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**In the High Court of Punjab and Haryana at Chandigarh****CWP No. 16181 of 2017 (O&M)****Reserved on: 17.2.2025****Date of Decision: 01.4.2025**

House Owners Welfare Association (Regd.)

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Sanjeev Sharma, Senior Advocate assisted by
Mr. Vishal Sodhi, Advocate and
Mr. B.S.Mittal, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana,
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana
for the respondents-State.

Mr. Deepak Balyan, Advocate and
Mr. Vicky Chauhan, Advocate
for respondents No. 2 to 4-HSVP.

Mr. Jasbir Singh Ahlawat, Advocate
for respondents No. 5 to 8.

Ms. Bhargavi, Advocate for
Mr. A.P.Bhandari, Advocate
for respondent No. 9.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks the quashing of the Part Demarcation Plan/Sectoral Development Plan dated 11.12.2003 (Annexure P-10) approved by the respondents concerned, thus to carve out clinic sites in Sector-17, Panchkula, and, also seeks the quashing

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of the advertisement dated 12.7.2017 (Annexure P-12) qua the e-auction of the clinic sites No. 4 and 5 in Sector-17, Panchkula.

Brief facts of the case

2. It is averred in the instant petition, that the petitioner's association is a registered society and is working for the common and social welfare of the local residents. The respondents concerned, had issued an advertisement dated 12.7.2017 for the e-auction of the residential/institutional properties on freehold basis in various sectors of Panchkula Urban Estates on "as is where is basis". The said advertisement includes the e-auction of the plots/sites under the institutional category of Clinic Sites No. 4 and 5, measuring 237 sq. mts. each, falling in Sector-17, Panchkula. It is further averred, that the petitioner's association members were allotted the residential plots respectively measuring 6 marlas, 8 marlas and 10 marlas in Sector-17, Panchkula extension, in the year 2004 hence in the conducted draw of lots, thus on a freehold basis. The members of the petitioner-association raised the constructions thereons as per the planning and design prescribed by the respondent-HUDA. At the time of purchasing of the plots, the petitioner-association was never informed that the area where their residential plots have been carved out also includes the provision qua institutional sites i.e. clinic sites in front of their houses or in the same street. It is further averred in the instant petition, that as per the layout plan, the houses of the members of the petitioner association i.e. H. No. 872 to 888 in the category of 8 marla houses, fall right in front of the proposed clinic sites. Adjacent to the proposed clinic sites, there is a lane of 10 marla houses bearing House Nos. 871 to 862. Moreover, there is drive-way width connecting the houses with the street road, which is measuring 2 meter on

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one side and 3 meter on the other side. The road/street has been categorized as a 'C' road by the respondent authorities and heavy vehicles i.e. school buses are not allowed to ply on this road. It is also averred that the major drawback of the said street, is that, another end of the street i.e. falling at point of H. Nos. 888 and 862, is completely closed and, thus there is an entry at one point of the street but there is no exit of road on another end. It is further averred that there are total 5 number of clinic sites, which have been carved out in the layout plan but under the present auction process, the respondents concerned have floated two sites, and, the rest of the three clinic sites have been withheld by the respondents concerned. Furthermore, it is averred that all the residents are already facing huge difficulties for theirs properly accessing to their homes located at the end of the street, which is permanently closed, and, further the 5 mtr. width of street road is not serving the purpose.

3. It is further averred in the instant petition, that the provisions of the National Building Code, 2005 provide, that no building which attracts a large crowd shall be carved out or planned in the area less than minimum 12 meter width of means of access along with 200 mtr length of means of access. When the petitioner association came to know about the earmarking of the clinic sites in front of their houses, they made representation dated 27.6.2011 to the Administrator, HUDA, Panchkula, however, no action was taken on the said representation. Subsequently, one member of the petitioner association sought information under the RTI Act from the respondents concerned, about the status of the clinical sites, and, also about any extra provision being made for the parking in the proposed clinic sites. In response to the said, the respondents concerned, replied that no separate

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provision for the parking has been made for the clinic sites in front of H. Nos. 872 to 877. The petitioner association also made several representations to the respondents concerned, however, no action has been taken on the same.

Submissions on behalf of the learned senior counsel for the petitioner

4. The learned senior counsel for the petitioner submits-

(i) The learned senior counsel for the petitioner submits, that the sites concerned, should remain residential as the clinic sites will change the nature of the site to an institutional site, which rather allows the raisings of constructions upto an unlimited height and also permits the raisings of twin basement, thus to the detriment of the present petitioner.

(ii) That the width of the road i.e. 5 mtr does not permit any more traffic movement, especially because the road is a dead end and does not allow free flow of traffic. Furthermore, the same will invite large crowds which would impede the residential amenities of the residents.

(iii) That since there are already three nursing home sites in the vicinity, therefore, no more sites for clinics are required even in public interest.

(iv) That respondents Nos. 5 to 9 (allottees) have already consented for converting the clinic sites to the residential sites. Moreover, the said allottees will not suffer any prejudice, as the building plans have neither been submitted, nor sanctioned, besides zoning plan has not been prepared.

(v) That the National Building Code, 2005 has prevalence over the Haryana Shahri Vikas Pradhikaran Act, 1977 (for short '*the HSVP Act*') which provides that the width of means of access for medical and



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health/institutional building should be 12 meters.

(vi) That as per Section 13 of the HSVP Act, prior sanction and approval of the development/sectoral plan was required by the HSVP before implementing it, which is admittedly not there rather in the impugned sectoral plan. Moreover, the impugned plan has been approved by the Chief Administrator, and, not by the State Government.

(v) That despite the order passed by this Court on 22.7.2022, the respondent-HSVP has failed to prove that the sectoral plan has been approved/sanctioned by the State Government.

5. Therefore, it is prayed that the impugned sectoral development plan, and, the impugned advertisement be quashed and set aside.

**Submissions on behalf of the learned counsels for respondents No. 2 to 4-
HUDA (HSVP)**

6. The learned counsel for respondents No. 2 to 4 submits-

(i) That the layout plan of Sector-17, Panchkula, was approved by Chief Administrator, HUDA, Panchkula, wherein government dispensary, five clinic sites and three nursing homes were planned in a cluster, thus to provide better health facilities not only to the residents of Sector-17, Panchkula but also to the nearby sectors.

(ii) That the representations submitted by the petitioner from time to time were duly considered, and, it was intimated to the petitioner that its request was not feasible as the land in question has been planned for clinic/nursing home sites.

(iii) That the clinic sites shall be used for providing technical consultancy by the doctors without nursing home facilities.



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(iv) That the sectoral/zonal plan was prepared as per the relevant provisions of the Act and Rules, and, that planning of any sector is done prior to the allotment of plots. Therefore, the petitioner cannot contend given their now residing in the said sector, qua the sectoral/zonal plan becoming changed as per their convenience.

Submissions on behalf of the learned counsels for respondents No. 5 to 9

7. The learned counsel for respondents Nos. 5 to 8 and the learned counsel for respondent No. 9 submit-

(i) That as per sectoral plan (Annexure P-10), the area was marked in the year 1972 and the entire layout plan of Sector-17 was passed by the appropriate authorities in the year 2003. Furthermore, the members of the petitioner association had purchased the residential plots in the year 2004 or subsequently, and, that at that time the clinic sites were in their knowledge, as the said sites were already shown in the plan in 2003 itself.

(ii) That the petitioner association has raised frivolous objections in the instant petition and that the private respondents have been made parties only to harass them. Significantly, the instant petition is causing delay in the execution of the plan vis-a-vis the clinic sites, which have been bona fide purchased by the private respondents in the e-auction by incurring huge expenses.

8. Therefore, it is prayed that the instant petition is not maintainable and is liable to be dismissed.

Inferences of this Court

9. For the reasons, to be assigned hereinafter, no purported prejudice becomes encumbered upon the petitioner association, vis-a-vis its incorporeal rights, vis-a-vis the subject sites, as no cogent material in respect

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thereof becomes placed on record.

10. Moreover, the making of the impugned demarcation plan/sectoral development plan, obviously appears to be made with an insightful vision, but for promoting the health of the citizens of the locality concerned. The reason for so stating becomes embodied in the factum, that the instant clinic sites, thus visibly augment the health concerns of the elderly citizens, as also of the ailing children. Consequently therebys naturally the right to life, as enunciated in Article 21 of the Constitution of India, but also would become well furthered. As such, the impugned part demarcation plan/sectoral development plan, is in alignment with Article 21 of the Constitution of India, and, does not require the same being quashed and set aside.

11. Moreover, though it is averred that owing to heavy congestion of traffic in the locale concerned, therebys the impugned layout plan would overload the existing infrastructure. However, the said grouse was required to be initially raised at the stage when the members of the petitioner society had purchased their residential plots in the year 2004. Therefore, the effect of delay in the raising of the instant motion against the drawing of the layout plan in the year 2003, besides with the members of the petitioner association purchasing their residential plots in the year 2004, is not only that, the said delay leading to an inference that therebys the petitioner association not only acquiescing to the layout plan, but also brings home an inference, that as such, the petitioner association becoming estopped to challenge the said layout plan.

12. Additionally with the petitioner being aware of the apposite earmarkings in the said layout plan, and, also with its being enlightened

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about the relevant purposes of the subject sites, yet its omitting to promptly make a protest thereagainst, rather its permitting the respondents concerned, to acquire the subject sites in an e-auction. Resultantly, the instant belatedly raised motion appears to become clothed with an overload of malafides, thus to somehow deprive the respondents concerned, to subject the disputed sites rather for the purpose for which they became acquired by them. Consequently, they are also estopped to contend, that owing to the said clinic sites, thereby there would be an overload of congestion, on the sectoral road concerned.

13. The further reason for stating so becomes garnered from the factum, that since in the reply furnished by respondents No. 2 to 4, it is well contended, that a twin level basement can be constructed for the parking purposes. Therefore, the apprehension of the petitioner qua over congestion, if any, thus happening on the sectoral road concerned, but appears to become obviated, through the proposal of a twin level basement for parking, thus being created on the subject sites. Consequently, since the said grievance of the petitioner has already been adequately redressed by the HSVP, therefore, the said purported prejudice has no bearing at all upon the impugned layout plan.

14. Moreover, since the right to practice business and occupation is the fundamental right, to which the respondents concerned, are entitled, as they became allotted the clinic sites concerned. Therefore, the said fundamental right rather cannot be curtailed through the instant writ petition, unless accruals of demonstrable/palpable prejudice qua the incorporeal rights of the present petitioner, rather became cogently established. Since, as stated (*supra*), there is no demonstrable accrual of prejudice to the

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incorporeal rights of the present petitioner over the subject lands. Consequently, if yet the fundamental right to practice business and profession as endowed, vis-a-vis the respondents concerned, thus is fettered, thereby gross injustice would be wreaked upon the respondents concerned.

15. Moreover reiteratedly also, since the clinic sites would provide consultancy facilities to elderly people, senior citizens, or disabled people, whereupon on completion of constructions over the clinic sites, there would be no residential care givings, thereby also there may not be an overload of congestion or traffic on the roads concerned. In addition, when the consultancy services to be provided at the clinic sites, may become availed by the elderly people, senior citizens or disabled people, especially when in absence thereof, it would lead them to travel to long distances for receiving OPD consultancies. As such, the said provisionings inside the colony appears to reduce the necessity of patients travelling to long distances, thus to health centres concerned, rather to receive consultancy care giving services. If the said is the holistic purpose in the in-sector provisionings of consultancy services or consultancy care givings to the patients concerned, thereby the same also concomitantly reduces the trauma encumbered upon the patients concerned, to travel to long distances to receive consultancy services, at the already overloaded hospitals/medical centres concerned. Therefore, since thereby the fundamental right to health and to receive prompt medical care, thus becomes well attended to, as such, this Court finds no reason to omit to make deference vis-a-vis the impugned layout plan.

16. The argument raised before this Court, by the learned senior counsel for the petitioner, that a violation was made to the National Building

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Code, 2005, to the extent, that in case the construction activities are permitted to be raised over the subject clinic sites, thereby there would be an endowment of a right to the site owners concerned, to raise thereovers a building of a height more than the height prescribed for residential areas.

17. However, the said argument, as laid upon the National Building Code, 2005 is not well founded thereons, as neither the said code has been placed on record, nor it has been disclosed that the prescriptions therein, but are inconsistent with the provisions, as carried in the HSVP Act, nor is there any material suggestive, that the National Building Code, 2005 rather has an overriding effect over the HSVP Act. Since the HSVP is the creation of a statute whereunders a statutory right is bestowed upon the Chief Administrator concerned, to prepare and approve the layout plan, whereupons the impugned sectoral plan became granted approval by the Chief Administrator concerned, thus in the year 2003, resulting in the relevant purchases being made by all concerned, including the petitioner association. Therefore, reiteratedly at this belated stage, when no material has been placed on record, that the approval granted to the impugned sectoral plan by the Chief Administrator, rather is not well founded upon the apposite statutory empowerment becoming vested in the Chief Administrator, nor also when there is any material on record, that the various zones earmarked in the sectoral plan, rather for the relevant user thereof, thus brings conflict with any other law for the time being in force. Resultantly, and, also when for all the supra stated reasons, there is an open acquiescence by the petitioner association, to the validity of raising of the clinic institutions over the present disputed sites, thereby this Court finds no merit in the instant petition, and, is constrained to dismiss it.



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**Final order**

18. In aftermath, after finding no merit in the instant petition, the same is hereby dismissed.

19. The allotment letters are stated to be already issued to the allottees concerned. Therefore, the deed of conveyance, if not executed, be ensured to be forthwith lawfully executed between all concerned. Moreover, all the requisite entries, if required, be made in the relevant registers/records maintained by the HSVP.

20. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 01, 2025

Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No