2021 INSC 733

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6901 OF 2021
(Arising out of SLP (C) No. 23096 of 2017)

THE STATE OF HARYANA & ORS. ... APPELLANT(S)

Versus

SHALIMAR ESTATES PVT. LTD. & ORS. ... RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. The State of Haryana and the Town Planning Authorities have come up with the present appeal against the judgment of the Division Bench of the High Court of Punjab and Haryana at Chandigarh setting aside two notifications, one dated 11.07.2002 issued under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the 'Controlled Areas Act'), and the other dated 31.12.2002, issued under the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as the 'Urban Development Act) and also setting aside all consequential actions.

2. We have heard Mr. Gurinder Singh Gill, learned senior counsel

appearing for the State, shri Abhinav Agnihotri, learned counsel appearing for the 1st Respondent and Mr. Ghashyam Das Sharma, learned counsel appearing for newly impleaded parties.

3. The 1st Respondent herein filed a writ petition in W.P.No.2437 of 2003, on the file of the High Court of Punjab and Haryana at Chandigarh contending interalia,

(i) that with a view to set up a residential colony in the villages of Naggal and Alipur, District Panchkula, they entered into two agreements, one dated 28.08.2001 for the purchase of 211 kanals and 10 marlas of land and another dated 16.10.2001 for the purchase of another 72 kanals and 5 marlas of land;

(ii) that pursuant to the aforesaid agreements the land owners also registered three sale deeds in their favour, one dated 16.05.2002 selling and conveying land of an extent of 194 kanals and 18 marlas, the second dated 16.05.2002 selling and conveying land of an extent of 16 kanals and 12 marlas and the third dated 30.05.2002 selling and conveying land measuring 112 kanals and 4 marlas;

(iii) that even before the execution of the sale deeds but after the agreements of sale, they got the layout plan prepared, carved out roads, laid sewerage and water supply lines, erected electricity poles and demarcated the plots for sale;

(iv) that the booking of plots by the allottees started on 24.10.2001 and closed on 24.12.2001;

(v) that during the said period they received about 565 applications from prospective buyers along with the prescribed earnest money through the Allahabad Bank;

(vi) that after the scrutiny of the applications, more than 500 plots were allotted up to March 2002;

(vii) that one of the allottees of a plot even submitted an application to the Director of Town and Country Planning, for the issue of a No Objection Certificate, for raising construction;

(viii) that the District Town Planner, Panchkula, issued a reply to the said allottee on 06.05.2002 informing the allottee that the plot was outside the controlled area;

(ix) that after they started the process of development of the colony, the land use and its character completely changed;

(x) that after seeing that the colony was gaining popularity, attracting a huge rush of people wanting to buy plots, the Government issued a notification with ulterior motive under Section 4 of the Controlled Areas Act, declaring the area to be a controlled area;

(xi) that thereafter they received a show cause notice dated 26.07.2002 alleging contravention of the provisions of Section 7 of the

Controlled Areas Act;

(xii) that though they submitted a reply to the show cause notice on 02.08.2002, an order overruling the objections was passed on 08.08.2002;

(xiii) that on 18.08.2002, the officials from the Office of the District Town Planner came to the site and caused damage to the roads, sewerage pipes and electricity poles;

(xiv) that therefore they filed a statutory appeal under Section 12-C(3) of the Controlled Areas Act before the Tribunal;

(xv) that by an order dated 28.01.2003, the Tribunal dismissed the appeal;

(xvi) that when the appeal before the Tribunal was pending, the Government issued another notification dated 31.12.2002 under Section 2(o) of the Urban Development Act;

(xvii) that the said notification was published in Government Gazette on 07.01.2003; and

(xviii) that therefore left with no alternative they had to approach the High Court for quashing the notifications under both the enactments and also for quashing the order of the Tribunal.

4. The reliefs sought by the 1st respondent herein in their writ petition W.P.No.2437 of 2003 before the High Court were,

(i) to quash the notification dated 11.07.2012 issued under section 4 of the Controlled Areas Act;

(ii) to quash the notification dated 31.12.2002 issued under section 2(o) of the Urban Development Act and published in the Government Gazette on 07.01.2003;

(iii) to quash the show cause notice dated 26.07.2002 and the order passed thereon dated 08.08.2002 for the demolition of the constructions already raised;

(iv) to quash order of the Tribunal dated 28.01.2003; and

(v) to declare Section 4 of the Controlled Areas Act and Section 2(o) of the Urban Development Act as illegal and *ultravires* the Constitution.

5. Though one of the reliefs sought in the writ petition was to declare the provisions of Section 4 of the Controlled Areas Act and Section 2(o) of the Urban Development Act as illegal, the 1st Respondent (writ petitioner) did not lay any legal basis in their writ petition justifying the said relief. Therefore, the High Court did not and rightly so in our opinion, go into the question of *vires* of the statutory provisions. But the High Court, after extracting the provisions of Sections 3, 4, 6 and 7 of the Controlled Areas Act, and the definition of certain expressions in the Urban Development Act, brought on record

the broad scheme of both the acts. Thereafter, the High Court went into the facts of the case and recorded certain factual findings, all of which may not be necessary to be brought on record. Suffice it to say that the High court found:-

(i) that the layout plan prepared by the writ petitioner provided for common areas such as green parks, primary school, community centre, library, dispensary, shopping areas, public health, religious place and club house;

(ii) that the writ petitioner issued advertisements, received 565 applications along with earnest money through banking channels and made allotment to 500 persons through draw of lots and also got sale deeds registered in favour of the allottees;

(iii) that the residential township proposed by the writ petitioner was to cater to the needs of common man, as the size of the plots varied from 4 marlas to 10 marlas;

(iv) that the notification dated 11.07.2002, issued under Section 4 of the Controlled Areas Act was followed by a spot inspection on 25.07.2002 and a show cause notice dated 26.07.2002;

(v) that though a reply dated 02.08.2002 was given, an order was passed on 08.08.2002 in a printed form and the appeal filed by the writ petitioner on 12.08.2002 was dismissed by the Tribunal on

28.01.2003, ignoring the development activities undertaken by the writ petitioner, the sales made and the construction in progress;

(vi) that the definition of the word "colony" would include the areas proposed to be developed and hence the inference is that the area was used as a colony even before it was declared as a controlled area.

(vii) that the speed with which action was taken to issue the notification under the Urban Development Act, after the issue of notification under the Controlled Areas Act, shows that there was an attempt to please the powers that be;

(viii) that the word "colony" under the relevant Rules cannot be understood to mean fully developed colony but should be taken to include even the proposed colony;

(ix) that 3rd party rights have already been created and some of the allottees had even gone to the consumer fora seeking compensation; and

(x) that as the area in question was already a colony at the time of issue of the notification under Section 4 of the Controlled Areas Act, the same fate will follow even at the stage when the notification under Urban Development Act was issued and that therefore the impugned notifications and the consequential orders were liable to be set aside.

6. A careful reading of the impugned judgment shows that the High Court was persuaded to set aside the notifications under both the enactments on the ground *inter alia*, ***(i)*** that even before the date of issue of the notification under Section 4 of the Controlled Areas Act, 1963 much water had flown, with the preparation of a lay out plan, division of the land into plots, allotment of plots after a draw of lots, sale of those plots to third parties and the construction of amenities; ***(ii)*** that the definition of the word "colony" would take within its fold even a proposed colony; and ***(iii)*** that the jet speed with which the notification under the Urban Development Act was issued, shows lack of *bonafides*.

7. Interestingly, despite commenting upon the speed with which the file for the issue of the notification under Section 2(o) of the Urban Development Act was moved and despite recording a finding that things were done to satisfy the then Chief Minister, the High Court did not choose to go the whole-hog and declare the actions of the authority as vitiated by *malafides.* In other words no clear finding of *malafides* was recorded though the findings were suggestive of the same.

8. The difficulty with the findings so recorded by the High Court is that a half-hearted attempt is not sufficient to hold a statutory

notification as vitiated by *malafides*. It was not even a case of malice in law and hence one of the main grounds on which the High Court was persuaded to set aside the notifications, is clearly unsustainable.

9. The definition of the word "colony" invoked by the High Court for holding that the colony need not have been fully developed but that even a proposed colony would come within its ambit, may have relevance to the notification under the Urban Development Act, but cannot have any relevance to the notification under the Controlled Areas Act. Section 2(c) of the Haryana Development and Regulation of Urban Area Act, 1975 reads as follows:

> *"(c) "colony" means an area of land divided or proposed to be divided into [plots or flats] for residential, commercial or industrial purposes, but an 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 holding not with the motive of earning profit; or*
> *(iii) in furtherance of any scheme sanctioned under any 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 metres, shall not a colony;"*

10. The Controlled Areas Act, 1963 does not deal with a colony or coloniser. The notification under the Controlled Areas Act preceded the notification under the Urban Development Act. Therefore, the definition of the expression in the latter Act cannot be invoked to nullify the notification under the former Act.

11. As seen from the preamble, the object of the Controlled Areas Act is "to prevent haphazard and substandard development along the scheduled roads and in controlled areas in the State of Haryana". The expression "controlled areas" is defined in Section 2(5) to mean an area declared under Section 4 to be a controlled area. Section 4 of the Act reads as follows:-

> *"4. (1) The Government may by notification declare the whole or any part of any area adjacent to and within a distance of –*
>
> *(a) eight kilo-meters on the outer sides of the boundary of any town; or*
>
> *(b) two kilo-meters on the outer sides of the boundary of any industrial or housing estate, public institution or an ancient and historical monument.*
>
> *specified in such notification to be a controlled area for the purposes of this Act.*
>
> *(2) The Government shall also cause the contents of the declaration made under sub-section (1) to be published in at least two newspapers printed in a language other than English."*

12. All that is required for the Government to issue a notification under Section 4(1) of the Controlled Areas Act is to show either that the area to be notified is located within a distance of 8 Kms. on the outer sides of the boundary of any town or 2 Kms. on the outer sides of the boundary of any industrial or housing estate, public institution or an ancient and historical monument. It was not the case of the 1st respondent that none of these requirements was satisfied.

13. It is not as though the power under Section 4(1) is unbridled. Section 5(1) mandates the Director to prepare plans within three months of the notification under Section 4(1), showing the controlled

area and signifying the nature of restrictions and conditions proposed to be made. The Government is obliged to publish the plans approved by it, by way of notification, inviting objections. The objections if any received by the Government along with the recommendations of the Director should be considered by the Government and the final plans showing the controlled area should be prepared. In fact, the Government has power under Section 7-A in public interest, to relax any restrictions or conditions in so far as they relate to land use prescribed in the controlled area in exceptional circumstances.

14. Therefore, it was not as though the developer reached a point of no return with the issue of the notification under Section 4 of the Controlled Areas Act. In any case the Controlled Areas Act does not take away any of the rights to property, except that the erection of buildings along the scheduled roads is prohibited and the erection of buildings in controlled areas is made subject to the restrictions and conditions imposed by the Government under Section 5. Instead of taking recourse to any of the remedies available under the Act, either to seek permission or to seek relaxation, the first respondent chose to assail the notification under Section 4 of the Controlled Areas Act, not on any legally tenable grounds but on *alibi*. Therefore, the High Court could not have sustained the challenge.

15. Insofar as the notification under the Urban Development Act is concerned, we do not know how the challenge to a notification under Section 2(o) could have been sustained. For notifying an area as an urban area, any of the prescriptions contained therein should have been satisfied. They are ***(i)*** that the area of land falls within the limits of a municipal area or a notified area or Faridabad complex or situate within 5 kms. of the limits thereof or ***(ii)*** that it is any other area where, in the opinion of the Government, there is a potential for building activities. The formation of opinion required under Section 2(o) that there is potential for building activities is *qua* "any other area". In other words, urban area means: ***(i)*** any area of land within the limits of a municipal area; ***(ii)*** any area of land within the limits of a notified area; ***(iii)*** any area of land within the limits of the Faridabad complex or; ***(iv)*** any area of land situate within 5 kms. of the limits thereof or; ***(v)*** any other area where, in the opinion of the Government, there is potential for building activities.

16. The High Court did not record a finding that the area of the land in question did not fall within any of those five categories. Even the writ petitioner did not contend that the land did not fall within any of those five areas. The definition of the expression 'colony' under Section 2(c) of the Urban Development Act has nothing to do with the

parameters contained in Section 2(O) for the issue of notification.

17. As in the case of the Controlled Areas Act, even the Urban Development Act merely regulates the manner in which a colony is to be developed. Section 3(1) enables an owner desiring to convert his land into a colony, to make an application to the Director for the grant of a licence to develop a colony. After conducting an enquiry, the Director may grant a license under Section 3(3), permitting the owner to undertake development subject to payment of various charges. The Director is also empowered under Section 9 to grant exemption to a person from obtaining the license under certain circumstances.

18. Even the Urban Development Act contains a provision empowering the Government to exempt any class of persons or areas from all or any of the provisions of the Act. Section 23 reads as follows:-

> ***"23. Power to exempt.*** *- If the 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."*

19. Instead of taking recourse to Section 3 or 23 of the Urban Development Act, the first respondent chose to assail the notification without any legal basis. The High Court did not see through this game and granted relief without a strong legal basis.

20. The High Court overlooked the fact that the first respondent was only holding two agreements for the purchase of lands, dated 28.08.2001 and 16.10.2001. These agreements fructified into registered Sale Deeds only on 16.05.2002 and 30.05.2002. But according to the first respondent, applications were invited and allotments of plots were made during the period 24.10.2001 to 24.12.2001. In other words, the first respondent started collecting money from the alllotees even before they became the full fledged owners.

21. In fact, one of the allottees, who according to the first respondent made an application on 17.04.2002 for putting up a construction, was informed by the Director by a letter dated 6.05.2002 that a proposal for the issue of a notification under the Controlled Areas Act was already in process. It is only thereafter that the first respondent got the land conveyed to them under 3 sale deeds, two of them dated 16.05.2002 and one dated 30.05.2002.

22. Within a period of 11 months, *namely*, from 28.08.2001 (the date of the first agreement of sale) to 11.07.2002 (the date of the notification under the Controlled Areas Act), it is not possible for any person (*except Mayasura who built Lanka for Ravana and Indraprastha for the Pandavas*) to develop a colony. The argument that

the word 'colony' would include a proposed colony under Section 2(c) of the Urban Development Act cannot make the notification under the Controlled Areas Act invalid. Therefore, the impugned order of the High Court is clearly erroneous and is liable to be set aside.

23. The learned counsel for the intervenors who were allotted plots of land in the colony proposed by the first respondent, pleaded that the intervenors are gullible public whose hard earned money is now lost and that this Court should take into account their plight. But the above argument loses a sight of several remedies available even now, both to the coloniser and to the allottees. It appears that some of the allottees have already approached the consumer fora and secured orders for the refund of money. In any case the developer/coloniser is only required to apply for license/permission under the both these enactments and prepare a fresh lay out in accordance with the terms and conditions stipulated by the authorities and then develop the lay out afresh and allot alternative plots to the original allottees. There are also provisions in both the enactments such as Section 7A of the Controlled Areas Act and Section 23 of the Urban Development Act, which the parties have not even taken note of. Therefore, it is not as though the allottees of plots are now left high and dry with no redemption in sight.

24. In view of the above, the appeal is allowed and the impugned order of the High Court is set aside. It is open to the parties, both the developer and the allottees to follow the route available under both the enactments for the redressal of their grievances. And it is also open to the allottees, if they so wish, to work out their remedies against the first respondent. There will be no order as to costs.

.....J.
(Hemant Gupta)

.....J
(V. Ramasubramanian)

NOVEMBER 16, 2021
NEW DELHI