
(2012) 03 P&H CK 0245

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16387 of 2009

Nivedita Sharma

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 162

Haryana Development and Regulation of Urban Areas Act, 1975 — Section 3A, 3B, 3C, 4(1), 7A

Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 — Regulation 12(3)

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 7, 7(1A), 8

Citation : (2012) 2 RCR(Civil) 380

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has challenged the legality of the circular dated 27.3.2009 (Annexure P.3) issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning Department, as violative of the provisions of the Constitution of India.

2. The petitioner relies upon an agreement to sell dated 10.1.2008 in respect of purchase of the basement of a residential building bearing Number F-5/5 measuring 550 sq. ft. in a licenced plotted colony "DLF Qutab Enclave", Phase-I, Gurgaon, entered with Rahul Bansal. The said Rahul Bansal has purchased the property from a builder, namely, Shri Vikram Vij on 12.3.2001. It is alleged that the Government has stopped registration of individual floors without any valid reasons. The petitioner alleges that a circular has been issued on 27.3.2009 whereby the floor-wise registration of the property has been permitted, but it is stipulated therein that basement cannot be registered independently and can be registered only along with the ground floor. It is the said circular, which is

challenged by the petitioner, in the present writ petition.

3. In support of the plea that the sale deed in respect of the basement alone can be registered, in the replication filed by the petitioner, a reference is made to a sale deed dated 25.1.2010 executed by Mrs. Saroj Verma on favour of one Shri Baljeet Singh Rathee.

4. In the written statement, the respondents have pointed out that on 23.7.2009, the Haryana Development and Regulation of Urban Areas Act, 1975 (for short 'the Act') was amended when Section 3C was inserted by Haryana Ordinance No 7 of 2009, since substituted by Haryana Act No. 18 of 2009. Section 3-C contemplated transfer, sale, gift, exchange, lease in perpetuity of independent dwelling units in any residential colony, which has been granted licence under the aforesaid Act. The proviso to said provision contemplates that the registration shall be limited to the dwelling limit of each floor with an overall unit of three dwelling units on each residential plot. It is also pointed out that the basement in a residential plot is free of Floor Area Ratio and is meant for the use of bona-fide residents of the plot and is not allowed to be sold to any other party for any other independent use. The circular issued on 27.3.2009 clarifies that the basement, if any, allowed in a residential building shall not constitute a separate sub division/floor. However, in case owners of different independent floors in building intend and agree to use basement as a common area for facilities such as parking or other plant and equipment required for different floors in the building they may have undivided proportionate right in the basement.

5. In a reply filed on behalf of the Tehsildar, Gurgaon, it is pointed out that the State Government has issued a Notification on 25.9.2002 in exercise of Section 7-A of the Haryana Development and Regulation of Urban Area Act, 1975 whereby, the area of Gurgaon as specified in Schedule given in the said Notification, was declared as an urban area. After declaration of such area as urban area, the District Town Planner Enforcement, Gurgaon, has written a letter dated 17.12.2002 to the Tehsildar Gurgaon not to register any sale deed in which the seller had sub-divided the plots/floor in the licenced colony, other than the multistorey Group Housing Colonies. Vide the aforesaid letter, the floor wise execution of the sale deed was not permitted, but after the circular dated 27.3.2009, the prohibition has been removed.

6. In reply dated 9.9.2010 to the rejoinder, it is explained by the Tehsildar that in the year 2001, there was no bar to register sale deed in respect of only basement, but thereafter, due to amendments in the statutory provisions, the execution of sale deed in respect of a basement is not permissible. In respect of the sale deed dated 25.1.2010, it is pointed out that the sale deed was of a ground floor and of basement and not of the basement alone as alleged by the petitioner. The petitioner filed a counter affidavit pointing out that in fact on 25.1.2010, two separate sale deeds were executed of the ground floor and the basement.

7. We have heard the petitioner and the learned counsel for the respondents at length. Section 7 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short 'the 1963 Act') provides that no land within the controlled area shall, except with the permission of the Director, and on payment of such conversion charges as may be prescribed by the Government from time to time, be used for purposes other than those for which it was used on the date of publication of the notification under sub-section (1) of Section 4 of the Act. Section 8 of the 1963 Act provides for a licence by making an application to the Director. However, sub-section (1A) of Section 7 contemplates that the provisions of the 1963 Act shall not apply to the local authorities, firms and undertakings of Government, colonizers and persons exempted from obtaining a licence under "the Act".

8. The District Town Planner has issued Circular dated 17.12.2002 (Annexure-C), stipulating therein that no person is authorised to sub-divide the plots in a licenced colony and such act violates Section 8 of the 1963 Act. Subsequently on 27.3.2009, Circular (Annexure P.3) was issued permitting registration of sale of independent floors in the residential plots of 180 square yards or above, pursuant to the meeting held under the Chairmanship of the Hon'ble Chief Minister on 11.11.2008. It is recited therein that under the Act, a dwelling unit shall be designated as 'Independent Floor' and shall be recognized as a distinct identifiable property with separate identification number to which the owner shall have title along with proportionate rights in the declared common areas and common facilities, rights of access, easements and other ownership rights as well as the right to use transfer or dispose of the property in accordance with the applicable laws and rules. The relevant clauses from the said Circular read as under:-

iii) The basement if any allowed in a residential building shall not constitute a separate sub division/floor. The basement shall form a part of the independent floor at ground level. However, in case owners of different 'Independent Floors' in a building intend and agree to use basement as a common area for facilities such as parking or other plant and equipment required for different floors in the building they may have undivided proportionate right in the basement.

iv) No increase in maximum permissible FAR will be allowed. However, the owner shall have an option to distribute the maximum permissible coverage equally on all the floors.

xx xx xx

4. PROCEDURE FOR TRANSFER OF OWNERSHIP OF FLOORS

4.1. The present owner shall make an application to the Sub Registrar for transfer the ownership of Independent Floor under the Transfer of Property Act. The request shall be accompanied by the following information/document.

i) The area/floor proposed to be transferred along with details of common areas

and common facilities duly defined on the prescribed format(s) and further shown and marked on the approved building plan.

ii) Original allotment letter.

iii) A copy of the approved building plan.

iv) A copy of the occupation certificate (in case of constructed building).

v) Photographs of existing building showing front back and side elevation.

vi) Any other document prescribed by the Registrar/Sub Registrar for registration of such floors.

4.2 All these provisions of Punjab Scheduled Roads and Controlled Areas Registration of Unregulated Development Act, 1963 and Rules, 1965 framed thereunder from time to time and covenants shall apply, pari-passu to such floors and to the owners thereof as they did and would have to the site of building and the owners thereof.

9. Section 3-B of the Haryana Development and Regulation of Urban Areas Act, 1975, inserted by Haryana Act No. 11 of 2003 with effect from 16.11.1971, deals with the erection and re-erection of the buildings in a licensed colony. Section 3-C was inserted by Haryana Ordinance No. 7 of 2009 promulgated on 25.7.2009, subsequently substituted by Haryana Act No. 18 of 2009 with effect from 14.9.2009. The said provisions reads as under:-

3-B. Erection or re-erection of buildings in a licensed colony.- No person shall erect or re-erect buildings in a colony save in accordance with the approved plans and subject to such restrictions and conditions as are contained in the license or as may be specified by the Government or the Director.

3-C. Registration of independent residential floors- (1) The registration of independent residential floors for the purpose of transfer, sale, gift, exchange or lease in perpetuity in a colony, for which a licence has been granted under this Act, shall be permitted as independent dwelling unit.

Provided that no sub-division of land under the residential dwelling unit shall be permitted and the registration shall be limited to only one dwelling unit on each floor.

(2) The purchaser desiring registration under subsection (1) shall be liable to pay a duty as notified by the Government from time to time, in addition to the stamp duty payable under the Indian Stamp Act, 1899, as applicable in the State of Haryana.

(3) The said duty shall be collected by the Registrar or sub-Registrar at the time of registration of the document in the manner specified under the Indian Stamp Act, 1899 and intimation thereof shall be sent to the Director immediately.

(4) The amount of the duty collected under this Act shall be credited to the Fund

established u/s 3A of this Act.

10. The terms of licence granted to the colonizer are not on record but it is not even suggested by the petitioner that the basement can be used for the purpose of human habitation under the terms of the licence granted to the developer/colonizer. Therefore, we proceed on the assumption that the basement can not be used for human habitation and is thus not a dwelling unit. In respect of the area being developed by the Haryana Urban Development Authority, the basement is not permitted to be used for human habitation. Similar would be the situation of the plots in a licensed colony. The plots carved out by Haryana Urban Development Authority is governed by the Haryana Urban Development Authority (Erection of Building) Regulations, 1979. Regulation 12(3) of the said Regulations contemplates that only one building shall be erected on a site and that the basement can be used only for parking, servicing and storage purposes. The relevant Regulations read as under:-

12. Use of site type and character of building.

(1) & (2) xx xx xx

(3) Except as otherwise expressly provided at the time of sale, not more than one building unit shall be erected on any one floor of a building on a site.

Note: "Building unit" means a self contained building with such out buildings as are ordinarily ancillary to the main building used in connection therewith and physically incapable of sub-division into two or more independent building units. A building unit may, however, be owned by an individual or be jointly and severally owned.

13. Proportion of the site which may be covered with buildings. (a) The proportion upto which a site may be covered with buildings including ancillary building shall be in accordance with the following slabs, remaining portion of the site shall be left open in the form of an open space around the building or a courtyard.

(i) Residential

(a) Permissible Maximum Coverage.

xx xx xx

A basement, not exceeding the maximum coverage on the ground floor and intended to be used only in parking, servicing and storage may be allowed if it satisfies the Public Health and structural requirements.

11. Section 3-C of the Haryana Development and Regulation of Urban Areas Act, 1975, permits transfer, sale, gift, exchange or lease of an independent dwelling unit. It also restricts that there can be only three dwelling units on a residential plot. The basement is not an independent residential floor. Therefore, the same is not transferable independently. The Circular mentioned above, provides for

transfer of the basement along with the ground floor or to have proportionate right in the basement in respect of common services.

12. There was no specific statutory provision in respect of the registration of independent residential floors prior to insertion of Section 3-C in the Act. The Circular issued on 27.3.2009 does not contradict any of the provisions of the statute but in fact supplements the same. Therefore, the Circular permitting registration of the sale deed in respect of the basement and ground floor, is legal and valid and does not suffer from any illegality.

13. There was no specific statutory provision empowering the State Government to issue such circular prior to insertion of Section 3C in the Act. But such circular would be in exercise of the Executive Powers of the State Government under Article 162 of the Constitution of India. Such circular is not contradicting any statutory provisions. The basement is not habitable and the dwelling unit, therefore, it cannot be transferred as an independent unit.

14. We do not find any merit in the argument raised by the petitioner in respect of the discriminatory treatment by registering the sale deed of basement in case of Baljeet Singh Rathee. A perusal of the record shows that on 25.1.2010, two sale deeds were executed i.e. in respect of the ground floor bearing sale deed No. 21201 for the sale consideration of Rs. 11 lacs and another sale deed bearing number 21200 in respect of the basement. The Vendor in both the sale deeds is Mrs. Saroj Verma and the vendee is Shri Baljeet Singh Rathee. In view of the said fact, it transpires that though the two separate instruments of sale were executed, but such instruments of sale are in respect of ground floor and basement in favour of the same vendee. Therefore, there is no violation of either the statute or Circular. In any case, the petitioner cannot claim any right on the basis of illegality committed by the respondents in respect of another person. There cannot be any equality in illegality. Reference may be made to the judgment reported as Chandigarh Administration and another Vs. Jagjit Singh and another, reiterated in Fuljit Kaur Vs. State of Punjab and Others, wherein it has been held as under:-

11. The respondent cannot claim parity with D.S. Laungia in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide Coromandel Fertilizers Ltd. v.

Union of India, Panchi Devi v. State of Rajasthan and Shanti Sports Club v. Union of India).

12. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, Sneh Prabha v. State of U.P., Jalandhar Improvement Trust v. Sampuran Singh, State of Bihar v. Kameshwar Prasad Singh, Union of India v. Rakesh Kumar, Yogesh Kumar v. Govt. of NCT, Delhi, Union of India v. International Trading Co., Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P. and Krishan Bhatt v. State of J&K).

15. In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.