

(2010) 07 P&H CK 0268
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13834 of 2007

Satpal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 12(2)

Citation : (2010) 2 ILR (P&H) 879 : (2010) 4 RCR(Civil) 331

Hon'ble Judges : Mukul Mudgal, C.J.;Ajay Tewari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukul Mudgal, C.J.—This petition has been filed by the petitioners for issuance of a writ in the nature of certiorari/mandamus or such other appropriate writ, order or direction declaring the action of the respondent authorities in exercising jurisdiction under the provisions of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short "the Act of 1963") in the area which fell within municipal limits of Municipal Sirsa, as illegal, arbitrary, mala fide, and ultra vires to the provisions of the Act of 1963 and violative of Article 14 of the Constitution of India. It is further prayed by the petitioners that respondent authorities be directed to regularize the colony in question/houses constructed by the petitioners in consonance with the instructions dated 17th December, 2004 (Annexure P-6). He has further challenged notice issued to the petitioners u/s 12(2) of the Act of 1963 by the District Town Planner for removal of encroachments.

2. The case set up in the petition by the petitioners is that respondent No. 5 Sirsa Adarsh Housing Building Society had purchased 32 acres of land for allotment to its members in the year 1980. At that time, this area was outside the municipal limits and was left out of acquisition which had taken place in the

years 1982, 1989 and 1992. It is further case of the petitioner that this area was merged into the municipal limits of Sirsa in the year 1997. Thereafter, after its merger, all the activities within the municipal area are governed by the Haryana Municipal Act. It is further averred in the writ petition that District Town Planner has issued notice u/s 12(2) of the Act of 1963 which he could not because of merger of area into the municipal limits.

3. Upon notice, the respondents filed reply, inter alia, contending that Act of 1963 is applicable to the construction raised by the petitioners as the area falls within the municipal limits of Sirsa City which were extended later on.

4. While placing reliance upon the decision of Full Bench of this Court dated 12th February, 2007 rendered in Civil Writ Petition No. 8011 of 1999 bearing caption M/s Shiva Ice Factory versus State of Haryana and Others, it was contended that the Full Bench while analyzing two Division Bench Judgments titled as State of Haryana and others versus Kartar Singh and Others 1989 P.L.J. 35 and Pritam Singh and Others versus State of Haryana and Others 1995 P.L.J. 357 found that there is no conflict or inconsistency between the ratios laid down in the said two judgments and held that within the municipal limits for framing a development scheme and grant of sanction etc., the provisions of the Act of 1963 would not apply as application of that Act starts to apply to the areas lying outside the municipal limits

5. Learned counsel for the respondent on the other hand contended that the provisions of the 1963 Act would apply to the present case because the area in question was not originally in the municipal limits but was added later on.

6. After hearing learned counsel for the parties and on going through the record, we find that there is no dispute that the area in question which is the subject matter of the writ petition falls within the municipal limits Council, Sirsa. Such an averment has been made in paragraph No. 6 of the writ petition which is as follows :--

That despite the fact that the area in question, since the year 1997, stood included in the municipal limits of Municipal Council, Sirsa and the authorities under the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (hereinafter referred to as the Act of 1963) continued to exercise jurisdiction in the matter, as would be evident from the notice u/s 12(2) of the Act of 1963 dated 13th June, 2005 issued to one of the petitioners, copy of which is being annexed with this writ petition as Annexure P-5. It is submitted that once the area in question fell within the municipal limits of Sirsa, whether originally or by reason of limits being extended, the authorities under the Act of 1963 cease to have jurisdiction in the matter.

In response thereto, the respondent-District Town Planner has filed its reply to the following effect:--

That in reply to para No. 6 of the CWP, it is submitted that the municipal limits of

Sirsa City was extended in the year 1997 and the area in question falls under the extended limits of municipal limits of Sirsa, which is under the purview of and jurisdiction of the answering respondent under this Act.

The aforesaid averments clearly establish that as far as back in the year 1997 the area in question fell within the municipal limits and the notice issued by the District Town Planner u/s 12(2) of the Act of 1963 which is the subject matter of challenge in the present writ petition was issued on 13th June, 2005.

7. The Full Bench of this Court in M/s Shiva Ice Factory's case (supra) has also held to the following effect:--

To sum up, in both the judgments, it has been held that within the Municipal limits for framing a development scheme and grant of sanction etc., the provisions of the Scheduled Roads Act would not apply, as the scheduled area generally starts outside the Municipal limits, and even if the scheduled area is widened and a development scheme has already been framed under some other Act, the same would be saved from the operation of the provisions of the Scheduled Roads Act, provided the scheme so framed is not contrary to the provisions of the Act.

8. In view of the law laid down by a Full Bench of this Court and also the fact that the area in question was merged into the municipal limits in the year 1997, we are of the view that the impugned action u/s 12(2) of the Act of 1963 initiated by the District Town Planner dated 13th June, 2005 (Annexure P-5) cannot be sustained being beyond jurisdiction and after the merger, the area is to be governed by the provisions of the Haryana Municipal Act, 1973.

9. In view of above, the writ petition is allowed and impugned action dated 13th June, 2005 (Annexure P-5) of the respondent is quashed and it is declared that the area in question having been merged into the municipal limits would be governed by the provisions of Haryana Municipal Act, 1973 and not by the Act of 1963.

10. At this stage, learned counsel for the petitioners prayed that a direction be issued to the State Government to regularize the colonies set up by the petitioners as similar situated 26 other colonies which were merged later on in the municipal area have been regularized. He further states that a representation dated 11th January, 2005 (Annexure P-7) has already been made in this regard to the Government of Haryana which is pending decision. In view of the law laid down by the Full Bench in M/s Shiva Ice Factory's case (supra) as well as considering the fact that 26 colonies have already been regularized, we direct respondents No. 1 to 3 to dispose of the representation dated 1st December, 2005 by passing a speaking order but not later than 12 weeks from today. In case any order adverse to the petitioners is passed, the said order shall not be given effect to for a further period of 8 weeks. There shall be no order as to costs.