
(1988) 09 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 832 of 1986

State of Haryana and Others

APPELLANT

Vs

Kartar Singh and Others

RESPONDENT

Date of Decision : 16-09-1988

Acts Referred:

Haryana Municipal Act, 1973 — Section 203

Punjab Municipal Act, 1911 — Section 3, 3(18)

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 23(2), 24, 4, 4(1), 5

Citation : (1989) 1 ILR (P&H) 353

Hon'ble Judges : Veeraswami Ramaswami, C.J;G.R. Majithia, J

Bench : Division Bench

Advocate : N.S. Pawar, D.A.G, for the Appellant; V.K. Bali Anil Khetar Pal, for Respondent Nos. 1 to 15 and Rajesh Chaudhry, for the Respondent

Judgement

G.R. Majithia, J.—This judgment will dispose of Letters Petent Appeals Nos. 832 and 833 of 1986.

2. Thanesar Municipality by a special order No. 104 declared some area as unbuilt area within the limits of the Municipality. The Government of Haryana in exercise of powers conferred by Clause (b) of Sub-section (18) of Section 3 of the Punjab Municipal Act, 1911, confirmed the special order No. 104,--vide order dated January 28, 1969. The Haryana Municipal Act, 1973 (for short, referred to as "the Act") was published in Haryana Government Gazette (Extraordinary) of July 2, 1973. It repealed the Punjab Municipal Act, 1911. The schemes prepared under the Punjab Municipal Act, 1911, before the enactment of the Act, were to remain in force in so far as these were not inconsistent with the provisions of the Act. Section 203 of the Act enjoined upon the Thanesar Municipality to frame a Town Planning Scheme for the unbuilt area, but no step was taken in this behalf. No building activity could be taken up by the land owners whose lands were covered by the special order, since the land had been declared unbuilt area and the building activity was to be regulated by the town planning scheme. The land-

owners applied for the preparation of the Town Planning Scheme. The Thanesar Municipality submitted the survey plan and the ownership statement of the District Town Planner, Kurukshetra, for preparing the town planning scheme. Before any final decision could be taken, the State of Haryana,--vide notification dated September 26, 1980 u/s 4(1)(b) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter called "the Scheduled Roads Act") declared the area as "controlled area". As a result of the notification under the Scheduled Roads Act, the finalisation of the town planning scheme was stopped. A dispute arose whether the area is to be regulated by Section 203 of the Act or by the Scheduled Roads Act. The State Government did not take any step in this behalf. The land-owners whose land was declared as unbuilt area under Clause (b) of Sub-section (18) of Section 3 of the Punjab Municipal Act, 1911, moved this Court for issuance of a writ of certiorari for quashing declaration of the State Government declaring the area as "controlled areas" and also for quashing the notification dated January 28, 1969 issued in exercise of powers under Clause (b) of Sub-section (18) of Section 3 of the Punjab Municipal Act, 1911 and in the alternative for a writ of mandamus to the Respondent State to frame a town planning scheme.

3. The writ petition was allowed by the learned Single Judge and he issued a writ of mandamus directing the State to prepare a town planning scheme u/s 203 of the Act for the unbuilt area declared,--vide notification dated January 28, 1969. This order of the learned Single Judge has been challenged in appeal by the State of Haryana and its officers.

4. On behalf of the Appellant it was submitted that once the area has been declared as controlled area under the Scheduled Roads Act, a town planning scheme under the Act cannot be prepared. It was pointed out that a plan in conformity with the provisions of Section 5 of the Scheduled Roads Act has been published by the State Government and the writ Petitioners if they wanted to carry out building activities should apply for permission from the Directorate of Town and Country Planning, Haryana.

5. Section 24 of the Scheduled Roads Act empowered the State Government to impose restrictions upon the use and development of land comprised in the controlled area. But if the State Government under any other law prepared a development scheme for the development of land in the controlled area, the scheme can still be implemented, provided it is not inconsistent with the provisions of the Scheduled Roads Act. Section 24 of the Scheduled Roads Act reads as under:

Savings--Nothing in this Act shall affect the power of the Government or any other authority to acquire land or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force, or to permit the settlement of a claim arising out of the exercise of powers under this Act by mutual agreement.

A plain reading of this section safeguards the development schemes for the development of the land comprised in the controlled area prepared under other Acts. Sub-section (2) of Section 23 of the Scheduled Roads Act envisages that it shall not affect actions taken under any other Act except where the actions taken under the other Act are inconsistent with the provisions of the Scheduled Roads Act. The provisions of the Scheduled Roads Act operate in different fields. It is aimed at restricting unregulated development along the scheduled roads and further to ensure the planned development of the controlled area. u/s 4 of the Scheduled Roads Act, the State Government can by notification declare the whole or any part of any area adjacent to and within a distance of (a) eight kilometers on the outer sides of the boundary of any town, or (b) two kilometers on the outer sides of the boundary of any industrial or housing estate, public institution or ancient and historical monument, to be a controlled area. The domain of Section 4 operates outside the boundary of a town. Town is not defined in the Scheduled Roads Act. In the absence of any special definition in the Act, we have to resort to the ordinary dictionary meaning. In Webster's New World Dictionary, "town" means, "a more or less concentrated group of houses and private and public buildings, larger than a village but smaller than a city". Most of the local areas which constitute the towns are governed by the Act. Thus, the local areas which came within the description of "town" and are governed by the Municipal Act, Section 4 of the Scheduled Roads Act would not operate. The "controlled area" within the meaning of Clause (a) Sub-section (1) of Section 4 of the Scheduled Roads Act can only be the area which is outside the boundary of a town. Section 5 of the Scheduled Roads Act provides for preparation of plans showing the controlled area and specifying therein the restrictions and the conditions for the erection or re-erection of any building, allotment or reservation of land for roads etc. The provisions of Section 5 of the Scheduled Roads Act aim at achieving the same object in the controlled area which Section 203 of the Act seeks to achieve within the Municipal limit of a town. Thus, the provisions of Section 203 of the Act are not inconsistent with the provisions of the Scheduled Roads Act. The provisions of Section 203 of the Act being consistent with the provisions of the Scheduled Roads Act, therefore, will remain operative.

6. We do not find any infirmity in the conclusion arrived at by the learned Single Judge. We dismiss the appeals leaving the parties to bear their own costs.