
(1983) 05 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 785 of 1980

S. Hardam Singh and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 12-05-1983

Acts Referred:

Punjab Regulation of Colonies Act, 1975 — Section 2, 3(1), 4(2), 8(1)

Citation : AIR 1983 P&H 340 : (1984) 1 ILR (P&H) 127

Hon'ble Judges : S.S. Sandhawalia, C.J.;S.P. Goyal, J

Bench : Division Bench

Judgement

S.S. Sandhawalia, C.J.—Do the regulatory provisions of the Punjab Regulation of Colonies Act, 1975, directed against the mushroom rise of slums and the haphazard and ill-planned growth of urban and suburban areas violate the erstwhile fundamental right to property under Article 19(1)(f), 31 or the equality clause of Article 14, is the primary, if not the sole, question which falls for adjudication in this set of nine writ-petitions.

2. The issues of law as also of fact being admittedly common, this judgment will govern all these writ petitions. The factual matrix necessary for the determination of the legal issue may be picked from Civil Writ Petition No. 785 of 1980(Hardam Singh v. State of Punjab petitioner No. 2 therein being the owner of agricultural land situated in village Naranjanpura, Tehsil Patiala, sold the same through petitioner No. 1, her Attorney, the five pieces by registered sale-deeds on the 6th of January, 1976. It is the petitioner's stand that the aforesaid sales were not intended to set up a residential or commercial colony. However, a communication was addressed to Patiala, on behalf of the Housing Development and Urban Estates, Punjab, alleging that the petitioner had sold her parental land in five or more than five plots for residential, commercial, industrial or other purposes and construction had been commenced thereon in violation of Sections 2(e), 3(1), 4(2) and 8(1) of the Punjab Regulation of Colonies Act 1975(hereinafter called the Act). Therein it was further alleged that this

constituted a cognisable offence and it was requested that a case be registered in the police station against Harbhajan Kaur petitioner No. 2 and her husband Shri Hardam Singh petitioner No. 1, for the violation of the Act. In pursuance thereto, a case was apparently registered at Police Station, Kotwali, Patiala, Later on, a complaint was filed in the Court of Additional Chief Judicial Magistrate, Patiala.

3. The writ-petitioners assailed the constitutionality of Ss. 3(1), 8(1) and 11(1) of the Act as being violative of Articles 14 and 19(1) (f) and (g). The basic stance taken is that the definition of the "colony" in the Act is almost similar to the definition of the "colony" given in the Haryana Restriction on (Development and Regulation of) Colonies Act of 1971, which was struck down by the Division Bench in *Jai Chand Bhagat v. State of Haryana* (1975) 77 PLR 277. Therein, it was held that since the Haryana Act rested primarily on the definition of the "colony", the whole of the statute was ultra vires of the Constitution. It is pointed out that the provisions under the present Act were also challenged by a number of writ petitions in 1975. But, due to the declaration of the Emergency and the suspension of Fundamental Rights, the question had remained undecided.

4. In the reply by way of an affidavit of Shri Gursewak Singh Sekhon, Deputy Director, Housing and Urban Development Department, Punjab, it is highlighted that the Department had to take notice of the sale of more than five plots made through registered deeds on the same day by the petitioner and that these sales had been made for residential purposes and with the requisite intention of setting up a residential colony. It is reiterated that these transactions came within the mischief of Ss. 3(1) and 8(1) of the Act and, consequently, criminal prosecution were rightly instituted against the petitioners. The distinction betwixt the definition of a "colony" under the Act and that under the Haryana Act is highlighted and the firm stance taken is that the provisions of the Act are intra vires and beyond the pale of any constitutional challenge.

5. To clear the decks for the examination to the basic issue of the constitutionality of the Act, one may first dispose of a preliminary objection on behalf of the respondents, which was strenuously pressed. On the very threshold it was pointed out on their behalf that Article 19(1) (f) and 31 having been repealed with effect from the 19th of June, 1969 by the Forty-fourth Amendment, and the writ-petitioners, who had moved the Court in 1980(after the said repeal) and were now relying on the same, were disentitled to challenge the statute on the said ground because these Articles were no longer part of the Constitution. In sum, the argument is that a challenge to the vires of a provision cannot possibly be sustained on the basis of the Articles of the Constitution which now stand repealed.

6. However, in this context, the firm stand on behalf of the writ petitioner is that the impugned Act having come into force on the 9th of August, 1975, has to be tested with regard to its constitutionality on the said date and not on the basis of any subsequent amendments or deletions of the provisions in the Constitution. It was, therefore, argued that the date and time of preferring the writ petition or

pressing the challenge at the time of argument is irrelevant to the issue. Reliance was basically placed on *Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others*, , wherein it has been observed :--

"It is in our opinion absolutely elementary that the constitutionality of an Act must be judged on the basis of the Constitution as it was on the date the Act was passed subject to any retrospective amendment of the Constitution. Therefore, the argument that the constitutionality of the Transfer Act must be judged on the basis of the Constitution as it stood on the date of the present writ petition has no force and must be rejected."

Similar analogous view has been expressed in paragraph 23 of the report in *Saghir Ahmad Vs. The State of U.P. and Others*, , and paragraph 19 of the report in *Deep Chand Vs. The State of Uttar Pradesh and Others*, .

7. However, it would appear that there undoubtedly is a certain penumbral area, if not an actual discordance of view stemming from the observations in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, . In paragraph 42 to 47 of the report, therein a distinction is sought to be drawn in the one hand, where there is a total lack of competence of the legislature enacting the statute and the violation of constitutional restrictions on the other. Whilst in the first case, the statute is styled as still born or non est, in the latter case it is not altogether beyond reprieve but has been opined to be unenforceable and would start operating if the constitutional bar is later removed or rectified.

8. I do not propose to be drawn into, or finally pronounce, on this controversy which undoubtedly bristles with difficulty. This is so because, in view of what follows, it appears to me both academic and unnecessary. Equally, it deserves recalling that the view identical issue had also been raised before the Full Bench in *Ram Puri, Chandigarh Vs. Chief Commissioner, Chandigarh and Others*, and for somewhat similar reasons, had to be left open. Indeed, I am inclined to take the view that even on the anvil of the fundamental right to property both under Arts. 19(1)(f) and 31, the challenge to the impugned provisions of the Act must fail. Therefore, I propose to examine the constitutionality of the Act by placing the case of the petitioners at the very highest on the assumption that it is open to them to raise the challenge on the foundation of the fundamental right of property because, when enacted on the 9th of August, 1975, the Act had to withstand the said test.

9. One must now advert to the provisions of the Act with particular reference to those impugned as unconstitutional. The statute was enforced on the 14th of May, 1975, after receiving the assent of the President of India. Its avowed object was the preventing of haphazard and ill-planned growth in urban areas and to regulate colonies for the construction of residential, commercial, industrial or any other building purposes. Section 2(c) and (d) of the Act define "colony" and "coloniser" whilst the succeeding S. 3 bars every person from converting land

into a colony without obtaining a licence in accordance with the provisions of the Act and its Rules. Section 4 prescribes the procedure for the receipt of applications by the Director for licensing of colonisers and also spell out of the indicia for the grant or refusal of the same. Section 5 to 7 provide for the maintenance of registers by the Director, the completion of the development works by a coloniser and the auditing of accounts of Coloniser by the Director. Section 8 then places restrictions on the transfer of plots and the erection of building in the colony whilst Ss. 11, 13 and 14 provide for penalties, prosecution and the offences by companies for violation of the provisions of the Act or the Rules framed thereunder. Section 16 creates a bar of jurisdiction against the civil Courts for challenging any proceedings under the Act whilst S. 18 provides for an appeal by persons aggrieved by orders made by the Director. The power of exemption under S. 19 is vested in the State Government wherever it is of the view that the provisions of the Act cause undue hardship or it is expedient to do so.

10. Now, the spearhead of the attack against the provisions of Ss. 2(c) and (d), 3, 4, 8, 11 and 14 was rested primarily, if not wholly, on the Division Bench judgment in *Jai Chand Bhagat v. State of Haryana*, (1975) 77 PLR 277. Therein the provisions of the Haryana Restriction on (Development and Regulation of) Colonies Act, 1971, were struck down on the ground that the definition of the "colony" therein did not satisfy the test of reasonableness and since the which Act, in substance, rested on the said definition, the provisions thereof were inseparable and the whole of the statute was declared unconstitutional. Mr. K. P. Bhandari's star argument was that the definition of the "colony" in the present Act so closely similar that the reasoning in *Jai Chand Bhagat's* case (*supra*) would, *mutatis mutandis*, apply to the present Act as well.

11. Before I attempt a close comparison of the definition of "colony" in the two statutes, to test the contention aforesaid, it seems not only apt but necessary to seek the larger purpose and the intent of the Legislature in enacting the statute. As the inevitable drift of the people from villages towards the town gains momentum in a country already over-populated, the problem of deed sometimes appears to defy solution. This is perhaps inevitable in the transitional period from an agricultural economy to an industrial one. It was not disputed before us that the regulated development of urban areas for residential, commercial, industrial and building purposes in the altogether new or developing towns assumes a momentous significance in the country and the State would indeed be failing in its duty if it did not address itself to this problem. Within this region, the very concept and the subsequent rise of the planned city of Chandigarh, is a shining example. That the impugned Act was directed to this larger purpose seems to be manifest from the aforesaid resume" of its provisions as also by the Statement of Objects and Reasons appended to the Bill which are in the following terms:--

"The increasing trend towards urbanisation has led to considerable increase in the demand for residential plots to urban areas. This situation has been fully

exploited by the private colonisers. As a result of this activity numerous residential colonies have come up, which are badly planned and are sub-standard from the point of view of provision of basic civic amenities. In the process, however, the private coloniser has amassed considerable wealth. The direct result has been that while the State has not at all profited from the change in the land use, its burden and liability had increased because ultimately the responsibility of providing civic amenities in these colonies devolves upon it. It, therefore, becomes imperative to undertake Legislature to control and regulate colonisation by private colonisers."

What then equally calls for attention is the preamble of the Act:--

"An Act to regulate the colonies in the State of Punjab with a view to preventing their haphazard and ill-planned growth."

That the aforesaid is indeed a laudable purpose could not be denied even on behalf of the petitioner. Indeed, Mr. K. P. Bhandari with illimitable candour had conceded that the control and regulation of urban development was not only warranted by law but indeed a necessary pre-requisite in the present-day conditions.

12. With the aforesaid background and in view of the prime contention raised on behalf of the petitioners, it becomes necessary to compare the foundational definition of "colony" under the Haryana Restriction on (Development and Regulation of) Colonies Act, 1971 and the present Act:--

Section 2(c) of the Haryana Restriction on (Development and Regulation of) Colonies Act, 1971. Section 2(c) of the Punjab Regulation of Colonies Act, 1975.

"Colony" means an area of land which has been sub-divided or is proposed to be sub-divided into plots for residential, commercial, industrial or other purposes. "Colony means a compact area of land which has been divided or is proposed to be divided for the purpose of transfer, otherwise than by way of gift, into five or more plots for residential, commercial, industrial or any other building purpose, other than for agriculture or for any purpose subservient to agriculture, but does not include any area of land divided or proposed to be divided as a result of (i) family partition or partition of joint holding, (ii) inheritance, (iii) succession, or (iv) operation of will.

13. Now, an analysis of paragraph 33 onwards of the judgment in Jai Chand Bhagat's case (1975 77 PLR 277)(supra) would indicate that the primary, if not the sole consideration for the Bench to stamp the definition of the "colony" under the Haryana Act as being violative of Article 19(1)(f) was its glaring failure to draw any distinction betwixt the large and the smallest holding of land even when sub-divided in the minimal quantity of two plots for sale. It was in terms observed that if a citizen owns even 25 square yards of lands in a city (where all development works may have already taken place and which does not admit of any further development works) and he intends to dispose of the same by

dividing the same into two plots, he would come within the mischief of the statute and the crippling net of being a coloniser and oblige to satisfy all the onerous conditions prescribed therefor. It was further held that the words "any other purpose" in the definition of the colony would include even lands sold for agricultural purposes after being sub-divided which would have no relevance to the objects of the Act. On an analysis of the stringent provisions of the Haryana Act and even more so of the Rules, it had, therefore, to be held that the provisions of the Act were unreasonable, harsh and arbitrary restrictions on the right of the citizens to dispose of their lands having no relationship with the object to be achieved.

14. Now, can it be said that any such identical vice attaches to the definition of "colony" under the Act and the consequential provisions thereto? The answer, to my mind, has to be rendered in the negative. Perhaps, what deserves highlighting under the impugned definition is, the fact that there is no fetter on the transfer of land howsoever the number of its sub-divisions, if it is done for agricultural purposes or for any purpose subservient to agriculture. There is thus no blanket bar on the disposal of land or property under this definition. It was not disputed before us that barring the four purposes prescribed in the definition of the "colony", the land may be fragmented into as many parts as the vendor may wish for a profitable disposal thereof. The situation under the Haryana Act was entirely different and the blanket use of the expression "other purposes" was rightly construed by the Division Bench of this Court in *Jai Chand Bhagat's case* 1975 77 PLR 277(supra) as even prohibiting transfer for agricultural purposes or those subservient thereto and thus plainly unreasonable and a clog on the right of disposal of property. It would appear to me that the definition of "colony" in the present Act was framed with an eye to avoid this vice and has in terms rectified the evil noticed in the Haryana provision.

15. Apart from the above, there are other significant differences betwixt the two definitions of the "colony" under the Haryana Act and the Punjab Act. The Haryana Act applied indiscriminately to any area of land which was sought to be sub-divided. The Punjab Act, however, makes it clear that this has no relevance to mere ownership etc., but, in the first instance, means a compact area of land. Therefore, if an owner has three or four compact areas of land, which are not connected with each other, he does not come even within the regulatory provisions of the bar under the Punjab Act. Again, the Haryana Act was somewhat loosely worded whereas the Punjab Act is precisely couched and excludes from its ambit transfers which are made by way of gifts. This would involve an added liberalisation to sub-divide the lands sought to be gifted. Equally, the Punjab Act in terms excluded all sub-divisions resulting from family partition or partition of joint holdings and by inheritance, succession or by operation of a will. Consequently, joint holdings could be sub-divided and property flowing from succession, whether testamentary or otherwise, would in express terms be out of the definition of the "colony" under the Punjab Act.

16. What then calls for notice is that the restrictions under the Punjab Act are attached only in four situations, namely, where the transfer of plots is for residential, commercial, industrial, and building purposes. Transfers and sub-divisions for all four purposes, barring these four, would prima facie not come within the ambit of the definition of the "colony" under the Punjab Act. The plain object appears to be that it is only where there is a fragmentation of the land for purposes of haphazard urbanisation that the statute regulates what in essence would be the sowing of a dragon's seed for mushroom growth and slums in urban or suburban areas. The limitation is, therefore, confined narrowly to the arena of indiscriminate sub-divisions of a compact area for urban uses alone.

17. Coming now to the pivotal difference betwixt the Haryana Act and the Punjab Act with regard to the number of sub-divisions permitted, it is plain on the reading of the definition of the "colony" under the latter that the statute permits without any fetter the sale of a compact price of land in blocks up to four even for the four urban purposes specified therein. It is not as if any sub-division, i. e., at the level of two, is being forbidden as, in fact, was the case under the Haryana Act. This liberalisation to divide into four blocks is not a difference of mere quantity but makes a qualitative difference which actually reduces materially if not altogether removes the rigour in this context under the Haryana Act. Counsel are agreed that under the existing provisions in the Punjab Act, the original owner can sell his compact area in four blocks for the four specified purposes as well. Once that is done, each individual vendee would again be entitled to sell each of the said blocks into further four sub-divisions and so onwards even with regard to the four categories mentioned in the definition of the "colony". This is apart from any sub-division for purposes of agriculture or subservient to agriculture or other exemptions which flow from the said definition. This situation cannot, therefore, be read as any blanket bar to the sale, holding or acquiring of property which can possibly be hit by the erstwhile fundamental right of property keeping always in mind that the same was subject to reasonable restrictions expressly as also precedentially. The rigid consequences that flowed from the definition in the Haryana Act which barred even a sub-division into two blocks both at the level of the original vendor as also at the level of subsequent vendee and thus was the Achilles' heel of the Haryana statute, is completely absent under the Punjab Act. It would thus be seen that this definition is merely intended to regulate the transfers and the fragmentation of land for strictly urban purposes and can in no way be construed as a blanket bar on the right to sell or acquire property. I may reiterate that even Mr. K. P. Bhandari had to concede that control and regulation for building purposes in urban areas would be well within the field of constitutionality and indeed is a legislative necessity now.

18. Now, once it is held, as it must, be, that the legislature is within its right to curb haphazard and ill-planned growth or urban areas and the rise of slums in towns, it would follow that the Punjab Act is only laying down reasonable restrictions on the right to property for that object. It was conceded before us and seems to be otherwise plain that a line has to be drawn somewhere with

regard to the fragmentation of land for urbanisation in municipal and suburban areas. The Legislature in its wisdom has thought that making five or more blocks for the four purposes specified would be indicative of the intention of the vendor to urbanise the land and may well lead to haphazard, growth. Even here it is not that an absolute bar is placed if sub-divisions of five or more are created but thereafter it is only a regulation of this right by requiring that the vendor must then secure a licence and conform to the requirements prescribed for a coloniser. It would seem reasonable that the person who fragments his compact area into blocks of five or more for clear-cut urban purposes is not merely disposing of his property and land but may well be treading the delicate path of colonising the same for purposes of urban use and development. Once that is so, the provisions regarding the definition of a coloniser, the requirement of a licence and the conditions and regulatory provisions therefore have a distinct social purpose. It calls for pointed notice that mushroom growth of slums and haphazard urbanisation is an evil which is irreversible in nature because once the area is fragmented and built upon, then the vice cannot be easily remedied except at the great and sometimes prohibitive costs of acquisition at full market value and then demolition and rebuilding thereof. This is a luxury which a poor country can ill-afford and is glaringly wasteful. It is, therefore, necessary to take preventive action and nip and evil in the bud. The tenuous argument of Mr. K. P. Bhandari that no bar should be placed on original fragmentation for urbanisation but later on curbs may well be placed for purposes of buildings and development appears to be fallacious. This is essence would be only robbing Peter to pay Paul If the vendees in such a situation are first allowed to purchase haphazardly laid out sub-divided thereon, then it would mean only an unjust enrichment of the original vendor at the cost of his duped vendees. It must be highlighted that there is no inflexible right to create fragmented case pools in urban areas in the garb of the erstwhile fundamental right to hold and dispose of property. It would thus follow that considering the larger purpose of curbing or prohibiting the haphazard and ill-planned growth of urban and suburban areas, the restrictions sought to be placed by the Act are plainly reasonable and intended to prevent grave and irreversible mischief which may arise from the creation of slums and shanty towns by unscrupulous landowners for purposes of unrestricted financial greed.

19. Lastly, the cushioning effect of Section 19 of the Act vesting the power of exemption of the State Government has also to be noticed. The discretion is vested at the highest level and it is to be presumed that it would be reasonably and liberally exercised, if necessary. This is a way mellows the rigour of the statute, if any, and is couched in somewhat wide terms. The power of exemption can be exercised both to avoid undue hardship and equally for reasons of expediency. It is a flexible power which may be exercised by the imposition of such terms and conditions within its scope of grant exemption to any class of persons or even to a whole area from all or any of the provisions of the Act. It is true that merely the vesting of a power of exemption is not and cannot possibly

be conclusive. It is, however, only one factor which may well be taken into consideration for the avoidance of any unseen rigour or harshness in particular cases. Again, Section 18 of the Act provides an appellate forum for any person aggrieved by the order of the Director. The regulatory power, therefore, conferred on the Director is not uncanalized but controlled by the right of appeal of the Government therefrom.

20. Before parting with the judgment, one must in fairness notice the contention raised by Mr. K. P. Bhandari which does credit to his ingenuity. He had argued that the Act compelled a person to adopt the profession of a coloniser in order to sell and dispose of his property. The heart of this submission was that even whilst offering for sale the land which in law was his own, the citizen, if he wanted to obtain maximum benefit by making five or more than five plots of the compact area, would be obliged to take out a licence and conform to all the stringent provisions of the Act and the Rules applicable to colonisers. This, according to him, was a clog on the right to own and dispose of property. By some further straining it was argued that just as the Constitution guaranteed the right to carry on a profession or business, in the converse equally impugned is the right of not carrying on a particular profession or business. Consequently, it was argued that to compel of a landowner into the profession of a coloniser merely in order to dispose of his compact piece of land in more than five fragments, would be violative of Article 19(1) (f) and (g) of the Constitution as well.

21. I am unable to accede to what appears to me as the somewhat doctrinaire stand aforesaid. As has been pointed out earlier, there is not the least bar for the disposal of a compact area of land into any number of blocks for purposes other than four specified in the definition of a "colony" and particularly for agriculture and subservient to agriculture as also or by way of gift and also other contingencies for sub-divisions. The Act again leaves it wholly open to sell one compact area into four blocks even for the four specified urban purposes. As noticed earlier, it leaves it open to the vendees to further sub-divide each compact area if they are so inclined. Even the erstwhile fundamental right to property was expressly subject to reasonable restrictions which have been liberally construed by precedent. It cannot be easily said that limiting the fragmentation of a compact block to less than five sub-divisions is an unreasonable restriction sub-serving to the plain object to planned urban development which indeed is now considered and accepted as a social necessity. It is only when a person wishes to urbanise his land into five or more blocks that the restrictions of a coloniser are attracted to this situation. I am unable to hold that this is in any way an unreasonable restriction.

22. In the ultimate analysis it must be concluded that the significant differences noticed above in the definition of "colony" in the Punjab Act distinguish it sharply from that in the erstwhile Haryana Act. Therefore the ratio in *Jai Chand Bhagat's* case 1975 77 PLR 277(supra) is in no way attracted to the provisions of this Act.

Once that is so, both the object and the purpose of the statute are not only laudable but indeed are an essential social necessity in modern urbanisation. Far from being in any way unconstitutional, the provisions of the Act subserve to the larger social purpose against the narrowly acquisitive ones of individual financial gain and are clearly within the ambit of reasonable restrictions. These provisions, therefore, must be upheld and the challenge thereto is hereby repelled.

23. Apart from the contentions noticed in the earlier part of the judgment, learned counsel for the petitioner did not and obviously could not advance any other argument to assail the provisions of the Act on the ground of arbitrariness or discrimination under Art. 14 of the Constitution. Consequently, we are unable to find any infraction of the equality clause in the impugned Sections of the Act.

24. In view of the above, all the nine writ petitions must fail and are hereby dismissed. Before of the somewhat intricate nature of the issues involved, I do not propose to burden the petitioners with costs.

S. P. Goyal, J.

I agree.

25. Petitions dismissed.