
(2014) 07 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 17392 of 2001 (O&M)

State of Haryana and Others

APPELLANT

Vs

Raj Kumar and Others

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Haryana Municipal Act, 1973 — Section 203C, 203D, 203G, 32
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 2(9), 3, 4, 5

Citation : (2015) 177 PLR 108

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Pardeep Singh Poonia, Additional Advocate General, Advocates for the Appellant; Adarsh Jain, Advocates for the Respondent

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order dated 11.02.2000 passed by the Tribunal constituted under Punjab Schedule Roads & Controlled Areas Restriction of Unregulated Development Act, 1963 (for short the Act) as amended by Haryana Act No. 6 of 2007 whereby an order passed by District Town Planner, Kurukshetra exercising the powers of Director, Town and Country Planning, Haryana was set aside holding that the construction has been raised in terms of permission granted by the Municipal Authorities, therefore, the same cannot deserve to be reviewed. The brief facts leading to the present writ petition are that predecessor of respondent No. 1 purchased land measuring 5 Kanal 17 Marlas situated in revenue estate of village Jhambra Shahbadm, Tehsil Thanesar, District Kurukshetra, and raised construction in the form of a Saw Mill and a wooden Stall (Lakkar Taal) somewhere in the year 1969. Such construction is reflected in the Jamabandi for the year 1969-70.

2. The aforesaid land became part of controlled area vide notification dated 17.12.1970 issued under Section 4 of the Act. In terms of Section 5 of the Act, the development plan were published on 02.01.1973 wherein the land in question was reserved for residential purposes.

3. The respondent No. 1 was served a notice on 14.05.1982 that the respondent has erected or re-erected a building over Khasra No. 31//16/2 and called upon the present respondent No. 1 to restore the land to its original state. An order was passed to restore land at Khasra No. 31//16/2 to its original state on 24.06.1982. However, the municipal limits of Municipal Committee Shahbad was extended on 26.08.1985 and the land in question came to be within the municipal limits. Thereafter, the respondent No. 1 got the building plan sanctioned in respect of the construction raised over Khasra No. 31//16/2, 24/1 and 24/2.

4. The respondent No. 1 was again served a notice by District Town Planner exercising the powers of Director Town and Country Planning, Haryana, Chandigarh on 13.10.1998 that he has raised building over Khasra No. 31//16/2, 24/1 and 24/2 and called upon respondent No. 1 to restore the land to its original state. It is in pursuance of such show cause notice, the District Town Planner exercising the powers of Director Town and Country Planning, Haryana, Chandigarh passed an order of restoration of the land on 16.11.1998. It is the said order which has been set aside by the Tribunal which is being challenged by the State in the present writ petition.

5. Learned counsel for the petitioners has vehemently argued that the land was reserved for residential purposes in the development plan finalized, therefore, could not be used for non-residential purpose. Since, the respondent has contravened the provisions of the Act, the Director, Town and Country Planning is the competent authority to enforce the provisions of the Act in respect of constructions raised within the controlled area, though, subsequently came to fall within the municipal limits. It is argued that the building plans were approved by the Municipal Council on 15.10.1998 i.e. after issuance of notice under the Act. It is argued that the sanction of the building plans after issuance of the notice will not cure the defect and the land is to be restored to its original state. It is also argued that there is a violation of Section 3 of the Act as well as the construction has been raised within 30 mtrs of schedule roads.

6. On the other hand Mr. Jain, learned counsel for the respondents, referred to Division Bench judgment of this Court in CWP No. 17048 of 2007 titled as Rajat Kuchhal and others v. State of Haryana and others, decided on 23.08.2012 to contend that the Director Town and Country Planning has no jurisdiction to enforce the provisions of the Act in respect of land situated within the municipal limits. Since the land falls within the municipal limits and that respondent has got the building plan sanctioned may be even after the issuance of the notice under the Act, the Director Town and Country Planning has no jurisdiction to direct the restoration of land to its original state for the reason that the land now falls within the municipal limits.

7. We have heard learned counsel for the parties and find no merit in the present writ petition. In Rajat Kuchhal's case (supra), the Division Bench of this Court has examined the provisions of the Haryana Municipal Act, 1973; Haryana

Municipal Corporation Act, 1994 as also the Act. It was held therein that in respect of the land situated within controlled area, the Director Town and Country Planning is to ensure compliance of development plans and the provisions of the Act, not in respect of land located the outside the municipal limits. It was held to the following effect:-

".....Once the Municipal Council is constituted or the limits of a local authority are extended, the 1973 Act becomes applicable in respect of a controlled area declared under 1963 Act in terms of Section 203C of the 1973 Act. But the power to implement the provisions of the Act lies with the Director, Urban Development Department, as defined in Section 2(9) of the Act as amended vide Act No. 5 of 2002 or on a delegate of the State Government in terms of Section 32 of the 1973 Act. We find that the legislation has used the expression Director, Town & Country planning and the Director in the 1973 Act for two different purposes. The expression Director, Town & Country planning has been used in respect of the Controlled area declared under the 1963 Act but where the expression used is only Director, it signifies that the jurisdiction within municipal limits is with the Director Urban Development Department. This is evident from reading of Sections 203C, 203D and 203G of the 1973 Act. It is further pointed out that the powers of Director can be delegated to any other person by the State Government in respect of an area governed by 1973 Act.

.....Therefore, keeping in view the rule of harmonious construction and to ensure proper working of all the statutes, it transpires that:-

(i) The Director, Town & Country Planning or any officer so appointed by the State Government is to ensure the compliance of the development plans and the provisions of 1963 Act in respect of controlled area and on the scheduled roads, outside the municipal limits;

(ii) The Director, Urban Development Department is competent to seek compliance of the development plans published under Sections 4 & 5 of the 1963 Act in terms of Section 203C of the Act unless such plans are modified in accordance with the procedure prescribed therein; and also by a delegate notified by the State Government in terms of Section 32 of the 1973 Act."

8. In the aforesaid judgment in Rajat Kuchhal's case (supra), after considering the amendments up to date, it was held that Director Town and Country Planning is to ensure compliance of the Act outside the municipal limits alone. Since, the land in question falls within the municipal limits and the show cause notice has been issued after the land in question came within the municipal limits, therefore, Director Town and Country Planning has no jurisdiction to issue notice to respondent No. 1. Still further, the Municipal Council has sanctioned building plans, therefore, there is no illegality in the construction raised by respondent No. 1. We do not find any merit in the present writ petition.

Dismissed.