(2007) 09 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Shri Bhagwat Gita Foundation (Society)		APPELLANT
	Vs	
State of Haryana and Others		RESPONDENT

Date of Decision: Sept. 27, 2007

Acts Referred:

- Punjab New Capital (Periphery) Control Act, 1952 - Section 12

Citation: (2007) 4 PLR 797 : (2008) 1 RCR(Criminal) 551

Hon'ble Judges: Hemant Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit filed by the plaintiff for declaration and for permanent injunction challenging the notice 8.1.1993 issued by the District Town Planner, Panchkula, as illegal, unconstitutional, null and void, was dismissed.

2. It is the case of the plaintiff-appellant that the plaintiff is a charitable institution, which is carrying on sacred religious objectives for public purposes and social welfare of the people. It is pleaded by the appellant that the land in dispute was taken on lease from Mari Gold Leasing India Limited vide agreements dated 28.6.1992 and 30.6.1992 and purchased vide sale deed dated 15.1.1993. It was pointed out that the suit property is situated at Village Bhawana, Tehsil Kalka, District Ambala. The said land was Barani without water and surrounded by jungles and that in the year 1968 the families built a Gurdwara. The land in the said village was allotted to the Sikh families migrated from Pakistan, for residential houses and for other infrastructure for Tunning their livelihood. The appellant alleged that the disputed property does not fall within 10 miles from outer boundary of the land

acquired for New Capital of Chandigarh as its distance from the outer boundary is more than 16 miles. It is also pleaded that with great efforts and huge investments, the plaintiff repaired the existing building, made renovation therein, uplifted the faces and altered the existing building retaining the original walls and water ponds for religious and social purposes, after getting sanction from the competent authority i.e. the Gram Panchayat, Toran. It was alleged that the notice dated 8.1.1993, issued by the District Town Planner alleging unauthorized construction of building and threatening that they would demolish the building of Alpine Public School, is wrong, illegal, ultra vires, arbitrary, unconstitutional, null and void. The notice dated 8.1.1993 was alleged to be frivolous, unwarranted and without authority and alleged to have been issued to harass the charitable body.

3. In reply, it was been stated that the plaintiff has constructed a new school building over the land in dispute without permission of the competent authority as the land, over which the building is constructed, falls within the Controlled Area under the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the Act). It was also pointed out that the land in dispute is away outside the abadi deh of village Bhawana and has a considerable distance of 400 meters approximately. It was also pointed out that the land in dispute falls within the agricultural land afore station zone where no such construction can be allowed. The revenue estate of village Bhawana has been declared to be a Controlled area vide Haryana Government Gazette Notification dated 21.3.1972. It has been pointed out that permission for the residential purposes can be granted subject to certain conditions as mentioned in the Punjab Government letter dated 15.10.1966, but the building in dispute is not the residential building and that the plaintiff has never applied for the permission as well.

4. The learned trial Court dismissed the suit after finding that the notice Exhibit D-2 was issued by the District Town Planner u/s 12 of the Act to show cause why the land should not be restored as such construction has contravened the provisions of the Act. Thus, it was found that the notice is not illegal. Such finding was affirmed in appeal as well.

Learned Counsel for the appellant has vehemently argued that the appellant has not carried out any new construction, but has only renovated the existing construction which was in dilapidated condition and, thus, the bar contained u/s 5 of the Act is respect of erection or re-erection of the building would not be applicable. The said argument is without any substance. Vide notification dated 21.3.1972, u/s 3 of the Act, the revenue estate of Village Bhawana was declared as Controlled Area. Being the Controlled Area, there is prohibition that no person can erect or re-erect any building except in accordance with the plans and restriction and with the prior permission of the competent authority.

5. In respect of construction of building, the appellant has relied upon deemed permission as a consequence of an application submitted to the Director, Town and

Country Planning on 13.3.1994, Exhibit P-1. Firstly, the permission has not been sought in terms of the provisions of Section 6 of the Act. The deemed permission can arise only if an application in terms of Section 6 of the Act is submitted. Exhibit P-1 is a simple letter written to the Director, Town and Country Planning which does not specify the requirements of pre-requisite conditions of Section 6 of the Act. Still further, the application Exhibit P-1 was filed when the construction was already raised by the plaintiff in the year 1993. Therefore, it cannot be said that the appellant has raised the construction as a consequence of deemed permission although it is not a case of deemed permission at all.

6. The argument that the State Government has sanctioned water connection etc., is again cannot help the appellant to assert that the construction is permissible. The water connection can be provided even in respect of the Construction which was already in existence. The provision of water connection cannot supersede the statutory provisions according to which there is statutory bar in respect of construction of a building.

7. The argument that the revenue estate of Village Bhawana does not fall within the periphery of New Capital of Chandigarh is misconceived. Firstly, the appellant has not challenged the declaration of the Controlled Area, issued in respect of the revenue estate of Village Bhawana and secondly, the argument raised that in terms of Section 9 of the General Clauses Act, the distance from the outer boundary of the new capital to the revenue estate of Village Bhawana is more than 16 miles is not again tenable. According to Section 9 of the General Clauses Act, the distance has to be measured in straight land on the horizontal plan. Thus, the distance of 16 kilometers, as argued by the learned Counsel for the appellant is a distance to be covered by a road, but not a distance which is required to be measured in a straight line in horizontal plan. Therefore, the argument that the revenue estate of Village Bhawana could not be declared as Controlled Area cannot be tenable.

8. Admittedly, the appellant is running a School after constructing a building on the land in dispute. The old building, which was in existence, was that of a temple and some kacha rooms. Such construction is raised without seeking permission from the competent authority. Therefore, both the Courts below have rightly found that the notice dated 8.1.1993 cannot be said to be illegal or is beyond the jurisdiction in any manner.

9. I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, the present appeal is dismissed.