
(1996) 02 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10923-M of 1994

Inderawati

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Haryana Development and Regulation of Urban Areas Act, 1975 — Section 11

Citation : (1996) 114 PLR 128

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : D.S. Bali and D.V. Gupta, for the Appellant; S.K. Hooda, AAG, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—This is a petition filed by Sarvotam Sharma General Power of Attorney of Smt. Inderwati u/s 482 of the Code of Criminal Procedure for quashing the FIR No. 252 dated 12.7.1993 u/s 10 of the Haryana Development and Regulation of Urban Areas Act, 1975. The first information report has been registered at Police Station Sadar, Bhiwani.

2. The facts alleged are that Smt. Inderwati is the owner of land comprising in Khasra No. 29/7,8,13,14 and 18/1 situated in village Rajpura Kharkhori. The impugned first information report was lodged on the basis of a complaint from the District Town Planner, Bhiwani addressed to the Senior Superintendent of Police, Bhiwani. It has been alleged that petitioner-Smt. Inderwati being the owner of the above said land has developed certain commercial/residential plots without obtaining the licence u/s 3 of the said Act and sold the plots thereby contravening the provisions of the Act. Petitioner seeks that the said first information report should be quashed because mandatory provisions envisaged under Sub-sections (2) and (3) of Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 had not been complied with. No such notice

had been issued to the petitioner. It was further contended that u/s 13 of the Act, there could be a composition of the offence. That being so a notice should have been issued before registering the first information report. The area was stated to be outside the limits of Municipal Committee, Bhiwani. The Government of Haryana has not specified the area in which the land belonging to the petitioner was situated. The provisions of the Act were not attracted. It was also alleged that no previous sanction required u/s 11 of the Act has been obtained.

3. In the reply filed the locus standi of the petitioner to file the present petition was challenged. It was alleged that Smt. Inderwati through her attorney Sarvotam Sharma has developed the land for residential/commercial purposes. It was denied that necessary sanction has not been obtained. It was admitted that the land is situated out side the municipal limits. But plea was raised that there is no need to specify the urban area because it has already been defined under the Act. No prior notice was required to be issued.

4. The Haryana Development and Regulation of Urban Areas Act, 1975 seeks to regulate the use of land in order to prevent ill-planned and haphazard urbanization in or around towns in the State of Haryana. For violation of the provisions of the Act, penalties have been provided in the form of punishment u/s 10 of the said Act. Section 11 of the Act, however, reads :-

"11. Prosecution. - No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Director or any officer authorised in writing by him in this behalf."

In other words prosecution can only be launched against the person concerned for any kind of violation made by him in this behalf.

5. Ex.R-1 is the copy of the complaint made by the District Town Planner addressed to the Senior Superintendent of Police, Bhiwani. Relevant portion of it reads:-

"It is brought to your notice that Smt. Inderwanti Sirsa is the owner of the land bearing khewat No._____ Khathoni No. _____ Khasra No. 29/7, 8, 13, 14, 18/1 situated at village Rajpura Hadbast No.____Tehsil Bhiwani. The total area of the above mentioned land is about 17 Kanal. He has Sub-divided the land in to plots for residential/industrial/ commercial purposes without obtaining a licence from the Director, Town and Country Planner, Haryana as required u/s 3 of the Haryana Development and Regulation of Urban Areas Act, 1975. A location plan of the site is attached herewith."

This shows that complaint indicated that violation is by Smt. Inderwati. The copy of the orders passed u/s 11 of the Act was also produced and it shows that sanction was granted for prosecution of Sarvotam Sharma. He is simply the attorney of Smt. Inderwati.

6. An attorney at best would be an agent of Smt. Inderwati. He would act for and on behalf of Inderwati, the owner. It is not being disputed that all the duites were

performed by Sarvotam Sharma as attorney of Smt. Inderwati. The acts must be that of Smt. Inderwati. That being so, only the owner could be prosecuted rather than the attorney. On the basis of said sanction, therefore, Inderwati could not be prosecuted. While as attorney prosecution against Sarvotam Sharma will also not be valid.

7. In normal circumstances this Court in such matters would not exercise the inherent powers but when on the face of it allowing the prosecution to continue would be an abuse of the process of the Court, there is no hesitation thus in quashing subsequent proceedings, if any. Accordingly, the petition is allowed. The proceedings pending in the Court of Judicial Magistrate are quashed. Nothing said herein would restrict the respondents from prosecuting the proper person after obtaining the necessary sanction.