

314

राजस्थान सरकार
नगरीय विकास विभाग

तत्काल
जरिये मेल

4.9.2017

1
11

क्रमांक: प.12(103)नविवि/2004 पार्ट-IV

जयपुर, दिनांक :

1. सचिव, जयपुर विकास प्राधिकरण, जयपुर।
2. सचिव, जोधपुर विकास प्राधिकरण, जोधपुर।
3. सचिव, अजमेर विकास प्राधिकरण, अजमेर।
4. सचिव, राजस्थान आवासन मण्डल, जयपुर।
5. मुख्य नगर नियोजक, राजस्थान, जयपुर।
6. मुख्य नगर नियोजक (एनसीआर), राजस्थान, जयपुर।
7. सचिव, नगर विकास न्यास - बीकानेर/भीलवाड़ा/उदयपुर/अलवर/
भरतपुर/कोटा/श्रीगंगानगर/जैसलमेर/भिवाड़ी/आबू (सिराही)/पाली/
सीकर/सवाईमाधोपुर/बाड़मेर/चित्तौड़गढ़
8. अध्यक्ष एवं प्रबन्ध निदेशक, जयपुर मेट्रो रेल कॉर्पोरेशन, राजस्थान, जयपुर।

विषय:-माननीय उच्च न्यायालय, जोधपुर डी. बी. सिविल रिट याचिका (पी.आई.एल.)
संख्या 1554/2004 गुलाब कोठारी बनाम राजस्थान सरकार व अन्य में पारित
निर्णय दिनांक 12.01.2017 एवं 08.08.2017 की पालना सुनिश्चित करने के
सम्बन्ध में।

महोदय,

उपरोक्त विषयान्तर्गत लेख है कि रिट याचिका डी. बी. सिविल रिट याचिका (पी.आई.एल.)
संख्या 1554/2004 गुलाब कोठारी बनाम राज्य सरकार व अन्य में दिनांक 08.08.2017 को पारित
आदेश के पैस संख्या 14-22 निम्नानुसार है :-

"14. We have considered the rival submissions and perused the compliance
reports and other material on record.

15. In the instant cases, vide order dated 12.1.17, this court categorically held
that the Master Plan once prepared in accordance with the procedure laid down, the
sanctity thereof has to be maintained and all improvement schemes of the various zones
and the development work to be undertaken by Local Authorities or private entrepreneurs
or anybody else during the operative period of the Master Plan must conform to the land
use as specified under the Master Development Plan. The court held that the power to modify
the Master Development Plan conferred upon the authority with the prior approval of the
State Government in no manner empowers it to effect the modification of the plan in
deviation of the original legislative intent underlying the enactment i.e. the planned and
orderly development to subserve the larger public interest and not just to serve the interest
of an individual. It was further held categorically that the power conferred upon the
development authority under Section 33A of Jaipur Development Authority Act, 1982 or
under subsection (2) and (3) of Section 73B of UIT Act, to compound unauthorised
development must conform to the land use plan under Master Development Plan and
therefore, unless and until unauthorised development sought to be compounded falls within
the parameters of the modification of the Plan laid down under the relevant statute and such

(397)

unauthorized development in exercise of the power conferred under the said provisions is not permissible to be compounded. Accordingly, the specific directions were issued by the court vide order dated 12.1.17 to the concerned authorities to proceed with the preparation of the Zonal Development Plan for each zone of the city clearly specifying the location and extent of the land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing recreation parks, industry, business, markets, schools, public and private open spaces etc. It was further directed that the sanctity of the Master Development Plan and Zonal Development Plan finally sanctioned shall be maintained and all development schemes of various zones and development works to be undertaken by the Local Authorities or private entrepreneurs or anybody else during the operative period thereof shall conform to the land uses as specified under the Master Development Plan or Zonal Development Plan, as the case may be. In this view of the matter, unless the Zonal Development Plan/Sector Plan are prepared as mandated under the relevant statute and the Master Development Plan, the question of regularisation of unauthorised possession/construction cannot at all be permitted. As noticed hereinabove, the Zonal Development Plan to be prepared has to make provisions for different land uses and thus, the regularisation sought for cannot be permitted unless the same conforms to the land use plan under the Zonal Development Plan/Sector Plan. In this view of the matter, the action of the respondents in regularising the unauthorised possession/construction without preparation of the Zonal Development Plan/Sector Plan or ascertaining as to whether the regularisation sought conforms to the land use plan as prescribed under the Zonal Development Plan, is apparently in violation of the law laid down by this court after due consideration of the various provisions of the relevant statute and the directions issued vide order dated 12.1.17. In the considered opinion of this court, the regularisation of unauthorised possession/constructions on 'as is where is' in unplanned manner will lead to chaos and the very object of the Master Development Plan to ensure development of the city or town in the planned manner and to arrest the undesirable and unplanned growth shall stand frustrated and thus, the action of the respondents in permitting regularisation of unauthorised occupation/constructions on 'as is where is' basis without preparation of the Zonal Development Plan/Sector Plan as mandated by the relevant statute or without ascertaining that the unauthorised occupation/construction sought to be regularised conforms to the land use plan indicated in Zonal Development Plan/Sector Plan cannot be countenanced by this court.

16. Further, it is specifically directed by this Court that once the Master Development Plan is brought into being, vigilant implementation thereof shall be the rule and the deviation therefrom an exception and therefore, power vested with the authority or the State Government for modification thereof during its operative period shall be exercised in

vide direction no.(xiv) contained in order dated 12.1.17, it is specifically directed that the residential colony developed as per the lay out plan approved where the plan does not provide mix user, no residential land in such colonies shall be permitted to be used for commercial purpose and thus, the question of Development Authorities and other Local Authorities permitting the mix user of the land in existing colony where mix user is not already provided, adversely affecting the rights of inhabitants settled therein cannot be permitted. For the parity of reasons, the user of residential land for Clinic Dispensary/Clinical Laboratory/Day Care Center with beds in such residential colony by reducing the width of the road to 12 mtrs. For a plot of 250 sq. mtr. also cannot be countenanced by this Court. Similarly, the action of the JDA in amending the para no.2.4.2 of Mixed Use Regulations reducing the width of the road required for permitting mix user from 30 ft. to 60 ft. and extending the area covered for mixed user to the extent of 3 times the width of the road by just recording its ipse dixit without considering the norms laid down in this regard also cannot be approved by this Court. Similarly, the modification sought to be made in Volume-IV for different permitted use are not supported by reasons and therefore, it is difficult to discern that the decisions have been taken in the larger public interest for planned development. The material on record does not reflect that the decision to reduce the requisite width of the road for different activities in the plan area has been taken so as to subserve the larger public interest and planned development of the city. In this view of the matter, before pronouncing on decision taken by the JDA and the State Government to modify the plan/ regulations in respect of various activities including the residential, commercial, industrial public and semi public etc. and the Notification dated 18.5.17 issued pursuant thereto, this Court considers it appropriate to peruse the original record of the proceedings taken by the JDA and the State Government in this regard.

17. Coming to the removal of the encroachments over the public ways and footpaths as directed by this Court vide order dated 12.1.17, it is noticed that though the action has been taken by the local authorities for removal of encroachment, but then, keeping in view, wide spread encroachment in the various cities, serious efforts are required to be made by the local authorities in planned manner by preparing an exhaustive action plan. It would be appropriate that a public notice is issued by the concerned local authority calling upon the encroachers to remove the encroachment made on public ways and footpaths voluntarily within the stipulated period and thereafter to take the appropriate action to remove the identified encroachments as per the action plan.

18. Coming to the question raised by the Amicus Curiae regarding auction of the land forming part of the way for commercial use by the Municipal Corporation, Jodhpur, it needs to be emphasized that this Court while passing the order dated 12.1.17 has categorically laid down that every citizen has right to passover the public way and for its maintenance and custody thereof with the State and the local authorities. (391)

local authorities are yoked under inhibition not to put any structure on footpath and public way which is not necessary for regulating and maintaining the user thereof. Every inch of the land forming part of footpaths and public ways has to be preserved and maintained meticulously. Once a colony is developed and the building lines are fixed, the land in between the building lines of two opposite sides forming part of public way and footpath, cannot be permitted to be used for commercial or any other purpose inasmuch as, diversion of use thereof shall disturb the building line already fixed and thus bound to adversely affect the residents of the area. Neither the building line already fixed can be permitted to be disturbed nor the local authority or anybody else can be permitted to raise construction obstructing the front of the plots owned by the residents of the colony. It is not disputed before this Court that Paoth 'C' Road as also Nehru Park Road is directly connected with the National Highways and thus, the action of the respondents in reducing the width of the public way allegedly on the ground of need of the local residents which is not reflected from the material on record in any manner, taking the same to be stray plots, cannot be approved by this Court. The tendency of the local authorities in selling such land forming part of public way and footpaths, deserves to be deprecated.

19. This takes us to consider the issue raised regarding diversion of the land use in the area which is shown in the various Master Development Plans as Green Zone/Green Area marked as G-2 abutting G-1, this court vide direction No. (vi) contained in order dated 12.1.17 has already issued directions that the Green Area marked as G-2 abutting G-1 developed as buffer to promote a continuum to G-1, shall not be permitted to be used for activities other than those specified, unless and until the State Government after objective consideration arrive at a categorical conclusion that public interest involved in diversion of the land for other use outweighs the object sought to be achieved in permitting its restrictive use as specified. The court specifically directed that change of land use of Green Zone/Green Area (G-2) shall be an exception to serve the larger public interest, to achieve the basic object thereof i.e. planned development of the concerned region, city or town not to subserve the interest of an individual. Further, vide direction no.(x), the court directed that the State Government while permitting the change of land use in peripheral control belt or the Green Zone (G-2)/Green Area (G-2) shall maintain complete transparency, the application made for the change of land use as also the order passed thereon shall be uploaded on the website of the Department of Urban Development & Housing so also on the website of concerned local authority. That apart, specific direction is issued that the order permitting the change of the land use shall be a speaking order reflecting the fulfillment of the para meters laid down as aforesaid. A perusal of the proceedings of the JDA and the order issued pursuant thereto does not reveal that while permitting Educational/Medical Institutions/Marriage Gardens and Eco Friendly houses in Ecological Area G-2, the exception

taken. The speaking order if any, passed justifying the change of the land use on the parameter that public interest involved in diversion of the land for other use outweighs the object sought to be achieved in permitting its restrictive use as specified, is also not placed on record. Thus, the decision taken by the JDA permitting the diversion of the land use in Ecological Zone (G-2) without due application of mind ignoring unequivocal directions issued by this court cannot be approved.

20. Regarding pasture land, no details have been furnished by the State as directed by this court vide direction No.(xxviii) till this date. It is to be noticed that vide direction No.(xxix), this court directed the State Government to take appropriate steps to check and remove unauthorised occupation over the pasture land by unscrupulous person in various villages of the State forthwith. Strangely enough, instead of complying with the directions issued by this court to remove the unauthorised occupation over the pasture land, the Additional Chief Secretary, Rural Development & Panchayati Raj, Government of Rajasthan, vide communication dated 19.4.17 addressed to the District Collector of all the districts proceeded to issue directions that where the abadi has been settled inter alia on pasture land and the same cannot be removed, the proposal may be mooted for transfer of such land to the concerned Panchayat and for this purpose if necessary, diversion/alternate land exchange proposal may be sent to the competent authority. The act of the State in not furnishing the details as directed and non removal of unauthorised occupation over the pasture land in defiance of the directions issued by this court is not appreciated. The State is expected to take immediate steps to comply with the directions issued by this court.

21. Vide directions No. (xxvi), this court directed the Development Authorities and State Authorities to take appropriate steps to ensure that industrial area is located away from residential area and shall provide for green area between the industrial area and residential area to buffer the residential area, but instead of complying with the directions issued, the decision is proposed to be taken to permit construction for residential purposes on the plots occupied by sick industrial units within the industrial area, which apparently violative of the directions issued by this Court. Further, this court vide direction No. (xxvii) directed the State to constitute a High Power Committee consisting of inter alia the experts of the field to frame the relocation scheme with regard to shifting of hazardous industries/industrial areas located in close vicinity of residential colonies, admittedly, no effective steps in this regard have been taken by the State.

22. No compliance report has been submitted by the respondent with regard to the directions issued by this court vide directions No. (xvii), (xviii), (xxli), (xxlii) and (xxxi) either."

"23. Thus, in view of the discussion above, in continuation of the directions issued vide order dated 12.1.17, we consider it appropriate to issue following further directions:

- (i) The State, Development Authorities and other Local Authorities shall take immediate steps to prepare the Zonal Development Plan/Sector Plan as mandated by the relevant statute and the Master Development Plan of various cities. In the meanwhile and until further orders, no regularisation of unauthorised possession/constructions shall be permitted unless the same conforms to the land use plan and other norms laid down under the Master Development Plan and Zonal Development Plan/Sector Plan of the concerned city.
- (ii) The implementation of the circulars dated 8.2.17 and 27.4.17 issued by the Urban Development & Housing Department, Government of Rajasthan and notification dated 18.5.17 issued by the Jaipur Development Authority, Jaipur shall remain stayed.
- (iii) The Jaipur Development Authority, Jaipur is directed to produce the original record containing the decision taken to modify the Master Development Plan of Jaipur as notified vide notification dated 18.5.17 for perusal of this court on the next date of hearing.
- (iv) The Development Authorities and the Local Authorities of the State are restrained from reducing the available width of the road including footpaths notwithstanding that the actual width of the road in the existing colonies at the site is more than specified under the Master Development Plan of the concerned city. No land forming part of the road/footpath existing at the site shall be auctioned or permitted to be used for commercial or any other purpose. The interim order dated 28.7.17 passed by this court in respect of the shops sought to be constructed on Nehru Park Road connecting Residency Road and Paota 'C' Road, Opposite All India Radio Station, Jodhpur, shall continue till further orders.
- (v) The respondents would continue with the removal of the encroachments over the public ways and footpaths with necessary expedition keeping in view observations made in para no.17 of this order.
- (vi) The District Collector of all the districts of the State of Rajasthan are directed to furnish the complete details regarding pasture land as directed by this court vide direction No. (xxviii) as contained in order dated 12.1.17 to the Principal Secretary/Secretary, Department of Revenue, within a period of one month from the date of this order and the Principal Secretary/Secretary, Department of Revenue, Government of Rajasthan in

before the next date of hearing. It is reiterated that unauthorised occupation of pasture land shall be removed forthwith and no unauthorised occupation over the pasture land shall be permitted to be regularised.

(Vii) The original record relating to the proceedings taken for permitting the change of user of the land measuring 1222.93 hectares situated between Kho Nagoria and Goner Road, Jaipur as directed by this court vide direction No.(xxx) contained in order dated 12.1.17 shall also be kept ready for perusal of the court on the next date of hearing.

(Viii) The State Government, the Development Authorities and the Local Authorities shall submit further compliance report before this court in respect of the various directions issued noticed hereinabove before the next date of hearing. We believe that the respondents are well aware about the binding force tangibly embodied in the order passed by this court and shall make sincere efforts to comply with the same in letter and spirit. We make it clear that any further defiance of the directions issued by this court, shall be viewed seriously and dealt with sternly."

अतः उपरोक्त आदेश की पालना सुनिश्चित करने हेतु निम्नानुसार कार्यवाही किया जाना उपयुक्त होगा :-

1. समस्त नगरीय निकाय अविश्व डेडिकेटेड कन्सलटेन्स के माध्यम से सर्वे कर जोनल प्लान व सेक्टर प्लान 6 माह में तैयार करें। इसके साथ ही अतिक्रमण/अवैध निर्माण का नियमन तब तक नहीं किया जावे, जब तक कि उक्त अतिक्रमण/निर्माण मास्टर प्लान में दर्शाये गये भू-उपयोग मास्टर प्लान/जोनल प्लान/सेक्टर प्लान के अनुरूप नहीं हो।
2. समस्त नगरीय निकाय विभागीय आदेश दिनांक 08.02.2017, 27.04.2017 तथा जयपुर विकास प्राधिकरण की अधिसूचना दिनांक 18.05.2017 की क्रियान्वति स्थगित रखे।
3. जयपुर विकास प्राधिकरण द्वारा आगामी तारीख पेशी पर अधिसूचना दिनांक 18.05.2017 के द्वारा मास्टर प्लान में किये गये संशोधन से संबंधित समस्त मूल अभिलेख माननीय उच्च न्यायालय के समक्ष प्रस्तुत किया जावें।
4. समस्त नगरीय निकायों द्वारा विद्यमान सड़कों की चौड़ाई/फुटपाथ की चौड़ाई मास्टर डवलपमेंट प्लान में दर्शाई गई चौड़ाई से अधिक होने की स्थिति में भी इनकी चौड़ाई कम नहीं की जावें। सड़क/फुटपाथ की भूमि को नीलाम नहीं किया जावे अथवा व्यावसायिक व अन्य उपयोग हेतु अनुमति प्रदान नहीं की जावें। जोधपुर नगर निगम क्षेत्र में स्थित नेहरू पार्क, सड़क, पावटा, सी-रोड, के संबंध में माननीय उच्च न्यायालय द्वारा पारित अन्तरिम आदेश दिनांक 08.08.2017 की पालना सुनिश्चित की जावें।
5. समस्त नगरीय निकाय आम धरते तथा फुटपाथ पर किये गये अतिक्रमणों को हटाने के

अनुपालना में विस्तृत एक्शन प्लान तैयार करें। उक्त एक्शन प्लान के अनुसम अतिक्रमण हटाने के संबंध में आम सूचना नगरीय निकायों द्वारा जारी की जाकर अतिक्रमण एक माह में स्वेच्छा से हटाने के लिये समय दिया जावे। तत्पश्चात् भी अतिक्रमण द्वारा अतिक्रमण नहीं हटाया जाता है, तो ऐसे अतिक्रमणों को नगरीय निकायों द्वारा माननीय उच्च न्यायालय के निर्देश की पालना में हटाया जावे तथा पालना रिपोर्ट प्रस्तुत की जावे।

6. जयपुर विकास प्राधिकरण माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 12.01.2017 के निर्देश संख्या (XXX) तथा आदेश दिनांक 08.08.2017 के निर्देश संख्या (vii) की पालना में खोनापोरिया तथा गौनेर रोड स्थित 1222.93 हैक्टेयर भूमि के भू-उपयोग परिवर्तन से संबंधित समस्त मूल अभिलेख माननीय उच्च न्यायालय के समक्ष आगामी तारीख पेशी पर प्रस्तुत करें।
 7. विकास प्राधिकरणों एवं नगरीय निकायों द्वारा आगामी तारीख पेशी पर माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 12.01.2017 व 08.08.2017 की पालना रिपोर्ट माननीय न्यायालय के समक्ष प्रस्तुत की जावे।
- उक्त पत्र सक्षम स्तर से अनुमोदित है।

(अर्जन राम चौधरी)
संयुक्त शासन सचिव-द्वितीय

प्रतिलिपि:—निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है :-

1. श्री नरपत मल लोढ़ा, महाधिवक्ता महोदय, राजस्थान उच्च न्यायालय, जयपुर।
2. श्री राजेश पंवार, अतिरिक्त महाधिवक्ता महोदय, राजस्थान उच्च न्यायालय, जोधपुर।
3. श्री शिव मंगल शर्मा, अतिरिक्त महाधिवक्ता महोदय, राजस्थान सरकार, माननीय सर्वोच्च न्यायालय, C-53/54, LGF, Lajpat Nagar-I, New Delhi-110024 को प्रेषित कर निवेदन है कि माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 12.01.2017 के विरुद्ध माननीय उच्चतम न्यायालय के समक्ष एस.एल.पी. प्रस्तुत की जा चुकी है। उक्त एस.एल.पी. के साथ ही आदेश दिनांक 08.08.2017 को भी माननीय उच्चतम न्यायालय में लम्बित एस.एल.पी. सम्मिलित कराने का श्रम करें।
4. विशिष्ट सहायक, माननीय मंत्री महोदय, नगरीय विकास एवं स्वायत्त शासन विभाग, शासन सचिवालय, जयपुर।
5. निम्नी सचिव, अतिरिक्त मुख्य सचिव, नगरीय विकास विभाग, शासन सचिवालय, जयपुर।
6. प्रमुख शासन सचिव, राजस्व विभाग, शासन सचिवालय, जयपुर को प्रेषित कर निवेदन है कि माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 08.08.2017 के पैरा (Vi) तथा आदेश दिनांक 12.01.2017 के निर्देश संख्या (XXVIII) की पालना सुनिश्चित कराने का श्रम करें।
7. प्रमुख शासन सचिव, स्वायत्त शासन विभाग, शासन सचिवालय, जयपुर।
8. संयुक्त शासन सचिव-प्रथम/द्वितीय/तृतीय, नगरीय विकास विभाग, शासन सचिवालय, जयपुर।
9. अतिरिक्त मुख्य नगर नियोजक, नगरीय विकास विभाग, शासन सचिवालय, जयपुर।
10. वरिष्ठ संयुक्त विधि परामर्शी/उप विधि परामर्शी, नगरीय विकास विभाग, शासन सचिवालय, जयपुर।
11. निदेशक, स्वायत्त शासन विभाग, निदेशालय, जयपुर को प्रेषित कर लेख है कि पत्र की प्रति समस्त नगर निकायों को पालना हेतु भिजवाया जाना सुनिश्चित करें।
12. वरिष्ठ उप शासन सचिव, नगरीय विकास विभाग, शासन सचिवालय, जयपुर को प्रेषित कर लेख है कि समस्त विभाग/संस्थाओं में राफाल मेल करवाकर विभाग की वेबसाइट पर आज ही अपलोड करवाया जाना सुनिश्चित करें।
13. श्री आर. के. विजयकर्णीय, वरिष्ठ नगर नियोजक (पगारी अधिकारी केरा), कार्यालय निदेशक, स्वायत्त शासन विभाग, निदेशालय, राजस्थान, जयपुर।

(404)