
(2006) 03 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2951 of 2006

Suresh Kumar and Others

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 250, 254, 261, 261(2), 265(1)

Citation : (2006) 143 PLR 832 : (2006) 2 RCR(Civil) 353

Hon'ble Judges : Uma Nath Singh, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : A.K. Chopra and Deepinder Malhotra, for the Appellant;

Final Decision : Dismissed

Judgement

Uma Nath Singh, J.—This common order shall also dispose of Civil Writ Petition Nos. 2984 of 2006 M/s Jagdamba Medicos and Ors. v. State of Haryana and Ors. and 2988 of 2006 S.D. Arora and Ors. v. State of Haryana and Ors., as all these petitions involve the controversies some what similar in nature and a common question of law as regards the jurisdiction of the Municipal Corporation of Faridabad over the properties in question in respect of the impugned different types of violations after the expiry of the terms of their Tenancy Agreements with the Haryana Housing Board. By invoking the writ jurisdiction of this Court, the petitioners have prayed for issuance of a writ of certiorari quashing (i) the judgment, dated 27.1.2006 (Annexure P-14) passed by learned District Judge, Faridabad, in the Statutory Civil Appeal No. 84 of 2.1.2006 and other connected ones filed u/s 261(2) of the Haryana Municipal Corporation Act, 1994 (for short "the 1994 Act"); (ii) the memo No.CVO-EO-2005/23614-23624 dated 14.9.2005, Annexure P-7, (proceedings of the meeting convened by the Chief Secretary to the Government of Haryana on 5.9.2005 at 4.15 PM towards compliance of this Court's order dated 21.7.2005 in C.W.P. No. 96 of 1997); (iii) the decisions taken in the said meeting, and (iv) the order dated 22.2.2006 passed by the Joint Commissioner, Municipal Corporation, Faridabad, Annexure P-16, (for taking

action against the misuser, illegal change of land use, encroachments and unauthorised constructions in the residential areas).

2. It appears that the Haryana Housing Board (for short "the Board") allotted the residential houses in question to the petitioners in various sectors of its colonies at Faridabad, sometime 25-35 years back (starting from early 1970) under a hire purchase scheme. A standard Hire Purchase Tenancy Agreement was entered into between the parties in all the individual cases. Ostensibly, the scheme was floated and the agreements were entered into under the provisions of the Haryana Housing Board Act, 1971 (for short "the 1971 Act") and the rules and regulations framed thereunder. On the expiry of the terms of agreements and conveyancing of the properties in their names, allottees are said to have become the absolute owners of the houses on payment of the total costs thereof. Admittedly, they are doing trading/commercial activities by running small shops in their houses; notwithstanding the facts that the houses were allotted under a scheme on concessional rates to them being economically weaker sections of the society; only for the residential purpose. With the passage of time, the said colonies became a regular market. Hence, a Civil Writ Petition (No. 287 of 1995) was filed before Hon"ble the Apex Court by all Sectors (HUDA) Market Welfare Association against the State of Haryana and Ors., seeking direction to stop commercial activities in residential houses of the Haryana Housing Board Colonies. However, the Secretary of the Board filed an affidavit in the said writ petition stating that after the expiry of the terms of Hire Purchase Tenancy Agreements, the Board has ceased to have authority and control over the premises in question. Vide an order dated 19.11.1996 of Hon"ble the Apex Court, the said writ petition was transferred to this Court, which was registered as C.W.P. No. 96 of 1997. This Court vide an order dated 21.7.2005, directed the Chief Secretary, Government of Haryana, to convene a meeting of the Heads of the Board, HUDA, MCF and Town and Country Planning Department, to sort out and resolve as to which authority has jurisdiction and power to take action against the alleged misuser of the premises, encroachments and violations, including additions and alterations. It appears that in a meeting convened on 5.9.2005, the concerned authorities took certain decisions (Annexure P7) and pursuant thereto, instructions were issued to all the Zonal Administration and all the Estate Officers, HUDA, to take necessary action in accordance with decision of the meeting. The Joint Commissioner, Municipal Corporation, Faridabad, Old Zone, issued notices to some of the allottees under the Haryana Urban Development Authority Act, 1977 (for short "the HUDA Act"), and also under Sections 250, 254, 261 and 265(1) of the 1994 Act, calling upon the petitioners to show cause within a period of 3 days as to why an order u/s 261 of 1994 Act be not passed. After replies were received and considered, vide the order dated 20.12.2005, the petitioners/allottees were directed to stop the commercial activities and misuse of the residential premises. They were also directed to remove the unauthorised construction and encroachments over the premises in question within a period of 3 days, or else face the demolition.

3. The aforesaid order of the authorities was challenged in C.W.P. No. 20367 of 2005, which was dismissed as withdrawn with liberty to take recourse to any other appropriate remedy as available under the law. Accordingly, the petitioners preferred statutory appeals u/s 261 (2) of 1994 Act for setting aside the order dated 20.12.2005.

4. Learned District Judge, Faridabad, while dismissing the statutory appeals filed u/s 261(2) of the 1994 Act granted one month's time to comply with the order of the authorities dated 20.12.2005. He also clarified that the petitioners could apply to Municipal Corporation for compounding of the violations. However, the Joint Commissioner, Municipal Corporation, Faridabad, has declined the application for compounding.

5. We have heard learned Counsel for the petitioners and perused the records.

6. The main submission of learned Counsel for the petitioners is that after expiry of the terms of the Hire Purchase Tenancy Agreements, the Board ceased to be the owner of the houses in question. In terms of their affidavits filed by the authorities before this Court in C.W.P. No. 96 of 1997 stating that the Board had no jurisdiction to take action against such premises, the petitioners have become the absolute owners of their properties. Though this Court directed the Chief Secretary, Government of Haryana, to convene a meeting of all the concerned authorities to define their jurisdiction for taking action against unauthorised constructions and misuser of the properties but even as a result of the decisions taken in the said meeting, the authorities have no sanction of law to proceed against them in the absence of a legislation, or notification to that effect in the official Gazette. It was also submitted that the commercial activities, additions and alterations in the said residential houses are not totally forbidden and the same could be carried with the prior permission of the authorities. Even the alleged violations are also compoundable in nature. Further, the petitioners are the members of the economically weaker section of the society and by running small shops in their residential premises, they are only earning their bread and butter. It was also submitted that all the commercial activities are not alike and running of chemists shops in the premises in question should not be stopped in the public interest.

7. On a careful consideration of the submissions of the learned Counsel, we are unable to persuade ourselves, that with the expiry of the terms of their Tenancy Agreements, the Local Authorities have ceased to have any control over the properties in question. The Haryana Housing Board Act, 1971, where under the Hire Purchase Scheme was launched, defines the "Local Authority" as under:

2(j) "Local authority" means a municipality constituted under the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), or a Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), or a Panchayat Samiti or a Zila Parishad constituted under the Punjab Panchayat Samities and Zila Parishads Act, 1961 (Punjab Act 3 of 1961), or an

Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922).

The Haryana Urban Development Authority Act, 1977 whereunder in exercise of powers of the Estate Officer, the Municipal Corporation, Faridabad, had issued notices earlier, also defines the "Local Authority" in similar terms as under :

2(n) "Local authority" means a Municipal Committee, a notified Area Committee, a Town Improvement Trust, the Faridabad Complex Administration (the Haryana Urban Development Authority) or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

8. That apart, by virtue of being parties to the order passed by this Court in Civil Writ Petition No. 96 of 1997 dated 21.7.2005 which was not challenged before Hon"ble the Apex Court, and, thus, attained finality, the petitioners have acquiesced in, and submitted to the consequential orders of the authorities passed pursuant thereto, Similarly by withdrawing their Civil Writ Petition No. 20367 of 2005 with liberty to take recourse to any other appropriate remedy under the law and thereafter by invoking the jurisdiction of the Statutory Appellate Authority (learned District Judge, Faridabad) u/s 261(2) of the 1994 Act, the petitioners have submitted themselves to the jurisdiction of the municipal authorities. Hence, they need to be estopped from questioning the jurisdiction of the Local Authority on technical grounds as raised in the instant Civil Writ Petition. The aforesaid orders, therefore, do not seem to have caused any prejudice in any manner to the petitioners.

9. In the Agreement (Annexure P-2), Clauses 2(b), 2(d), and 2(g) contain the conditions that the hire purchaser shall be bound by the orders and directions of the Local Authorities; they shall not carry any trade or business in their residential premises; and they shall not raise any alteration or additions to their properties without prior permission of the authorities. The Chairman of the Board has been made the final authority to take decisions in respect of all the regulations or the agreements. Even Schedule III to the Agreement also contains stringent conditions against the misuser of the property. Thus, looking to the tenor and terms of the tenancy Agreements, it cannot be said that all the restrictions have automatically stood withdrawn on expiry of the terms of the agreements, giving absolute freedom to the hire purchasers to create a self-contained and self-sufficient island for themselves. Once the petitioners were allotted the houses under a scheme floated under the 1971 Act, the tenancy agreements entered thereunder could not have the overriding effect on the substantive provisions of the Act defining "local body" as "municipality" and for the same reason the period prescribed in the agreements shall not forbid the exercise of the territorial jurisdiction of the local body. Further, the application of a Municipal Act over any property depends upon its territorial jurisdiction and since the properties in question fall under the territorial jurisdiction of the Municipal Corporation, Faridabad (See: Schedule 1 to the 1994 Act), the tenancy agreements cannot act as estoppel against the statute. That apart, in the

Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulation, 1972, a clause being 2(y) was incorporated with effect from 31.10.1989. The said clause, on reproduction, reads as under:

2(y) The allottee/hirer/owner shall be governed by the Haryana Urban Development Authority Act, 1977, Haryana Municipal Act, 1973 or any Act of any other concerned Local Authority and Rules and Regulations made thereunder in so far as they relate to unauthorised construction, violation of building or zoning regulations, the making of an unauthorised entry or exit or encroachment on a public street, park or open space, or use of the premises for any use other than a residential use.

Admittedly, the additions, alterations and commercial activities have been going on since long, even during the terms of the tenancy agreements. Therefore, the submission of learned Counsel that the provision of Clause 2(y) as aforesaid would not apply in the facts and circumstances of the instant case, as it is to operate prospectively with effect from 31.10.1989 and not retrospectively for past violations, does not find favour with us for the reason that these are not the cases of one time violation but rather, are the cases of continuing violations. Hence, this provision would also cover the present violations. Secondly, the past violations of the conditions of agreement and the provisions of 1971 Act, by way of alterations, additions and commercial activities, said to be running since long, are also covered under the provisions of Clause 2(g) of the Hire Purchase Tenancy Agreement as the petitioners did not obtain prior permission of the authorities before starting such activities.

10. As there is a clear violation of the conditions of the agreement so also the provisions of Clause 2(y) of the 1972 Regulations (incorporated by 1989 Amendment); as the premises in question fall under the municipal areas of the Corporation, being the Statutory successor of the municipalities of Faridabad and Ballabhgarh areas; and as the areas/sectors in question are covered under the Master plans said to have been implemented in different years from 1972 to 1988, the respondent-authorities are competent and well within their powers to take impugned actions, and moreso, when the order of this Court dated 21.7.2005 has given explicit sanction to resolve the issue in that manner.

11. However, as in terms of the provisions of Section 387 of the 1994 Act, the Commissioner or an authorised officer of the Corporation has been given power and discretion to compound any offence under this Act, the respondents concerned are bound to exercise such powers and discretion discreetly and dispassionately with abundant caution. They should weigh and evaluate the private interest of the petitioners vis-a-vis public interest in a background of collusion of the local authorities in permitting gradual growth of a big market area in the residential premises in question. As the authorities are said to have not passed speaking order considering each representation on its merit, the petitioners would be at liberty to submit fresh representations for composition of violations within 15 days from today and the authorities shall decide the same in

the light of the above observations after giving the petitioners personal hearing within a period of two months from the receipt of said representations. In the meantime, the authorities shall not proceed against the violations in question in terms of their orders. With this limited indulgence, these writ petitions being devoid of merits are hereby dismissed at the threshold.