

(2008) 08 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10153 of 2006 (O&M)

Dai Tari Jati and others

APPELLANT

Vs

Haryana Urban Development Authority and others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 617

Hon'ble Judges : Uma Nath Singh, J and L.N.Mittal, J

Advocate : S/Shri Shailendra Jain, Puneet Bali, P.L. Singla, D.K. Bhatti, Gautam Dutt, Sanjeev Sharma, J.K.Goel, P.K. Mutneja, V.K. Gupta, Ms. Kiran Bala Jain, Ms. Seema Narang, Advocate,, Mr.Ashish Kapoor, Additional Advocate General Haryana and Ms. Ritu Punj, Deputy Advocate General, Haryana., Mr. H.S. Hooda, Advocate General, Haryana with Mr. Arun Walia, Mr. Jitender Dhanda and Mr. Ajay Nara, Advocates., Mr. J.S. Cooner, Mr. Mohnish Sharma and Mr. Sanjay Chauhan, Advocates., Advocates for appearing Parties

Judgement

Uma Nath Singh, J.—Heard learned counsel for parties and perused the writ records.

2. This judgment shall also dispose of connected Civil Writ Petition Nos. 19831, 19909, 19914, 19915, 19916 of 2005, 9910, 15180, 15732, 15964, 16033, 16173, 20494 of 2006, 1375, 1511 1651, 2089, 2181, 2462, 2823, 2915, 3039, 3506, 4204, 4652, 4836, 6764, 10380, 10679, 13098, 16095, 16100, 16261, 16467, 16574, 17127, and 17149 of 2007, as this bunch of writ petitions involves common questions of law with somewhat similar facts which need not be detailed for disposal of these cases in view of consensus between parties on the stand taken by learned Advocate General, Haryana, Shri H.S. Hooda.

3. Learned Advocate General, Haryana, Shri H.S. Hooda, referred to notification dated 5.11.2007 issued by Government of Haryana, Town and Country Planning Department (Haryana Government Gazette (Extra), dated 5.11.2007) with No. PA2007/28277, and took us to amendment in Rule 49 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965,

in respect of State of Haryana, carried out in exercise of powers conferred by Subsection (1) read with Subsection (2) of Section 35 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. Relevant portion of Draft Rules, on reproduction, reads as :

"1. (1) These rules may be called the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development (Haryana Amendment) Rules, 2007.

(2) they shall come into force with immediate effect.

2. In the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965, hereinafter called the rules), in rule 38, after clause (xxiv), the following clause shall be inserted, namely :

(xxiva) "nonnuisance professional consultancy services" shall include Doctors (without nursing home); Lawyers; Tax consultants, Architects (without studio), Contractor Consultants, Chartered Accountants, Company Secretaries, Property Consultants and Tourist guides;

3. In the said rules, in rule 49 under heading "SCHEDULE",

(i) for sign "." existing at the end, the sign "." shall be substituted;

(ii) after the fiftieth proviso, the following proviso shall be added, namely :

"Provided further that the 25% of the built up area of the building or upto, 50 square meter, whichever is less, can be used for nonnuisance professional consultancy services, after getting permission from Director or any other officer authorized by him in writing. The applicant shall apply for specific use of consultancy services as mentioned in clause (xxiva) of rule 38, in form N1 alongwith fee as mentioned in schedule IVA. The permission shall be granted in form N11".

4. According to Mr. Hooda, aforesaid amendment in Rule 49 has also been reproduced in reply on behalf of the State, to Civil Writ Petition No. 16100 of 2007 (Om Properties & others v. State of Haryana and others), which reads as under :

"3. That the Government has made a policy vide gazette notification No. PA 2007/28277 dated 5.11.2007 published on 5.11.2007 regarding rendering 25% "NonNuisance" professional consultancy service in the land/building disposed of for residential purposes to the extent 25% of the built up covered area of the building or upto 50 square meters which ever is less, can be used for nonnuisance professional constituency services with the prior permission of competent authority on payment of prescribed fees as Annexure R1. Thus, the petition is liable to be dismissed."

5. Mr. Hooda also submitted that a Division Bench Judgment of this Court, rendered in Suresh Kumar and others v. Municipal Corporation, Faridabad and

others, reported in 2006(2) RCR(Civil) 353 : 2006(1) PLJ 253, shall also have some bearing on disposal of these writ petitions. He took us to para Nos. 7, 8 & 9 of the aforesaid judgment containing relevant discussions, which read as :

"7. On a careful consideration of the submissions of the learned counsel, we are unable to persuade ourselves that with the expiry of the terms of their Tenancy Agreements, the Local Authorities have ceased to have any control over the properties in question. The Haryana Housing Board Act, 1971, whereunder the Hire Purchase Scheme was launched, defines the 'Local Authority' as under :

"20) 'Local Authority' means a municipality constituted under the Punjab Municipal Act, 1911 (Punjab Act 3 of 1991), or a Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), or a Panchayat Samiti or a Zila Parishad constituted under the Punjab Panchayat Samities and Zila Parishads Act, 1961 (Punjab Act 3 of 1961), or an Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922)."

The Haryana Urban Development Authority Act, 1977 whereunder in exercise of powers of the Estate Officer, the Municipal Corporation, Faridabad, had issued notices earlier also defines the 'Local Authority' in similar terms as under :

"2 (n) 'Local authority' means a Municipal Committee, a notified Area Committee, a Town Improvement Trust, the Faridabad Complex Administration (the Haryana Urban Development Authority) or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

8. That apart, by virtue of being parties to the order passed by this Court in Civil Writ Petition No. 96 of 1997 dated 21.7.2005 which was not challenged before Hon"ble the Apex Court, and, thus, attained finality, the petitioners have acquiesced in, and submitted to the consequential orders of the authorities passed pursuant thereto. Similarly, by withdrawing their Civil Writ Petition No. 20367 of 2005 with liberty to take recourse to any other appropriate remedy under the law and thereafter by invoking the jurisdiction of the Statutory Appellate Authority (learned District Judge, Faridabad) under Section 261 (2) of the 1994 Act, the petitioners have submitted themselves to the jurisdiction of the municipal authorities. Hence, they need to be estopped from questioning the jurisdiction of the Local Authority on technical grounds as raised in the instant Civil Writ Petition. The aforesaid orders, therefore, do not seem to have caused any prejudice in any manner to the petitioners.

9. In the Agreement (Annexure P2), clauses 2(b), 2(d), and 2(g) contain the conditions that the hire purchaser shall be bound by the orders and directions of the Local Authorities; they shall not carry any trade or business in their residential premises; and they shall not raise any alteration or additions to their properties without prior permission of the authorities. The Chairman of the Board has been made the final authority to take decisions in respect of all the

regulations or the agreements. Even Schedule III to the Agreement also contains stringent conditions against the misuser of the property. Thus, looking to the tenor and terms of the tenancy Agreements, it cannot be said that all the restrictions have automatically stood withdrawn on expiry of the terms of the agreements, giving absolute freedom to the hire purchasers to create a selfcontained and self sufficient island for themselves. Once the petitioners were allotted the houses under a scheme floated under the 1971 Act, the tenancy agreements entered thereunder could not have the overriding effect on the substantive provisions of the Act defining `local body" as `municipality" and for the same reason the period prescribed in the agreements shall not forbid the exercise of the territorial jurisdiction of the local body. Further, the application of a Municipal Act over any property depends upon its territorial jurisdiction and since the properties in question fall under the territorial jurisdiction of the Municipal Corporation, Faridabad (See : Schedule 1 to the 1994 Act), the tenancy agreements cannot act as estoppel against the statute. That apart, in the Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulation, 1972, a clause being 2 (y) was incorporated with effect from 31.10.1989. The said clause, on reproduction, reads as under:

"2 (y). The allottee/hirer/owner shall be governed by the Haryana Urban Development Authority Act, 1977, Haryana Municipal Act, 1973 or any Act of any other concerned Local Authority and Rules and Regulations made thereunder in so far as they relate to unauthorized construction, violation of building or zoning regulations, the making of an unauthorized entry or exit or encroachment on a public street, park or open space, or use of the premises for any use other than a residential use."

Admittedly, the additions, alterations and commercial activities have been going on since long, even during the terms of the tenancy agreements. Therefore, the submission of learned counsel that the provision of clause 2 (y) as aforesaid would not apply in the facts and circumstances of the instant case, as it is to operate prospectively with effect from 31.10.1989 and not retrospectively for past violations, does not find favour with us for the reason that these are not the cases of one time violation, but rather, are the cases of continuing violations. Hence, this provision would also cover the present violations. Secondly, the past violations of the conditions of agreement and the provisions of 1971 Act, by way of alterations, additions and commercial activities, said to be running since long, are also covered under the provisions of clause 2 (g) of the Hire Purchase Tenancy Agreement as the petitioners did not obtain prior permission of the authorities before starting such activities."

6. In the premises set out hereinabove, namely, amendment in Rule 49 of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Rules, and discussion on issues raised in Suresh Kumar's case (supra), Mr. Hooda fairly states that petitioners can submit their applications/representations to competent authorities, namely, (i) Administrator, Haryana

Urban Development Authority, and (ii) Director, Town and Country Planning, under HUDA Act, for consideration of their cases on merits, within a time frame.

7. We do not find any legal impediment in issuing such directions for consideration of petitioners' cases on merits by the State. Accordingly, these writ petitions are disposed of with liberty to petitioners to make appropriate representations to the authorities concerned as aforesaid, within a period of one month from the date of receiving a copy of this order, which shall be considered on merits, after giving hearings to the parties, within a time frame of three months thereafter.

8. Mr. Hooda states that in the meanwhile, authorities concerned shall not interfere with possession and use of properties of the writ petitioners herein till disposal of their representations.

Thus, these writ petitions are disposed of with aforesaid directions.

Concerned Assistant Registrar to place photocopies of this order in files of connected cases.