

(1991) 10 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7738 of 1991

Rajni V. Sehrawat

APPELLANT

Vs

Commissioner, Gurgaon Division

RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Citation : (1991) PLJ 770 : (1992) 1 RRR 589 : (1991) 2 RRR 551

Hon'ble Judges : A.L.Bahri, J and H.S.Bedi, J

Advocate : Jaishree Thakur, Advocate, M.L. Sarin, Sr. Advocate,, Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. The petitioners are members of one family. Petitioner No. 1 Smt. Rajni Sehrawat is the widow of Shiv Chand Sehrawat and petitioner 4 No. 2 is his son, Sahib Ram Sehrawat. The other three petitioners are sons and wife of Sahib Ram Sehrawat. The petitioners owned 25 acres of land in village Sukhrali, tehsil and district Gurgaon. Their land and other land situated in that village was acquired by different notifications issued under the Land Acquisition Act. The petitioners after the acquisition of aforesaid land remained owners of only 23 kanals 4 marlas of land comprising Khasra Nos 6, 7 and 15 of Killa No. 59. The aforesaid land fell within the controlled area notified under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter called the Act) as applicable to Haryana. The petitioners moved requisite application under the Act before the Director, Town and Country Planning, respondent No. 2, for permission to change the existing use of the land by raising construction of residential houses and community centre (Barat Ghar). The application was rejected on May 14 1990, (copy annexure P/3). Against this order the petitioners filed an appeal under Section 8(2) of the Act (copy annexure P/4). Respondent No. 1, the Commissioner, partly allowed the appeal. He permitted the petitioners to raise the community centre (Barat Ghar) on a part of the land. He further laid down a condition that after construction, the

building would be transferred to the Gram Panchayat or any other social institution/body. He rejected the other claim of the petitioners for raising residential construction on the land in dispute. This order was passed on October 17, 1990. (copy annexure P/5). The petitioners have challenged these two orders passed by the respondents in this writ petition inter alia on the grounds that while allowing permission to raise construction on the land covered under the notified area, no conditions under the Act or Rules framed thereunder could be imposed for transferring ownership of the construction to be raised in favour of the Gram Panchayat or any other social institution/body. Secondly, the ground taken was that since the application for permission to raise residential houses was in accordance with the provisions of the Act and the rules, on fulfilling of such conditions, the authorities under the Act were required to allow the permission. Of course, some conditions be imposed by the authorities relating to the development of plot and expenditure to be met thereon.

2. The stand of the respondents in the written statement filed by respondent No. 2, is that for valid reasons application filed by the petitioners for raising residential houses on the land in dispute was rejected. Such reasons being that the land was under the process of acquisition; that the proposed site could not be adjusted/accommodated in the envisaged layout plan of the area in which the same was situated. At this stage, it may further be stated that copy of the layout plan was attached indicating that the entire land around the land in dispute was developed by the colonizers. It is further asserted in the written statement that even permission for raising the community centre (Barat Ghar) was wrongly granted.

3. We have heard learned counsel for the parties and have gone through the records produced on the file.

4. The aforesaid Act was enacted to prevent haphazard and substandard development along the scheduled roads and in controlled areas. Under Section 4 of the Act, the area is declared as "controlled area" by the Government. It is not disputed in this case that the area in dispute is part of the controlled area. Under Section 5 of the Act, within three months of the declaration of the controlled area State is required to prepare plan in the prescribed manner showing the controlled area signifying therein the nature of restrictions and conditions proposed to be made applicable to the controlled area. Such plans are to be prepared by the Director and submitted to the Government. Section 7 of the Act prohibits use of the land in the controlled area for any purpose except with the permission of the Director, for the purposes of charcoalkiln, potterykiln, limekiln, brickkiln or brickfield or for quarrying stone, Bajri, Surkhi, Kankar or such like extraction or operation. If any person wanted to use the site, within the controlled area for a purpose other than for which it was used on the date of publication of notification under Section 4 of the Act, he was supposed to apply to the Director in this respect under Section 8(1) of the Act. Subsection (2) of Section 8 of the Act empowers the Director to hold enquiry, if necessary, and thereafter either to

grant the permission or licence subject to such conditions, if any; as may be prescribed in the order or refuse to grant such permission or licence. Subsection (3) provides that the Director is not to refuse permission for erection or reerection of the building which was already in existence in the controlled area on the date on which notification under Section 4 of the Act was issued and in such a case even restrictions couldnot be imposed by the Director. At this stage, reference may also be made to the rules framed under this Act in 1965. Rule 26A provides for an application to be made by a person other than the colonizer intending to change the existing use of land in the controlled area for the purposes of developing the said land into buildings for residential, industrial, commercial or any other purpose was required to make an application in writing in form CLU1. Such an application is to be accompanied by:

- (1) a survey plan on the scale of 1" to 40 feet showing the existing means of access to the said land from the nearest public road and buildings and their nature falling within 100 yards of the said land;
- (2) a copy of the deed showing the title of the applicant to the said land.

Rule 26B further provides for return of such an application if the appellant did not give the two particulars mentioned above. Rule 26C provides for grant of permission if the authority is satisfied that the application is fit for grant of permission. Thereafter certain other conditions are required to be fulfilled with respect to furnishing of bank guarantee etc. as provided under Rule 26D. Proviso added to Rule 26D requires that no guarantee is to be furnished if the use of the land was to be changed for the purpose of developing the said land into buildings for industrial purposes. Rule 26E provides the form of order to be passed while granting permission. Such a form is known as CLUIII. When permission is refused, order is required to be passed in form CLUIII giving reasons. It wouldbe useful to refer to form CLUIII, which is reproduced below:

FORM CLUIII [SEE RULE 20(2)]

Form of refusal or grant of permission for setting up a colony.

Reference your application dated.....for setting up a residential/industrial/commercial colony in the controlled area at....

- (1) Permission is hereby refused for reasons mentioned below :
- (2) Permission is hereby granted subject to the following conditions:
 - (a) that the colony is laid out to conform to the approved layout plans and development works are executed according to the designs and specifications shown in the approved plans accompanying this permission:
 - (b) that the conditions of the agreement already executed are duly fulfilled and the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965, duly complied with. Director, Town and Country Planning, Punjab.

5. Since two questions have been raised by learned counsel for the petitioners, they are taken up for consideration.

6. There is force in the contention of Mr. M.L. Sarin, Sr. Advocate, appearing on behalf of the petitioners, that condition imposed for transferring the building to be constructed on the site in dispute by the petitioners to third person such as Gram Panchayat or any other social institution or body is not warranted by the provisions of the Act or the rules. The object of the Act is not going to be achieved or effected in any manner by the aforesaid condition. Under the provisions of this Act, no citizen can be divested of his title to the site or to the buildings existing or to be constructed thereon. The condition imposed is, therefore, illegal and cannot be sustained.

7. In the written statement stand was taken that the appellate Court wrongly allowed permission to the petitioners to raise construction of the community centre. This contention is without any substance as the order of Commissioner has not been challenged by the State by filing a writ petition. By taking such a plea in the written statement the order of the Commissioner cannot be modified or set aside to the extent it has granted relief to the petitioners.

8. The second question for consideration is as to whether the authorities under the Act were justified in declining permission* to the petitioners to raise residential houses on the site in dispute. The contention of Mr. M.L. Sarin, Sr. Advocate, is that the authorities under the Act could impose any conditions with respect to the development or recovery of development charges and the permission should have been granted to the petitioners to raise residential buildings on the site in dispute. He has further argued that after maintaining orders of the appellate authority with respect to the construction of the community centre, normal conditions which are likely to be imposed on the petitioners would be to pay for the charges of development to be effected in the site in dispute as without the same the community centre cannot be put to use when constructed and if the petitioners are to be burdened with the development charges, there would be no justification for declining the permission to the petitioners to raise residential houses.

9. This contention cannot be considered to be wholly without any substance. However, it is for the authorities to determine. When the Director decided the case he declined permission as a whole being of the opinion that the site in dispute was subject to acquisition proceedings and the layout plan of the area around the site in dispute did not envisage construction of the residential houses in the site in dispute. The Commissioner's attention was not drawn to this aspect of the matter. It is not shown how the plan prepared by the Director did not envisage construction of the residential houses in the site in dispute.

10. By partly allowing the writ petition while quashing the order of Commissioner with respect to the imposition of the condition of transfer of the building of the community centre (Barat Ghar) to be constructed on the site in dispute to the

Gram Panchayat or an other social institution or body, it is left to the petitioners to approach to Director, Town and Country Planning, again for permission to raise residential building in accordance with the development plan prepared by the State under the provisions of the Act. The Director will take into consideration the fact that permission to the petitioners to construct community centre stands granted and its effect on the application to be made by the petitioners.

11. The writ petition is disposed of with the above directions. Parties are left to bear their own costs.