
(1997) 05 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16558 of 1996

Vinod Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Citation : (1997) 2 PLJ 372 : (1998) 2 RCR(Civil) 475

Hon'ble Judges : G.S.Singhvi, J and N.C.Khichi, J

Advocate : Mr. Sanjeev Sharma, Advocate, Mr. O.P. Goyal, Senior Advocate, instructed by Mr. Baljit Singh, Advocate., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.—In these petitions constitutional validity of Section 17(3) and (4) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) has been challenged. The petitioners have prayed that the impugned provisions be struck down and the notices issued by Estate Officer under these provisions be declared as nullity.

2. Shri Vinod Kumar and others, who have filed C.W.P. No. 16558 of 1996 are residents of Sectors 15, 16 and 17, Faridabad. They were allotted residential plots in the years 1967 and 1968 under the Punjab Urban Estates (Development and Regulation) Act, 1964 read with the Punjab Urban Estates (Sale of Sites) Rules, 1965. After that petitioners constructed buildings over the plots allotted to them and the petitioners started residing therein. After some time they started using a portion of their residential buildings for commercial purposes.

3. While deciding the petitions for Special Leave to Appeal (Civil) No. 1540809 of 1990 on 12.9.1994 the Supreme Court passed the following order :

"It is reported that the commercial use in the name and style of Sethi Properties and Sonu Boutique is still in operation. It was pointed out that at the time of inspection the petitioner is no longer its owner. The report indicates that there is a change in the ownership of these shops. Under these circumstances, we do not find any ground warranting interference. These SLPs are accordingly dismissed.

It is stated in the affidavit filed by the petitioners that some other shops are still being continued contrary to the Regulations. It is needless to mention that the authorities should take action against every person who violates the Regulations and the Rules as per law. "

4. In the purported compliance of the directions given by the Supreme Court the Estate Officer, Haryana Urban Development Authority, Faridabad issued notices to the petitioners and large number of other similarly situated persons under Section 17(3) and (4) of the Act for resumption of the buildings on the grounds that (i) the construction made by the petitioners is not in conformity with the sanctioned plan and the building byelaws, and (ii) the residential plots are being used for commercial purposes. The petitioners submitted their replies. Thereafter the Estate Officer passed the impugned orders for resumption of the site and forfeiture of 10 per cent of the consideration money.

5. Aggrieved by the orders passed by the Estate Officer some of the petitioners filed appeals before the competent authority under Section 17(5). Some others filed Civil Writ Petition No. 513 of 1996 titled as Madan Lal and others v. State of Haryana and others. On 12.9.1996 the Supreme Court dismissed the writ petition but gave liberty to the petitioners to avail the remedy under Article 226 of the Constitution. The extract of the order passed by the Supreme Court is reproduced below :

"The petition filed under Art. 32 of the Constitution is not maintainable. Accordingly it is dismissed. It is open to the petitioners to avail of the remedy under Art. 226 of the Constitution. One month's time is given to the petitioners to approach the High Court. In the meanwhile, inter suspension of the order dated April 11, 1996 and similar orders only to the extent of resumption of the respective plots of the petitioners. In other respects, there is no stay and they are bound to pay the respective amounts ordered for the contravention of the conditions. The resumption stands suspended in the meanwhile."

6. Taking advantage of the observations made by the Supreme Court the petitioners have filed this petition and have made the prayers aforementioned. The main plank of challenge to the constitutional validity of Section 17(3) and (4) is based on the order of reference made by the Supreme Court on 14.2.1995 in petition for Special Leave to Appeal (Civil) No. 4559 of 1993, Maj. (Retd.) Babu Singh Bains v. Union of India and Ors. The petitioners have contended that the vires of Section SA of the Capital of Punjab (Development and Regulation) Act, 1952 which is pari materia to Section 17(3) and (4) of the Act and which was upheld by a majority judgment of the Full Bench of this Court in Ram Puri v. Chief Commissioner, Chandigarh, AIR 1982 Punjab and Haryana 301 is now under consideration before the Supreme Court and, therefore, the action initiated against them under the impugned provisions should be declared as void. The petitioners have also contended that the impugned provisions are confiscatory in nature and they are hit by Articles 14 and 300A of the Constitution.

7. CWP No. 8752 of 1996 has been filed by Shri Ashwani Kumar for quashing the order and notice dated 3.4.1996 and 10.4.1996 respectively for resumption of his property, forfeiture of 10 per cent of the consideration money and his eviction from the property in dispute. He has relied on the order passed by the Supreme Court in S.L.P. No. 400 of 1996, S.K. Kathuria v. State of Haryana.

8. During the pendency of the writ petitions a three Judges Bench of the Supreme Court upheld the constitutional validity of Section 8A of the Act of 1952. It also dismissed the various petitions for Special Leave to Appeal and appeals filed against the orders passed by the High Court vide judgment in Babu Singh Bains etc. v. Union of India, JT 1996(9) S.C. 371 : 1996(3) RCR (Civil) 752. In view of this decision the learned counsel for the petitioners did not press their challenge to the constitutional validity of Section 17(3) and (4). They, however, submitted that the petitioners may be given time to remove the misuser and/or to bring the buildings in conformity with the sanctioned building plans. Learned counsel also submitted that the appeals/applications filed by the petitioners may be ordered to be decided so that the parties may know the fate of their pending cases. The learned Advocate General Haryana and the counsel for the Haryana Urban Development Authority submitted that the petitioners may be given time to bring their buildings in conformity with the sanctioned plan and remove misuser but specific limit should be fixed by the Court for such actions.

9. Keeping in view the submission made by the learned counsel for the parties, these petitions are disposed of with the following directions :

(1) Within 15 days from today the petitioners shall furnish an undertaking in writing and also file an affidavit that they will remove the misuser within a period of six months and bring their buildings in conformity with the sanctioned plans.

(2) The appeals/applications filed by the petitioners shall be decided by the competent authority within three months from today. Shri Sanjiv Sharma undertakes to inform the competent authority about this direction. The appellants/applicants should appear before the competent authority on 16.6.1997.

(3) If the competent authority/authorities pass order in favour of the appellants/applicants then the issues of misuser etc. shall be treated as decided in accordance with that order.

(4) In all other cases the petitioners shall stop misuser and bring their buildings in accordance with the sanctioned plans within six months failing which the sites and the buildings shall stand resumed automatically and the order of ejectment, if any passed, shall become operative.

(5) The directions given in the preceding paragraphs shall not operate to the prejudice of the owners of the sites/buildings who may not be personally guilty of misuser.

(6) In case any of the petitioners fail to stop the misuser, the respondents shall

file a miscellaneous application in these petitions for initiation of proceedings under the Contempt of Courts Act, 1971 and also for prosecution of the person concerned for violating the undertaking.

10. This order was dictated on May 15, 1997 but due to mixing of this file with other files, the same could not be sent to the Registry. We, therefore, direct that the period mentioned in this order shall commence from the date of issuance of certified copy of this order to the counsel for the petitioners. We also direct that copies of this order be supplied dasti on payment of prescribed fee.