

(2002) 04 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 1649-M of 1994

Partap Singh and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: April 2, 2002

Acts Referred:

- Haryana Development and Regulation of Urban Areas Act, 1975 - Section 2

Citation: (2003) 1 RCR(Civil) 153

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: Y.P. Malik, for the Appellant; Sanjay Vashisth, D.A.G. Haryana, for the Respondent

Final Decision: Allowed

Judgement

H.S. Bedi, J.

1. Petitioners Partap Singh (since deceased) and his brother Rajpal, who is stated to be serving in the Army, sold 7 Kanals 17 Maria's agriculture land situated in village Siwah to M/s Novelty Spinning Mills Private Limited, G.T. Road, Panipat through a registered sale deed dated 9.2.1989 (Annexure P-1). Respondent No.2, The District Town Planner, Panipat, thereafter lodged the present FIR against the petitioners on 22.1.1991 (Annexure P-2) alleging that by selling the land in question, the petitioners had infringed the provisions of Section 7 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the "Act") as they had sub divided their land for selling the same for residential and commercial purposes without obtaining a licence from the Director, Town and Country Planning, Haryana, Chandigarh. The police after due verification filed a challan against the petitioners alleging that only one transaction had taken place i.e. the one made on 9.2.1989. The petitioners thereafter approached this Court by way of the present petition for quashing of the FIR and all other consequential proceedings arising

therefrom on the ground that no provision of law had been violated as only one plot had been sold and there was no allegation that any other plot had been carved out or proposed to be put up for sale.

2. This petition was admitted for hearing on 2.2.1994 and the further proceedings before the trial Court were ordered to be stayed. It is the admitted position that the said stay order continues to operate as of today.

3. A reply has been filed on behalf of the respondents wherein the allegations against the petitioners had been reiterated and it has been pleaded that by selling 7 kanals 17 marlas of land, the entire land measuring 127 kanals 19 marlas belonging to the petitioners had been sub-divided, which was a clear violation of Section 7 of the Act.

4. Mr. Malik, the learned counsel for the petitioners, has urged that from a bare reading of Section 2 of the Act, it would be clear that a colony could be said to have been set up if more than one plot had been carved out and as there was no allegation whatsoever that any plot beyond one was sold to M/s Novelty Spinning Mills Private Limited, the question of setting up of a colony did not arise with the result that no case was made out against the petitioners.

5. Mr. Sanjay Vashisth, D.A.G., Haryana has, however, contorted the stand of the petitioners and has argued that it would be clear from the facts as stated that the land had been subdivided for being used for residential and commercial purposes and that there was a clear violation of Section 7 of the Act.

6. Sub-Section (2)(c) of the Act which defines "Colony" is reproduced below:-

(c) "Colony" means an area of land divided or proposed to be divided into plots for residential, commercial or industrial purposes, but no area of land divided or proposed to be divided:-

- i) for the purpose of agriculture; or
- ii) as a result of family partition, inheritance, succession or partition of joint holdings not with the motive of earning profit; or
- iii) in furtherance of any scheme sanctioned under other law; or
- iv) by the owner of a factory for setting up a housing colony for the labourers or the employees working in the factory;

Provided there is no profit motive; or

v) when it does not exceed one thousand square meters, shall not be a colony."

7. It will be clear that before a colony could be deemed to have been set up, the land in question should be divided into plots or proposed to be divided into plots for use as residential or commercial purposes. The very fact that the word "plots" has been

mentioned clearly means that more than one plot had to be carved out before a colony could be said to have come into existence. It is clear from the FIR and the reply filed to the petition that there is no allegation whatsoever that the petitioner had carved out or sold more than one plot. In this situation, no colony had been set up by the petitioner by a mere sub-division of his land. Moreover, the matter is pending in this court since 1994 for an infringement that had allegedly happened in 1989 and one of the accused has also in the interregnum died. The delay must also be taken into account.

8. In view of the above, this petition is allowed, the FIR and all the consequent proceedings arising therefrom are quashed.