
(1974) 05 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 2419 of 1973

Jai Chand Bhagat and another

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision: May 17, 1974

Acts Referred:

- Haryana Restrictions on (Development and Regulation of) Colonies Act, 1971 - Section 2(c)

Hon'ble Judges: Bhopinder Singh Dhillon, J; Bal Raj Tuli, J

Bench: Division Bench

Advocate: R.S. Mittal, for the Appellant; C.D. Dewan, Additional Advocate General, Haryana, for the Respondent

Judgement

Bhopinder Singh Dhillon, J.

This judgment will dispose of Civil Writs Nos. 2419 and 3624 of 1973, wherein the constitutional validity of the provisions of the Haryana Restrictions on (Development and Regulation of) Colonies Act, 1971 (Haryana Act No. 39 of 1972) (hereinafter referred to as the Act) has been challenged.

2. Briefly stated the facts, as singed in Civil Writ No. 2419 of 1973, are that the three petitioners, who are brothers, owned a piece of land at Sonapat. They divided the said chunk of land into a number of plots and before coming into force of the Act, they sold 166 plots to various persons at the rate ranging from Rs. 2/- to Rs. 10/- per square yeard. The Act came into force on November 16, 1971 and there-after they sold only six plots According to the averments in the affidavit dated April 17, 1974, filed by Jai Chand petitioner, this land is situate outside the municipal limits of Sonapat and therefore, the Punjab Scheduled Roads and Controlled. Areas Restriction of Unregulated Development Act, 1963, was not applicable to it. It is further alleged that while selling the plots to various purchasers, the petitioners did not enter into any agreement for carrying out any development works in the area sold. Rather there is a stipulation in the sale deeds that the sellers will not be

responsible for any costs of development works which may be carried out in the area and the buyer shall be responsible for the expenses of paying and metalling of Kacha roads as well as of other developmental works that may be carried out. Respondent No. 2, Divisional Town Planner, Sonapat, wrote a memorandum dated October 31, 1972, to respondent No. 3, the Station House Officer of Police Station, Sonapat, and on the basis of that memo memorandum, the first information report No 14 dated. December 21, 1972, was recorded against the petitioners for violating the provisions of the Act, copy of which is Annexure "A" to the writ petitioner. The petitioners, having challenged the constitutional validity of the provisions of the Act have prayed that the Act, may be declared to be unconstitutional and consequently the first information report registered against them may be quashed.

3. The brief facts as alleged in Civil Writ No. 624 of 1975, are that the petitioner, Shri Muni Subrat Dass Jain, owned a piece of land situate between Delhi-Hissar road and Dabra road in District Hissar, He had to repay the loan of Rs. 2,70,158.75 paise to the Haryana Financial Corporation which loan he had taken for constructing a cold storage in Hissar in 1968 and since he was unable to repay the same, he by dividing his land sold 15 pieces of agricultural land to various persons and some of the sales were made after the enforcement of the Act. It may be pointed out that in this case, no act on has yet been taken against the petitioner for prosecuting him for the violation of the provisions of the Act, but the petitioner claims that since the Act is unconstitutional, he cannot be required to take any licence for setting up a colony as postulated under the provisions of the impugned Act.

4. The statement of objects and Reasons for the enactment of the Act as published in the Haryana Government Gazette (Extraordinary) dated October 21, 1971, is as under:--

Due to various reasons considerable urbanisation is taking place in the State and consequently a number of colonies are coming into existence. Most of the colonies set up by the private persons are not of requisite standard. The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, and Rules framed thereunder inter alia regulate their growth within a specified area, i.e., an area declared as "Controlled Area" under the Act. In other areas where the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1953, and Rules made there under do not apply, there is no law to regulate the growth and development of colonies in a planned manner. Besides this quite a few private colonisers have been found to indulge in malpractices. The Bill seeks to put a curb on the establishment of haphazard and sub-standard colonies and to regulate their growth in a planned manner.

In order to appreciate the respective contentions raised on behalf of the Learned Counsel for the parties the salient provisions of the Act may be noticed.

5. Section 2 of the Act provides various definitions. In clause (c) of section 2 of the Act, as it now stands amended by Act No. 9 of 1973 (The Haryana Restrictions on (Development and Regulation of) Colonies (Amendment) Act, 1973), Colony is defined as under: --

2(a) "Colony" means an area of land subdivided or proposed to be sub divided into plots for residential, industrial or commercial purposes, but does not include any area of land sub-divided or proposed to be sub-divided as a result of--

(i) family partition or partition of joint holding, not with the motive of earning profits.

(ii) inheritance,

(iii) succession,

(iv) operation of will.

In the unamended Act in Clause (c) of section 2, the "colony" was defined as under:--

2(c). "Colony" means an area of land, which has been subdivided or is proposed to be sub-divided into plots for residential, commercial, industrial or other purposes.

The definition of a "coloniser" as provided in clause (d) of section 2 of the Act, is as under:--

"Coloniser" means an individual, company or association or body of individuals, whether incorporated or not, including a cooperative society owning or acquiring or agreeing to own or acquire, whether by purchase or otherwise, land for the purpose of setting up a colony and to whom a licence has been granted under this Act.

6. Section 3(1) of the Act provides that any person, desiring to set up a colony, shall obtain a licence under this Act by making application to the Director in the manner prescribed. The application shall be accompanied by income tax clearance certificate and such fee as may be prescribed. Sub-section (2) of Section 3 of the Act further provides that on receipt of the application the Director shall, among other things, make an enquiry into the financial position and experience of the applicant and shall by an order in writing either accept or reject the application. However, before rejecting the application, the Director shall give the applicant an opportunity of hearing. After having obtained a licence u/s 3 of the Act, any coloniser desiring to set up a colony shall make an application to the Director under sub-section (1) of section 4 of the Act, in the manner prescribed for being granted permission to set up a colony. Sub-section (2) of section 4, of the Act provides that, among other things, a Director, on the receipt of an application under sub-section (1) of this section, shall make an enquiry into the following matters, namely,

(a) title to the land;

(b) extent and situation of the land;

- (c) capacity to develop a colony
- (d) the layout of the colony;
- (e) plan regarding the development works to be executed in the colony; and
- (f) conformity with the development schemes of the land in question and the neighbouring areas.

Sub section (3) of section 4 of the Act provides after the said enquiry, the Director shall by an order in writing either:--

- (a) grant permission on the colonizer furnishing to the Director a bank guarantee equal to twenty-five percentum of the estimated cost of development works as certified by the Director and on such other conditions as may be prescribed or as may be specified in the order; or
- (b) refuse to grant the permission;

provided that before refusing to grant the permission, the applicant shall be given an opportunity of being heard.

Section 5 of the Act enjoins upon the Director to maintain such registers as may be prescribed showing sufficient particulars of all cases in which licence or permission is granted or refused by him and the said registers shall be available for inspection without charges by all interested persons and such persons shall be entitled to have extracts therefrom.

7. Section 6(1) of the Act provides that the Colonizer shall deposit sixty percentum of the amount realised by him from the plot-holders, from time to time within ten days of its realization, in a separate account to be maintained in a Scheduled Bank. This amount shall only be utilised towards meeting the cost of internal development works in the colony. After the internal development works of the colony have been completed to the satisfaction of the Director, the colonizer shall be at liberty to utilize the balance amount for any other purpose. According to sub section (2) of section 6 of the Act, the remaining forty percentum shall be deemed to have been retained by the colonizer to meet the cost of land, external development charges and other expenses including profits.

8. Section 7(1) of the Act makes a provision authorising the Director or any other officer authorised by him in this behalf to inspect the accounts maintained by the colonizer who shall produce before him all the relevant records required for this purpose. Sub section (2) of this section enjoins upon the colonizer to get his accounts audited after the close of every financial year by a chartered accountant and to produce a statement of accounts, duly certified and signed by such chartered accountant in the manner prescribed

9. Section 8(1) of the Act prescribed that no person shall, without obtaining a licence under sub-section (2) of section 3 and permission under sub-section (3) of section 4, negotiate or agree to transfer or transfer in any manner plots for residential, industrial, commercial or any other purpose or make an advertisement or receive any amount in respect thereof. Sub-section (2) of this section provides that no person shall erect or re-erect any building in any colony regarding which permission under sub section (3) of section 4 has not been granted.

10. u/s 9(1) of the Act, the Director is authorised to cancel the licence or permission granted under this Act, if the colonizer contravenes any of the conditions of the licence, or permission, or the provisions of the Act or the rules made thereunder, after he has been afforded an opportunity of hearing. It is provided in sub section (2) of this section that in the exigency of the licence or permission having been cancelled, the Director may himself carry out or cause to be carried out the development works in the Colony and recover such charges as he may have to incur on the said development works from the colonizer and the plot-holders in the manner prescribed as arrears of land revenue. Sub Section (3) of this section provides the extent of liability of the colonizer and that of the plot-holders for the payment of such charges in the case of cancellation of licence or permission.

Section 10 of the Act provides the conditions and procedure for the transfer of possession of and title to the land to the plot-holders.

11. Section 11(1) of the Act prescribes the penalties and provides that any person, who contravenes any provision of this Act, or rules framed thereunder, or any of the conditions of the licence granted u/s 3 or permission granted u/s 4, shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. In sub-section (2) of this section it is provided that without prejudice to the provisions of sub section (1), the Director may, by notice, call upon any person who has committed a breach of the provisions of sub-section 2 of section 8, to show cause why the building should not be demolished and if such person fails to show cause to the satisfaction of the Director within a period of fifteen days the Director may pass an order requiring him to demolish the building within thirty days from the date of the order. According to the provisions of sub-section (3) of this section, if the order made under subsection (2) is not complied with, the Director may serve, twenty-four hours" notice on that person to comply with the order and if such person fails to do so, the Director may himself, at the expiry of the period of this notice, take such measures as he may deem fit to give effect to the order. The cost of such measures shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue. Sub-section (4) of this section provides that notwithstanding anything contained in sub sections (2) and (3), if after the passing of the order under subsection (2) such person continues the erection or re-erection of the building, the Director may serve "twenty four hours" notice on such person to comply with the said order, tailing

which the Director may take such measures as he may deem fit to give effect to the order. The costs of such measures shall, if not paid on demand been made to him, be recoverable from such person as arrears of land revenue.

12. Section 12 of this Act provides that no Court inferior to that of Magistrate 1st Class shall be competent to try any offence punishable under this Act, and according to the provisions of section 13 of this Act, no prosecution for any offence punishable under this Act shall be instituted without the previous sanction of the Director. Section 14 of the Act deals with the offences committed by the Companies. Section 15 of the Act authorises the Director to compound the offences. Section 16 of the Act provides immunity to the officers enforcing the Act and the Rules from being prosecuted or being sued. Section 17 of the Act bars the jurisdiction of the Civil Courts to take cognizance of any matter falling under this Act or the Rules made thereunder

13. According to the provisions of section 18 of the Act, any permission already granted to set up a colony under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, and the rules made thereunder, shall remain valid and be governed or the terms and conditions contained therein; provided that if any breach of the conditions of the permission is committed, of which the Director shall be the sole Judge, the Director may cancel the permission after giving an opportunity of hearing and take action under the provisions of this Act.

14. Section 19 (1) of the Act provides that notwithstanding anything contained in this Act, any person who has sold or transferred or agreed to sell or transfer, plots for any purpose in a colony, situate in an area where the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, is not applicable, and has realised any money before the commencement of this Act from the plot-holders, shall complete the development works in terms of the agreement within a period of six months from the date of commencement of this Act or such further period as may be allowed by the Director. In case he fails to complete the development works within the aforesaid period of six months or the extended period, the provisions of this Act shall apply to him as they apply to any other person whose licence or permission has been cancelled. According to subsection (2) of this section, the Director shall be the sole judge to decide whether the development works referred to in sub-section (1) have been completed Sub section (3) of this section provides that subject to any contract to the contrary, such person shall be competent to realise the amount in respect of sale transfer of plots from the plot-holders within a period of six months or the extended period referred to in sub-section (1) from the commencement of this Act after obtaining the permission of the Director. Sub-section (4) of this section provides that in case of failure to carry out the development works within the period mentioned in sub-section (1), without (sic) cause, such person shall on conviction be liable to imprisonment of either

description which may extend to three years and fine.

15. Section 20 (I) of this Act provides that any person who has sold or transferred or agreed to sell or transfer any plot for any purpose in a colony (sic) area in which the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, was applicable, and has not obtained permission as required by the aforesaid Act, but has realised any money before the commencement of this Act from the plot-holders, he shall obtain a licence under the provisions of this Act within a period of three months or such further period as may be allowed by the Director. By sub-section(2) of this section, such, persons are enjoined upon to obtain the permission u/s 4 of this Act within a period of three months or such a further period as may be allowed by the Director after the date of obtaining the licence under Sub-Section (1) of this section has expired Sub-Section (3) of this section provides that if such person fails to obtain the licence or the permission, he shall be liable to punishment, or conviction to imprisonment of either description for a term which may extend to three years and fine, and sub section (4) of this section makes applicable the other provisions of the Act to such persons as they apply to any other person whose licence or permission has been cancelled.

16. Section 22 of the Act saves the power of the Government, Improvement Trusts, Housing Board Haryana, Municipal Committees, or any other local authority to develop land or impose restriction upon the use and development of any area under any other law for the time being in force.

17. Section 22 of the Act provides that any person aggrieved by any order of the Director under the Act, may, within a period of thirty days of the date of communication of the order to him, prefer an appeal to the Government in such form and manner as may be prescribed.

18. Section 23 empowers the State Government by a notification, subject to the condition of previous publication, to make rules for carrying out the purposes of the Act.

19. The Amending Act No 9 of 1973 (The Haryana Restrictions on (Development and Regulation of) Colonies (Amendment) Act, 1973, inserted new section 20-A in the Act, which is to the following effect:--

20-A. Power to exempt.--If the State Government is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by a general or special order, exempt any class of persons or areas, from all or any of the provisions of this Act.

20. The Rules framed by the Haryana Government under the Act called the Haryana Restrictions on (Development and Regulation of Colonies Rules, 1973, (hereinafter

referred to as the Rules), were published in the Haryana Government Gazette vide notification dated January 19, 1973. Rule 3(1) in part II of the Rules prescribes the procedure for submitting the applications for licences by any person desiring to obtain the same u/s 3(1) of the Act. The applications have to be made in form LCI and have to be accompanied by a demand draft for Rupees five hundred in favour of the Director, Town and Country Planning, Haryana; income tax clearance certificate, and particulars of experience as colonizer showing number and details of colonies already established and/or being established; and the particulars about the financial position. Sub-rule (2) of Rule 3 of the Rules provides that no application under sub-rule (1) shall be considered to be valid unless it is made in the prescribed form and is accompanied by the requisite documents required to be furnished alongwith the application. In case of failure of such compliance, the application together with other documents, if any, received therewith shall be returned to the applicant for re-submission in accordance with the Rules. Rule 4 of the Rules empowers the Director to hold an enquiry into the financial position and experience of the applicant and such other things as he may consider necessary and relevant. Rule 5(i) of the Rules provides that if after the enquiry, as mentioned in rule 4, the Director is satisfied, he may grant a licence as in form LCII to the applicant or reject the application. According to Sub-rule (2) of this rule, in case the application is rejected, an intimation in this regard will be sent to the applicant in form LC-III, but before rejecting the application, the Director shall give the applicant an opportunity of hearing. Rules 6 and 7 of the Rules provide the procedure for the renewal of licences granted under the Act.

21. Part III of the Rules prescribed the procedure regarding the grant of permission to set up a colony u/s 4 of the Act. Rule 8 of the rules is reproduced below:--

8. Application for grant of permission to set up a colony:--

(1) A colonizer holding a licence and desirous of setting up a colony shall make an application in writing to the Director in form PC-I. The application shall be accompanied by the following plans and documents in triplicate, namely:--

(i) copy or copies of all title deeds and/or other documents showing the interest of the colonizer in the land under the proposed colony, along with a list of such deeds/documents.

(ii) A copy of the Shajra Plan showing the location of the proposed colony along with the name of revenue estate, Khasra number of each field and the area of each field.

(iii) A guide map on a scale of not less than 10 centimetres to 1 kilometre showing the location of the proposed colony in relation to surrounding geographical features to enable the identification of the land.

(iv) A survey plan of the land under the proposed colony on a scale of 1 centimetre to 10 metres showing the shop levels at a distance of 30 metres and where

necessary, contour plans. The survey will also show the boundaries and dimensions of the said land, the location of streets, buildings and premises within a distance of at least 30 metres of the said land and existing means of access to it from existing roads.

(iv) Layout plan of the proposed colony on a scale of centimetre to 10 metres showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, sites reserved for open spaces, community buildings and schools with area under and proposed building lines on the front and sides of plots.

(vi) An explanatory note explaining the salient features of the proposed colony, in particular the sources of wholesome water-supply arrangement and site for disposal and treatment of storm and sullage water.

(vii) Plans showing the cross-sections of the proposed roads, indicating in particular the width of the proposed carriageways, cycle tracks and footpaths, green verges, position of electric poles and of any other works connected with such roads.

(viii) Plans as required under clause (vii) indicating in addition, the position of sewers, storm water channels, water-supply and any other public health services.

(ix) Detailed specifications and designs of road works shown under clause (vii) above and estimated cost thereof.

(x) Detailed specifications and design of sewerage, storm water and water--supply schemes with estimated costs of each

(xi) Detailed specific and designs for disposal and treatment of storm and sullage water and estimated costs of works.

(xii) Detailed specification and designs for electric supply including street lighting.

(2) The (sic) plans mentioned in sub-rule (1) shall be clear and legible (sic) prints with one set mounted on cloth.

22. Under Rule 9(1) of the Rules, it has been provided that in the layout plan of a colony, other than an industrial colony, the land reserved for roads open spaces, schools, public and community buildings and other common uses shall not be less than forty-five percentum of the gross area of the land under the colony, provided that the Director may reduce this percentage to a figure not below thirty five where in his opinion the planning requirements and the size of the colony so justify. Sub rule (2) of this rule provides that in the layout plan of an indutrial colony, the land reserved for the purposes specified in sub-rule (I) shall not be less than thirty five percentum of the gross area of the land under the colony provided that the Director may reduce this percentage to a figure not below twenty where in his opinion the planning requirements and the size of the colony so justify.

23. According to Rule 10, the designs and specifications of the development works to be provided in a colony shall include--

(a) metalling of roads and paving of footpaths;

(b) turfing and plantation with trees of open spaces;

(c) street lighting,

(d) adequate and wholesome water-supply;

(e) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and

(f) any other works that the Director may think necessary in the interest of proper development of the colony.

24. Rule 11 makes a provision for a request being made by a coloniser to the Director for the preparation of layout plans and documents on the payment of fees as assessed by the Director. Rule 12 provides for the procedure for the return of the application when it is incomplete. Rule 13 authorises a Director to hold enquiry on the receipt of an application, in the prescribed form, for granting permission to set up a colony and Rule 14 gives him the power to reject such applications. In case the Director grants the permission, he can call upon the applicant, under rule 15 (1) to fulfil the conditions laid down in Rule 16 within a period of thirty days from the date of notice and under sub-rule (2) of this rule it is provided that if the coloniser fails to fulfil the conditions mentioned under sub-rule (1) within the specified or extended period, the permission shall be refused.

25. Rule 16 provides various conditions required to be fulfilled by a coloniser which include furnishing of a bank guarantee equal to 25 per centum of the estimated cost of the development works as certified by the Director; undertaking to deposit 60 per centum of the amount to be realised by him from the plot holders : to undertake to pay proportionate development charges if the main lines of roads, drainage, sewerage water-supply and electricity are to be laid out and constructed by the Government or any other local authority, to undertake responsibility for the maintenance and upkeep of all roads and open spaces mentioned in sub rule (d) of this rule, for a period of five years from the date of the issue of the completion certificate under rule 20 unless earlier relieved of this responsibility by the Government or a local authority, as the case may be, and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be, to undertake to construct at his own cost or get constructed by any other institution or individual at their cost, schools, hospitals, community centres and other community buildings on the land set apart for this purpose or undertake to transfer to the Government, at any time, if so desired by it, free of cost the land set apart for schools, hospitals, community centres and community buildings in which case the Government shall be at liberty to

transfer such land to any person or institution including a local authority on such terms and conditions as it may deem fit; and to undertake to permit the Director or any other officer authorised by him to inspect the execution of the lay out and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the lay out and development works in accordance with the permission granted.

26. Under Rule 17, after the coloniser has fulfilled all the conditions laid down in rule 16 to the satisfaction of the Director shall grant the permission to set up a colony form P.C.V. Rule 18 provides for the submission of copies of advertisements etc. by the coloniser to the Director. Under Rule 19, the permission granted by the Director under Rule 17 shall remain valid for a period of three years from the date of grant and under sub-rule (2) of this Rule, the coloniser shall commence the laying out of the colony and development works within three months of the grant of the permission under rule 17. Rule 20 (1) enjoins upon the coloniser, after the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, to make an application to the Director in form PC-VI and the Director may then, under sub-rule (2) of this rule, issue completion certificate inform PC-VII, after necessary enquiry, or may refuse the same. Rule 21 debars the coloniser from transferring the permission granted to him under Rule 17 to any other person or persons without the prior approval of the Director. Rule 22 gives the power to the Director to revoke the permission on the grounds specified therein. According to rule 23 (1) of the Ruls, after cancellation of the licence or permission the Director may himself carry out or cause to be carried out the development works in the colony and that he may recover all the cost of the development works as prescribed under this Rule. Rule 24 lays down the procedure for the release of the bank security after the development works have been completed in the manner prescribed therein.

27. Rule 25, which is in part IV of the Rules, prescribes the procedure for the maintenance of the registers. Rule 26 prescribes the procedure for the maintenance and submission of accounts by the coloniser. Rule 27 enjoins upon the coloniser to intimate the Account No. and full particulars of the Scheduled Bank to the Director wherein he deposits sixty per centum of the amount realised by him from the plot-holders for meeting the cost of internal development works in the colony. Rule 28 enjoins upon the coloniser to intimate to the Director on the 5th day of each month the amount realised by him from each of the plot-holders and the amount deposited by him in the Scheduled Bank during the proceeding month. Rule 29 prescribes the fee for obtaining the copy or licence or permission and Rule 30 provides the procedure for filling an appeal to the Government u/s 22 of the Act. To the Rules are attached various prescribed forms reference to some of which has already been made above.

28. In view of the provisions of entry 18, List II, VIIth Schedule of the Constitution of India, it is no more in doubt that the Legislature of the State of Haryana is competent to enact law regulating the colonies in the State of Haryana. So also it cannot be disputed that under the provisions of Article 19(1)(f) of the Constitution, every citizen has got a right to acquire, hold and dispose of property. However, in view of the provisions of clause (5) of Article 19 of the Constitution, nothing in sub clauses (d), (e) and (f) of the Article 19(1), is to affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribes. Thus it is obvious that whereas sub-clause (I) of clause (1) of Article 19 of the Constitution gives a right to a citizen to acquire, hold and dispose of property, clause 5 of this. Article authorises the Legislature concerned to make any law imposing reasonable restrictions on the exercise of the right to acquire, hold and dispose of property in the interest of the general public or for the protection of the interests of any Scheduled Tribe. The short point which arises for determination in this case is as to whether the restrictions imposed under the provisions of the impugned Act and the Rules made thereunder, are reasonable restrictions in the interest of general public on the exercise of the right of the citizens to acquire, hold and dispose of property or not.

29. Before examining the reasonableness of the restrictions imposed under the impugned Act and the Rules made thereunder, we would first like to dispose of the preliminary objection raised by the learned Additional Advocate General appearing for the State of Haryana. It is contended by him that since the impugned act was enacted during the continuance of emergency proclaimed under Article 352 of the Constitution, the plea of the infringement of the fundamental rights under Article 19(1) (f) of the Constitution of India, is not available to the petitioners. It may be pointed out that the President of India was pleased to proclaim emergency in exercise of the powers conferred by clause (I) of Article 352 of the Constitution, on December 3, 1971, whereas the impugned Act came into force on November 16, 1971. Thus it is clear that the impugned Act was enacted by the State of Haryana and came into operation before the issuance of the proclamation of emergency by the President. The provisions of Article 358 of the Constitution are in terms prospective and not retrospective, as has been authoritatively held by the Supreme Court in *State of Madhya Pradesh and another v. Thakur Bharat Singh* AIR 1967 S.C. 1170. That being the position, the objection of the learned Additional Advocate General is without any merit. It was then argued by him that the definition of the word "colony" contained in the original Act was amended by Act No. 9 of 1973 (The Haryana Restrictions on (Development and Regulation of) Colonies (Amendment) Act, 1973), while the emergency was in force and, therefore, that clause will be saved. We do not find any merit in this contention as well. It is to be seen that the definition of the word "colony" as provided in the original Act and as provided in the

Amending Act, is more or less in the same terms except that certain exceptions have been provided by the Amending Act, which were not provided in the original Act. Moreover, the amendment was made in the provisions of an Act, which was already in force before the declaration of emergency by the President of India and mere amendment of a particular definition, as given in the original Act, during the period of emergency, would not take the impugned Act within the ambit of Article 358 of the Constitution of India. We, therefore, do not find any force in this objection and the same is over ruled.

30. In order to examine the reasonableness of the restrictions imposed on the right to acquire, hold and dispose of property under the Act and the Rules made thereunder, the principles, which have to be kept in view for testing the reasonableness of the impugned provisions, may briefly be enunciated. Sufficient guidelines in this regard are available in a number of decisions of the Supreme Court. It was held by their Lordships in [Chintaman Rao Vs. The State of Madhya Pradesh](#), that the phrase "reasonable restrictions", as contained in clause (6) of Article 19 of the Constitution, connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. It was further held that the word "reasonable" implied intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Articles 19, it must be held to be wanting in that quality. These observations of their Lordship will apply with equal force to the interpretation of the provisions of clause 5 of Article 19 of the Constitution.

31. Similarly, in [The State of Madras Vs. V.G. Row](#), their Lordships, while laying down the tests for judging the reasonableness of restrictions in a particular Statute observed as follows:--

The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil, sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that

the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable.

32. Again their Lordships, while considering the same question in [M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others](#), referred with approval to their observations in the above two cases and further held that in order to be reasonable, a restriction must have a rational relation to the object which the legislature seeks to achieve and must not be in excess of that object.

33. There are numerous authorities of the Supreme Court, which enunciate more or less the same principle," which need not be referred to. Thus it is in the light of the observations referred to above, that the constitutional validity of the impugned Act and the Rules made thereunder, has to be examined. The bare reading of the definition of the term "colony" given in clause (c) of Section 2 of the Act, which is the hub, around which the provisions of the Act revolve, would show that irrespective of the extent of the area to be brought under the colony, an area of land, whether it is a big chunk or a small piece of land measuring a few feet, is sub divided or is proposed to be sub divided into plots for residential, industrial or commercial purposes, the land in question, if it is not covered by the exceptions made (hereunder, will be covered by the definition of "colony" and the provisions of the Act and the Rules made thereunder, will be applicable thereto. It is conceded by the learned Additional Advocate General, appearing for the State of Haryana, that this definition would cover even a small piece of land even when it is situate in a completely developed area where there is no need of any development works being undertaken, if it is subdivided or proposed to be sub divided into two or more than to plots for residential, industrial or commercial purposes. We have already reproduced the statement of objects and Reasons for which the enactment of the Act was considered to be necessary by the Legislature In a nutshell, the object for enacting this Act, as is clear from the statement of objects and Reasons and from the various provisions of the Act and the Rules, is to regulate the growth and development of the colonies in a planned manner in view of considerable urbanisation taking place in the State. It was further found that the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, operated within a specified area and in other areas where that Act did not operate, there was had law to regulate the growth and development of colonies in a planned manner which enabled a number of colonisers to indulge in malpractices etc. The Haryana Legislature sought to put a curb on the establishment of haphazard and sub standard colonies and the object was to regulate their growth in a planned manner, which meant that the Act was intended to apply to fairly big and extensive areas of land capable of being developed in a planned manner as a colony for residential, commercial or industrial purposes, as is popularly understood. The object was not to put unreasonable and harsh restrictions on the rights of the citizens to acquire, hold and dispose of their land, which did not admit of any development works. According to the definitions of "colony" and subsequent

provisions of the Act, if a citizen owns even 25 square yards of land in a city, where development works have already taken place and the land in question does not admit of any further development works and if he intends to dispose of the said land by dividing the same into two plots for commercial purposes so as to sell them for the construction of shops, he cannot do so without obtaining a licence u/s 3 of the Act and the permission to set up a colony u/s 4 of the Act and to abide by the innumerable stringent restrictions, which have been mentioned in the various provisions of the Act and the Rules though some of them are even incapable of being complied with in such a case. In order to get a licence u/s 3 of the Act he is to make an application in the prescribed form which is to be accompanied by an income tax clearance certificate and a demand draft for Rs. 500/-, giving the particulars of experience as a coloniser already established and or being established and particulars about his financial position. The said application will then be scrutinised by the Director under Rule 4 of the Rules, and if he is satisfied about these matters, he may grant a licence. After a licence is granted, the conditions specified in section 4 of the Act, and in part III of the Rules, will have to be complied with for getting the permission for setting up a colony. He shall be deemed to be a coloniser and shall be required u/s 6 of the Act, to deposit sixty per cent of the amount realised by him from the buyers of plots in a separate account to be maintained in a scheduled Bank, and various other restrictions, elaborately stated in the Rules, shall have to be observed. The said accounts can be got audited by the Director u/s 1 of the Act. In the case of a layout plan of a colony, other than an industrial colony, the land reserved for roads, open spaces, schools, public and community buildings and other common uses, shall not be less than forty-five per centum of the gross area of the land under the colony and the Director can reduce the said percentage to 35 per cent, and not below that, as provided under Rule 9(1) of the Rules. Similarly, in sub-rule (2) of this Rule, when an industrial colony is to be set up, the land reserved for the purposes specified in sub-rule (1) of this Rule, shall not be less than thirty-five per centum of the gross area of the land under the colony which can be reduced by the Director where, in his opinion, the planning requirements and the size of the colony so justify. Rule 10 enumerates the various development works to be executed at the cost of the coloniser, such as metalling of roads and paving of footpaths, turfing and plantation with trees of open spaces, street lighting, etc. etc. Thus it would be seen that in a case where the area of land is small, the land-owner would not be able to dispose of his land, though he may be in dire need of the money, without complying with the provisions of the Act and the Rules most of which are incapable of being complied with and are pretty harsh and cumbersome. These provisions clearly go to show that for all practical purposes it will not be possible for a small land-owner to dispose of his land even though it is situated at a place where neither any development work, mentioned in the Act or the Rules, can be carried out nor needs to be carried out. It is further apparent that many provisions of the Act and the Rules, referred to above cannot even be complied with if the area of land to be disposed of is small and does not admit of

any development works. In fact, after going through the various provisions of the Act and the Rules; one is clearly left with the impression that the Legislature only wanted to control the establishment of colonies on large areas which are intended to be established as in industrial or commercial estates or residential townships with various emoluments provided or as satellite townships to the existing cities so as not to lower the standards of living by prescribing standardized construction of various kinds of buildings and structures. The object to be achieved by enactment of the impugned Act does not appear to be to put a clog on the right of a citizen to dispose of his property which needs no development works and whose disposal involves no risks of unplanned development. We, however, find that this is the net result of the definitions of "colony" and "coloniser" in the Act, which are too widely worded and their language goes far beyond the object of the Act and the intention of the Legislature as is evident from the various provisions of the Act. These definitions take into their ambit every piece of land which is divided for purposes of sale into two or more plots and every person desiring to sell his land by dividing it into smaller plots, which may be two or more in number. The various provisions of the Act interpreted in the light of the definitions of "colony" and "coloniser" do not amount merely to reasonable restrictions on the right to dispose of property but amount to complete annihilation of that fundamental right which is not permissible.

34. It is further to be noted that the violation of any provisions of the Act and the Rules is a penal offence u/s (sic) of the Act. A citizen, who has got a fundamental right under Article 19(1) (f) of the Constitution of India, to dispose of his property, has been practically deprived of that right as it is impossible for any person holding a small area of land to comply with the restrictions imposed under the various provisions of the Act and the Rules, which are pretty harsh and harassing. The purpose to be achieved was to regulate the growth and development of the big areas of land which really answer to the description to which various provisions of the Act and the Rules made thereunder, can be made applicable. The indiscriminate application of the provisions of the Act, in the light of the definition of the word "colony" given in the Act, to every disposition of land for commercial, industrial or residential purposes, has the effect of putting a clog on the rights of citizens who desire to dispose of their lands in the usual manner. Thus keeping in view the nature of the right infringed the underlying purpose of the restrictions imposed, the extent of the evil sought to be remedied, it is evident that the limitations imposed by the various provisions of the impugned Act and the Rules made thereunder, on the rights of the citizens to dispose of their land, are arbitrary, excessive in nature and far beyond what is required in the interests of the public. The definition of "colony" has not been framed with intelligent care and deliberation and has no reasonable nexus with the object sought to be achieved. Thus it is to be held that the said provision is arbitrary and excessively invades the rights of the citizens and does not contain the quality of reasonableness as the restrictions imposed have no rational relation to the object to be achieved by the Legislature. Therefore, the I definition of

colony, as provided under the Act, cannot be held to be constitutional as it violates article 19(1)(f) of the Constitution.

35. It may further be pointed out that though the definition of the word "colony", as it now stands after amendment, does not include the sub-division of an area for any purpose other than residential industrial or commercial, within its ambit, section 8 of the Act has not been correspondingly amended so as to delete the words "or any other purpose". Thus according to the provisions of section 8 of the Act, a land-owner, who intends to sell his land, by dividing it into two or more plots, even for agricultural purposes, cannot do so without obtaining a licence under sub-section (2) of section 3 of the Act and a permission to set up a colony from the Director under sub-section (3) of section 4 of the Act after complying with the formalities and restrictions imposed under the provisions of the Act and the Rules. This provision in fact has no relation with the object to be achieved. The object to be achieved is to have a planned urbanisation and even if the land is to be sold for agricultural purposes, after being sub-divided, the same is barred under the provisions of section 8 of the Act.

36. The contention of the learned additional Advocate General Haryana, that it is very difficult to frame a definition of "colony" so as to provide the exemption to the owners of small pieces of land and, therefore, the provisions of the Act should not be struck down, has not appealed to us. The Legislature in its wisdom can certainly define a colony keeping in view the touchstone of area to be sub divided and/or the population proposed to be accommodated on the proposed colony. We are clearly of the opinion that the definition of "colony", as now provided, puts a clog on the right of every owner of the piece of land to dispose of the same even though its disposal may have no relevancy to the regulation, growth and planned development of urbanisation. It is open to the Legislature to provide certain other exemptions in the definition so as to exclude these areas which do not need any development works or where the planned urban development facilities are already available or the sub-division of which will not defeat the objects to be achieved but the Legislature, in our opinion, cannot put harsh, arbitrary and unreasonable restrictions on the right of the citizens to dispose of their land, which restrictions have no reasonable nexus with the object to be achieved. It is, therefore, obvious that the provisions of the Act, including the definition of "colony" as it stands, are unreasonable, harsh and arbitrary restrictions on the rights of the citizens to dispose of their land and the same have no relationship with the objects to be achieved.

37. Since the definition of "colony" is the pivot and the kingpin for the operation of the entire Act, and that definition has been held to be ultra vires Article 19(1)(f) of the Constitution, the whole Act has to be struck down as it becomes unworkable without that definition. The Rules have been framed for carrying out the purposes of the Act and they also fall with the Act. We accordingly hold that the impugned Act in

its entirety and the Rules framed thereunder are ultra vires Articles (19)(1)(f) of Constitution and are hereby struck down.

38. The only other contention raised by the learned Additional Advocate General, Haryana, is that u/s 20-A of the Act, the State Government has power to exempt any person from the provisions of the Act and any citizen wanting to dispose of his land by dividing the same for residential, industrial or commercial purposes can apply to the State Government for being exempted from the provisions of the Act, and therefore, no hardship will be caused to any citizen in connection with the disposal of his land. It is contended that there being a provision for the exemption being granted in proper cases from the provisions of the Act, the provisions of the Act may not be held to be unconstitutional. We are unable to agree with this contention of the Learned Counsel. The exemption clause provided in the Act cannot remedy the evil of unreasonableness and arbitrariness from which the Act suffers, particularly when it will be in the discretion of the Government whether to allow the exemption or not. No citizen will have a right to insist upon the exemption being granted and causing of harassment and (sic) to a person owning a small area, is not ruled out. The enactment of section 20 A therefore, does not take away or soften the rigors of the main provisions of the Act.

39. Since the Act and the Rules as a whole have been held to be ultra vires and have been struck down, the petitioners, in Civil Writ No. 2419 of 1973 cannot be said to have committed any offence under the Provisions of section 11 of the Act. Consequently the first information report No. 14 dated December 21, 1972 registered against them, copy of which is Annexure "A" to the writ petition, is hereby quashed. As regards the petitioner in Civil Writ No. 3624 of 1973, no action has been taken against him so far by the authorities concerned. Therefore, he cannot be given any relief.

40. For the reasons recorded above, both these writ petitions are disposed of accordingly with no order as to costs.

B.R. Tuli, J.

41. I agree and have nothing to add.