
(2009) 03 P&H CK 0241
In the Punjab And Haryana At Chandigarh

Sanjay Adlakha

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 250

Citation : (2009) 156 PLR 6 : (2009) 3 RCR(Civil) 315

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—The petitioner seeks a writ of certiorari for quashing the memo dated 6.10.1998 (Annexure P-7) prescribing the composition-fee for regularizing the unauthorized construction as well as the order dated 7.12.2004 (Annexure P-10) passed by the Appellate Authority-cum-Commissioner and Principal Secretary to Govt. Haryana, Urban Development Department, whereby the petitioner's appeal, seeking reassessment of the composition charges imposed on him by the Municipal Corporation, Faridabad (in short the Corporation) in respect of the unauthorized construction made over plot No. 2A/12, NIT, Faridabad, has been dismissed.

2. The petitioner's mother, Smt. Kheri Bai, purchased a residential plot measuring 640 square yards bearing No. 2A/12 in the New Industrial Township, Faridabad vide registered sale deed dated 21.8.1962. She is stated to have constructed a few shops on the said plot in the year 1968. On 11.10.1995, Smt. Kheri Bai applied to the Corporation for permission to construct a building over the said plot, comprising basement, ground floor and 1st floor. She also applied for permission for Change of Use of the subject plot from residential to commercial purposes. As the plot was abutting 120 feet wide road which was identified as a commercial road, the building plan submitted by Smt. Kheri Bai was approved by the Corporation. Smt. Kheri Bai, however, raised unauthorized construction in violation of the sanctioned building plan. She then applied for

compounding the unauthorized construction and also deposited certain amounts towards the "composition fee" and "conversion charges".

3. The record reveals that the building plan approved on 31.10.1995, permitted the mother of the petitioner to construct basement, ground floor and first floor having front side set back 62'3" x 10'0" wide each towards North and South side and rear set back/lawn open to sky 43 ft x 48 ft towards western side of the plot for the purpose of light, ventilation and parking etc. The petitioner's mother, on the contrary, raised large scale unauthorized construction measuring 2289 sq. feet + 5175 sq. ft. The Corporation served the petitioner's mother with notices under Sections 250 and 261 of the Haryana Municipal Corporation Act, 1994 but instead of stopping the unauthorized excavation for the purpose of constructing basement, she moved an application dated 20/22 November, 1995 expressing her willingness for compounding of the unauthorized construction on payment of the composition fee to be determined by the Corporation.

4. The Corporation thereafter served a notice dated 3.4.1996 (Annexure P-2) on the mother of the petitioner, asking her to pay composition fee @ Rs. 30 per sq. feet for the construction raised within the permissible area measuring 2289 sq. ft and @ Rs. 750/- per sq. ft. for raising construction on the set backs area measuring 1725 sq. ft. which was otherwise to be left open as per the sanctioned building plan. In this manner, the petitioner's mother was asked to deposit a total composition fee of Rs. 39,49,920/-.

5. Aggrieved, Smt. Kheri Bai - mother of the petitioner, filed a civil suit for declaration and permanent injunction in the civil court at Faridabad along with an application under Order 39 Rules 1 & 2 CPC for restraining the Corporation from recovering the assessed composition fee and/or demolishing the building constructed by her. The trial and the first appellate courts dismissed the ad-interim injunction application against the notice for recovery of Rs. 39,49,920/-. She, therefore, approached this Court by way of Civil Revision No. 3701 of 1998 which came up for preliminary hearing before a learned Single Judge on 2.9.1998 when the following interim order was passed:

Issue notice to the respondents to show cause why revision be not admitted returnable on 16.9.98. The building of the petitioner will not be demolished subject to the condition that the petitioner deposits a sum of Rs. 20 lacs within two weeks from today. If the said amount is not deposited, the interim injunction shall be liable to vacated.

Notice Dasti. If service is not effected on the respondents then the injunction would be liable to be vacated.

(emphasis applied)

6. It is not in dispute that the petitioner's mother failed to comply with the order dated 2.9.1998 and as the amount of Rs. 20 lacs, as directed by this Court, was not deposited. Meanwhile, the petitioner's mother's civil suit itself was dismissed

on merits by the learned civil court vide judgment and decree dated 7.1.2000 (Annexure P-3).

7. Smt. Kheri Bai did not file any appeal till her death. It was after a delay of 1320 days, that the petitioner and other legal heirs of Smt. Kheri Bai preferred Civil Appeal No. 64 dated 20.8.2003 before the learned District Judge, Faridabad which was dismissed on the ground of delay as well as on merits vide judgment dated 20.10.2003 (Annexure P-4).

8. The petitioner and other legal heirs of Smt. Kheri Bai thereafter preferred R.S.A. No. 2134 of 2004 and that was also dismissed by this Court vide order dated 7.4.2005, statedly, on the ground of limitation.

9. Having lost the civil suit as a result of which the demand notice dated 3.4.1996 also attained finality, the petitioner preferred an appeal before the State Govt, against the said demand notice. The fate of the appeal was no different and the same has also been dismissed by the appellate authority vide impugned order dated 8.12.2004 (Annexure P-10). The appellate order explains that the composition-charges have been levied as per the rates fixed by the State Govt, in the year 1993, i.e., much before the raising of the unauthorized construction. The fact that the petitioner failed to comply with the interim order dated 2.9.1998 passed by this Court in the Civil Revision, has also been referred to by the appellate authority.

10. Pretending that the appellate order has given rise to a "fresh cause of action", that the petitioner has approached this Court with selectively pleaded facts and has got an interim order dated 28.9.2006 staying demolition of his property.

11. I have heard Learned Counsel for the parties at some length and perused the records.

12. It has been the petitioner's own case throughout that a part of the construction has been raised in violation of the sanctioned building plan. It could also not be disputed that the composition fee has been levied by the Corporation at the rates uniformly prescribed by the State Govt. In any case, the demand notice dated 3.4.1996 calling upon the petitioner's mother to pay Rs. 39,49,922/- towards composition-charges has already undergone the judicial scrutiny of the civil court in a suit filed by the petitioner's mother and later on pursued by her legal heirs including the petitioner. The petitioner, therefore, cannot be permitted to re-agitate the matter regarding levy or calculation of the composition fee on the pretext that after dismissal of civil suit, the appellate authority has also upheld the said order.

13. It is quite unfortunate that the petitioner has been successfully hoodwinking the Corporation through sheer abuse of the legal process. It was more than 10 years back that this Court directed the petitioner's mother to deposit a sum of Rs. 20 lacs but the petitioner (or his deceased mother) failed to comply with the

said direction. Still, they have been able to retain the unauthorized building and enjoying its fruits from last about 14 years. During the course of hearing of this writ petition also, the petitioner was advised to comply with the order dated 2.9.1998 at least at this stage to prove his bona-fide. The suggestion has not found favour with the petitioner. The record reveals that the petitioner has scant respect for the municipal laws or the building bye-laws framed thereunder. The brazen violators like the petitioner need to be reigned in at the earliest, more so when the incident pertains to Faridabad whereby this Court has witnessed large scale unauthorized constructions/encroachments by land mafia, may be due to inaction or connivance of the local authorities.

14. No meaningful argument could be advanced to assail the well reasoned appellate order Annexure P-10.

15. For the reasons afore-stated, I do not find any merit in this writ petition which is accordingly dismissed, with costs of Rs. 25,000/-.