

(1995) 02 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7247 of 1994

Pritam Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 23

Citation : (1995) 111 PLR 762

Hon'ble Judges : S.C. Datta, J; R.S. Mongia, J

Bench : Division Bench

Advocate : Pritam Saini, for the Appellant; R.C. Setia, Addl. A.G. for Respondent Nos. 1 and 3 and Rajesh Chaudhary, for the Respondent

Judgement

R.S. Mongia, J.—This writ petition has been filed by Pritam Singh son of Ishar Singh, Jagbachan Singh and Jagjivan Singh sons of Niranjana Singh. It has been mentioned that the petitioners are owners in possession of plots No. 92 and 93, measuring 220 Sq. yards, situated in village Sunderpur, tehsil Thanesar, District Kurukshetra, which is within the Municipal limits of Municipal Committee, Thanesar. The petitioners submitted a plan for getting sanction of the Municipal Committee for construction of a house on the plots mentioned above. Requisite fee etc. were also deposited by the petitioners on February 5, 1992. However, the sanction was declined on July 13, 1992, on the ground that the plots in question fell within the controlled area of Kurukshetra and, therefore, the permission had to be obtained from the Town and Country Planning Department, Haryana as per the requirement under the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter referred to as "the Act"). The appeal of the petitioners was also dismissed by the Sub-Divisional Officer (Civil), Thanesar, on November 19, 1992. The petitioners had earlier filed a writ petition in this Court - C.W.P. No. 1696 of 1993 (Jagbachan Singh Vs. Deputy Commissioner, Kurukshetra, etc.) but on the preliminary objection having been taken by the respondents that a revision

petition lay, the petitioner was relegated to that remedy. As no decision was taken in the revision petition, the petitioners filed the present writ petition on May 30, 1994. It has been averred in this writ petition that a number of houses have already been constructed by the inhabitants of the locality after obtaining sanction from the Municipal Committee. Even plan submitted by one of the petitioners, Jagbachan Singh earlier was sanctioned by the Municipal Committee and the moment he started raising construction the sanction was withdrawn and the construction already raised was ordered to be demolished. That plot of Jagbachan Singh adjoins the present. The writ petition of Jagbachan Singh - C.W.P. No. 11446 of 1992 challenging the order of withdrawal of sanction was allowed by a Division Bench of this Court on January 19, 1993, in which it was held that since the plot in question in that case fell within the Municipal limits, the provisions of the "Act" did not apply to the land within the Municipal limits.

2. In the written statement filed on behalf of the respondent- Municipal Committee, it is admitted that the limits of the respondent-Municipality were extended on October 1, 1984, vide Notification No. 25/11/82-C-1 dated October 1, 1984, and the land of the petitioners in dispute was included within the limits of the Municipality.

3. The learned counsel for the respondent-Municipal Committee argued that the provisions of the "Act" over-ride the provisions contained in any other law including the provisions in the Municipal Act and, therefore, the sanction of the plan has to be under the "Act" and not under the provisions of the Municipal Act. No provision has been brought to our notice to substantiate this submission. Section 23 of the Act does not provide that the "Act" shall have over-riding effect over the Municipal Act.

4. The contention of the learned counsel for the petitioners is that since the plots in dispute admittedly fall within the Municipal limits, the question of application of the provisions of the "Act" does not arise. The reliance is on the Division Bench Judgment in Jagbachan Singh's case (C.W.P. 11446/92) referred to above. In the said judgment, it was observed as under

"The only ground urged during the course of argument to sustain the impugned order is that the site plan was approved by the Municipal Committee in violation of the Punjab Scheduled Roads and Controlled Areas (Restriction on Unregulated Development) Act 1963 (hereinafter referred to as the Act).

The learned counsel for the petitioner submits that the provisions of the Act are not applicable to the site in dispute as the site in dispute falls within the municipal limits. In order to support the submission, he relies on (State of Haryana v. Kartar Singh) 1989 P.L.J. 35. There is no gain saying nor has it been disputed as a question of fact before us that the site in dispute falls within the Municipal limits and the Act does not apply to the site in dispute. The site plan was approved by the Municipal Committee."

5. As observed above, learned counsel for the respondent could not bring to our

notice any provision of the "Act" which says that the Act is applicable even to the properties situated within the municipal limits. As observed in the above-said judgment of the Division Bench, the Act is not applicable to the properties within the Municipal limits. Since the plots in question are within the Municipal limits, it is only the Municipal Committee which is to sanction the plan.

6. Consequently, following the above said Division Bench judgment of this Court in Jagbachan Singh's case (C.W.P. 11446/1992) we allow this writ petition and direct the Municipal Committee, Thanesar, to sanction the plan in accordance with the provisions of the Municipal Act and the Rules/Bye Laws, if any, and be not influenced by the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction on Unregulated Development) Act, 1963. Let these directions be carried out within a period of two months of the receipt of copy of this order from this Court or a certified copy of the same from the petitioners.