either from the Municipal Council or from the District Town Planner, Rewari regarding the construction over the land in dispute. So, we are not inclined to issue any direction in the nature of mandamus directing the respondents to issue CLU/NOC for construction of the school. So, prayer of the petitioner is declined.

The learned counsel for the petitioner argued that part of his school has been demolished illegally and without authority. The petitioner is entitled to damages for the illegal and arbitrary demolition of the school. The learned State Counsel has controverted this fact and has stated that the school was demolished in accordance with the provisions of the Act of 1963 as the area of the school falls in the controlled area as notified by the State Government. The construction of the school was in contravention of Sections 6 and 7(1) of the Act of 1963. Demand notice was given to the owner of the land i.e. Smt. Guru Piyari wife of Sh. Bhagwan Singh Sharma and was directed to further stop construction. She was directed to appear on 14.01.2008 before the District Town Planner, Rewari, to explain her position. Neither she appeared nor filed any written reply to the said notice of restoration. So, restoration order was passed. Thereafter, unauthorized construction was demolished on 16.04.2008 as the petitioner has failed to comply with the order. The structure of the school has been demolished as per the provisions of the Act of 1963. We do not want to express any opinion on merit in this regard. The petitioner may approach the Civil Court or may avail any other remedy available to him.

In view of the discussions above, we are of the view that if, by any notification exempting the schools from CLU/NOC has been granted by the State Government, he may approach the concerned authorities. If the area falls in the limits of Municipal Council, then he may approach the Municipal Council.

Present petition is dismissed in the aforesaid terms and liberty is granted to the petitioner to do so, if so advised.

(PARAMJEET SINGH)
JUDGE

NOVEMBER 28, 2011
vkd

(SATISH KUMAR MITTA)
JUDGE