Anil Kumar Vs Director, Town and Country Planning, Chandigarh and others

Civil Writ Petition No. 157 of 2011 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 18, 2011

Acts Referred:
Haryana Development and Regulation of Urban Areas Act, 1975 â€" Section 3, 7, 9#Punjab Land Revenue Act, 1887 â€" Section 34#Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 â€" Section 5, 6

Citation: (2011) 164 PLR 266

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.
The petitioner challenges the order issued by the Director, Town and Country Planning, rejecting an application made by

the petitioner for change of land use for setting up a retail outlet as Kisan Sewa Kendra (KSK) at the Village Sondhapur. District Panipat. The

three objections, which have been taken, are as follows:

i) The proposed site has been taken on lease for 99 years, but takseem intkal/tatima of which has not been submitted.

ii) Violation of Section 7(i) of Act No.8 of 1975 has been taken place due to sale purchase of land in the compact block, in which the proposed

site is situated.

iii) Unauthorized construction has been raised at site in violation of Act No. 41 of 1963.

2. Of them, as regards the first objection, the petitioner"s contention is that, the property belonged to the father and he had taken it on 99 years

lease. It is contended that there is no requirement for such a transfer to be entered in revenue records. The learned counsel for the State would

point out to Section 34 of Punjab Land Revenue Act, 1887 as applicable to Haryana, that requires any person acquiring, by inheritance, purchase,

mortgage, or otherwise, any right in an estate as a landowner, assignee of land revenue or tenant having a right of occupancy, shall report his

acquisition of the right to the patwari of the estate. Evidently, the petitioner was under the belief that it was not necessary if he is a close relative. If

the authorities would require the proof of mutation, the petitioner could secure the same, for, I would understand Section 34 to be merely a

facilitative provision and not a legal mandate to pursue for a person, who has acquired such a right. The Land Revenue Act is essentially to enable

the State to know the person, who will be responsible for paying the revenue to the State and a transferee of an interest in immovable property is

required to obtain mutation to benefit himself by securing an entry in an official record proclaiming such right as well as enable to State to collect

revenue. I will not take this to be a fundamental defect to deny the permission sought for.

3. The violation complained of with reference to the transfer of property without the sanction is required u/s 7(i) of the Haryana Development and

Regulation of Urban Areas Act of 1975, in my view, cannot apply, since the interdict as set out in the Section applies only to a transfer or

agreement to transfer in any manner, plots in a ""colony"" among other grounds mentioned therein. The Section reads as under:

Prohibition to advertise and transfer plots:- Save as provided in Section 9, no person shall,-

(i) without obtaining a licence u/s 3, transfer or agree to transfer in any manner plots in a colony or make an advertisement or receive any amount in

respect thereof.

(ii) ....

(iii) ....

Colony"" is also defined under the Act and that includes a housing laying out where the constructions for domestic or commercial use are required

to be made and the use of a piece of an agricultural land that has been purchased by the father of the petitioner cannot come within the interdict

contained u/s 9. It is no body''s case that this is a part of a lay out in a colony.

4. The unauthorized construction which would constitute a violation under Punjab Scheduled Roads and Controlled Areas Restriction of

Unregulated Development Act of 1963 would require us to examine the definition of ""Schedule Road"" as under:

Scheduled Road"" means a road specified in the Schedule to this Act which is wholly situated within the State of Haryana and, where, any road so

specified is not so situated, the portion of such road which is situated in the State of Haryana, and includes a ""Byepass"", but does not include in any

part of such road or portion, not being a bye-pass, which is situated in the limits of a local authority.

In order that a particular place could be said to be a construction which is prohibited, it should be on a Scheduled road and it is contended that the

place where the outlet is sought to be established is Jattal road and that it is not a road specified in the Schedule. The learned counsel for the State

would contend that there is also a provision that bars an erection or re-erection of any building in a controlled area. Section 6 of the Act reads as

follows:-

6. Erection or re-erection of buildings etc. in controlled areas:- Except as provided hereinafter, no person shall erect o re-erect any building or

make or extend any excavation or lay out any means of access to a road in a controlled area save in accordance with the plans and the restrictions

and conditions referred to in Section 5 and with the previous permission of the Director.

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for

agricultural purposes subservient to agriculture.

This Section excepts such permission in cases where erection or re-erection of a building is used or is to be used for agricultural purposes or

purposes subservient to agriculture. If the complaint is that in the proposed site, there is already a construction, it explained by the petitioner that

construction as a kotha in an area of 14 kanals 12 marlas has been made for storing of agricultural implements. If the ground mentioned in the

impugned order must be understood as prohibiting a possibility of a future construction for establishing an outlet, the contention is that this is done

only for setting up a KSK that is for agricultural purpose meant for distribution of fuel for agricultural use, as the expression "KSK" itself may

denote. I do not find that there are any violations of any law as set through the grounds urged in the impugned order. The impugned order is not

tenable in law and it is quashed. The petitioner is at liberty to apply for a mutation in so far as the purported lease in his favour is concerned and

furnish the same to the authority who will take it into account and pass appropriate orders for change of land use.

5. The writ petition is allowed as above.