

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-A-297-MA of 2014 (O&M)

Date of Decision: 16.07.2015

Haryana State Pollution Control Board

--Appellant

Versus

Jyotirmay Daw

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. P.S. Poonia, Advocate for the applicant/appellant.

Mr. G.S. Bedi, Advocate for the respondent.

TEJINDER SINGH DHINDSA.J

This is an application preferred under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgement dated 4.9.2013, passed by the learned Presiding Officer, Special Environment Court, Faridabad acquitting respondent/accused.

The process of law was set in motion on a complaint filed by the Haryana State Pollution Control Board through its authorized official namely Dr. C.V. Singh. Complaint was filed asserting that the accused/respondent herein has constructed a farm house no. D-11, Aravali Retreat, Raisina, Gurgaon in violation of a notification dated 7.5.1992 as per which the Ministry of Environment and Forests, Govt. of India had restricted certain activities in the notified regions of the Aravali Range. As per complainant, a show cause notice for prosecution dated 22.7.2005 was issued upon the accused for raising illegal construction. A Sub Committee was also constituted comprising of officers of the Environment Department, Haryana State Pollution Control Board and District Administration which had examined the site and after considering the reply to the show cause notice, recommended prosecution against the violators including respondent

herein. As per complaint, accused had violated notification dated 7.5.1992 and as such was liable to be punished under sections 15/19 of the Environment Protection Act.

The competent court took cognizance of the complaint and issued summoning order against accused on 26.10.2009 in pursuance to which he appeared and was admitted to bail. Complainant was then called upon to lead pre-charge evidence.

On finding a prima facie case charge under Section 15 of the Environment Protection Act was framed against the accused vide order dated 29.1.2013. Thereafter, complainant examined Sh. Dinesh Yadav as CW-1 and Dr. C.V. Singh as CW-2. Statement of the accused was recorded under Section 313 Cr.P.C, wherein he denied the allegations and pleaded innocence. In defence accused examined himself as DW-1 and documents Ex.D1 to Ex.D4 were tendered. Defence evidence was closed on 4.9.2013.

In the trial that has ensued, the accused/respondent stands acquitted vide judgement dated 4.9.2013.

Counsel appearing for the appellant would contend that the Trial Court has erred in over looking the scope and ambit of notification dated 7.5.1992 issued by the Ministry of Environment and Forests, Govt. of India. It is contended that as per such notification construction of a farm house without prior permission of the competent authority is totally prohibited on *Gair Mumkin Pahar* land. It is argued that the accused/respondent had purchased a farm house and raised construction over an area/parcel of land which was reflected as *Gair Mumkin Pahar* as per revenue record relating to October, 1991. A further submission has

been made that the entries in the revenue record have thereafter been changed in connivance with the revenue officials.

Per contra, counsel appearing for the respondent would submit that as per notification it is construction of a cluster of dwelling units/farm house that was banned and no evidence has been led by the prosecution with regard to a cluster of farm house/dwelling units having been constructed by the accused. Submission raised in a nutshell is that the notification dated 7.5.1992 would not be applicable in the present case.

Having heard learned counsel for the parties at length and having perused the case file, I am of the considered view that no basis for interference is made out.

The entire case of the complainant hinges upon the notification dated 7.5.1992 which in turn imposes prohibition/ban qua certain activities. As per Table appended along with the notification, construction/any kind of operations without permission is prohibited in the following area:-

“i) All reserved Forests, protected forest or any other area shown on forest in the land record maintained by the State Government as on the date of this notification in relation of Gurgaon District of Haryana and Alwar District of State of Rajasthan,

ii) All area shown as:

- a) Gair Mumkin Pahar, or*
- b) Gair Mumkin Rada, or*
- c) Gair Mumkin Behed or*
- d) Banjad beed or*
- e) Rundh*

In the land records maintained by the State government as on date of this notification in relation to Gurgaon District of State of Haryana and the Alwar District of State of Rajasthan.

Iii) All the area covered by notification issued u/s 4 & 5 of

the Punjab Land Preservation Act, 1919 as applicable to the State of Haryana in the District of Gurgaon up to the date of notification.

iv) *All area of Sariska National Park and Sariska Sanctuary notified under the Wildlife (Protection) Act, 1971 (53 of 1972)”*

It would, thus, be amply clear that construction/any other kind of activity cannot be undertaken without prior permission upon land/area which is shown as *Gair Mumkin Pahar, Gair Mumkin Rada, Gair Mumkin Behed, Banjar Beed or Rundh* as reflected in the State records maintained by the State Govt. on the date of issuance of the notification in Gurgaon district of the State of Haryana and Alwar district of the State of Rajasthan.

Evidence has been adduced on record and duly appreciated in the form of revenue records of *Jamabandis* for the years 2000-2001 and 2009-2010 i.e. Ex. D3 and D4 respectively from where it is reflected that the land in dispute was not covered under any of the prohibited categories mentioned in the notification dated 7.5.1992. To the contrary, the status of the land in question stands reflected as *Gair Mumkin farm land* and upon which construction was not banned.

The finding of the Environment Court that notification dated 7.5.1992 would not be applicable to the case is, thus, well founded.

The court has also rightly observed that even if it was the case of the complainant that entries in the revenue records had been changed in collusion with the revenue officials by changing *Gair Mumkin Pahar* to *Gair Mumkin farm land*, yet, since the year 1992 no proceedings had been initiated for correcting the same.

It would also be pertinent to take note that the complaint as also prosecution was launched on the basis of a report having been submitted by

a Sub Committee who had purportedly inspected the site. It is on the basis of this very report that the complaint had been lodged. PW-1 Sh. Dinesh Yadav upon examination admitted in his cross-examination that though he had visited the site in dispute but he did not remember the date and time of inspection. Even the status report Mark-Y carries no time, date or month of inspection. Curiously, in the status report the date of show cause notice stands mentioned as 22.7.2005 which in other words means that notice for prosecution had been issued to the accused/respondent even prior to inspection. Such course of action clearly cannot sustain.

There is yet another aspect of the matter. From the statements of the witnesses examined on behalf of the prosecution the uncontroverted factual position that emerges is that the accused had purchased the farm house from Ms. Daljeet Kaur, Ms. Harpreet and Sh. Sarabjeet Singh in the year 2000 who had purchased it from M/s Ansal Properties and Industries Ltd. Clearly, in the year 1992 i.e. the year of issuance of the notification dated 7.5.1992 M/s Ansal Properties and Industries Ltd. was the owner of the land. The assertion made on behalf of the complainant that it was the present accused/respondent who had colluded with the revenue officials to get the entries in the revenue records changed pertaining to the year 1992, is clearly misconceived as the accused became owner of the land in question only seven years later in point of time.

It is settled that interference in an appeal would be called for only, if, the judgement under appeal is found to be perverse or based on misreading of the evidence. Interference would not be justified merely because this Court was to be inclined to take a different view. Learned counsel for the applicant/appellant has failed to point out any

perversity/misreading of oral or documentary evidence on record by the learned Presiding Officer, Special Environment Court, Faridabad in the impugned judgement dated 4.9.2013.

For the reasons recorded above, no case for interference is made out. The application seeking grant of leave to appeal against the impugned judgement dated 4.9.2013, is declined and consequently even the accompanying appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

16.07.2015
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