

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-22993 of 2013

Date of Decision: 09.09.2015

Bharti Reality Limited

....Petitioner

Versus

State of Haryana and another

....Respondents

Crl. Misc. No.M-25022 of 2009

Mr. Rakesh Bharti Mittal

....Petitioner

Versus

State of Haryana and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.S. Cheema, Sr. Advocate
with Mr. Rohit Khanna, Advocate
for the petitioner.

Mr. Baljinder Singh, D.A.G., Haryana
for the respondent-State.

Mr. Anshul Jain, Advocate
for Mr. Amar Vivek, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

By this order, both the petitions bearing **Criminal Misc. No.M-**

22993 of 2013 and **Criminal Misc. No.M-25022 of 2009** shall be disposed

of as common question of law and facts are involved. However, for the sake of convenience, the facts are being derived from ***Criminal Misc. No.M-22993 of 2013.***

The present petition has been filed under Section 482 Cr.P.C for quashing of complaint bearing No.42 of 2009 dated 08.01.2009 titled as ***Haryana State Pollution Control Board vs M/s Prime Rose Projects Private Limited and others*** pending before the Presiding Officer, Special Environment Court, Faridabad as well as summoning order dated 10.08.2009, whereby, the petitioner has been summoned to face trial for offence under Section 15 of the Environment Protection Act.

As per allegations in the complaint, the petitioner had started construction on the site situated at I.T. Park, CP-05, Sector 8, IMT, Manesar, Gurgaon without obtaining any prior Environmental Clearance Certificate, which is in violation of Section 15 of the Environment Protection Act, 1986.

Learned counsel for the petitioner submits that the Environmental Clearance Certificate was obtained by the petitioner-company on 17.05.2007 and the present complaint has been filed subsequently, which is contrary to the facts. He further submits that the summoning order has been passed without taking into consideration the material fact that the construction could not have started before obtaining the Environmental Clearance Certificate. Only on the basis of vague and general allegations, the complaint has been filed. No *prima-facie* case is made out against the petitioner and the summoning order has been passed, which is total misuse of process of law.

Learned counsel for the petitioner submits that the controversy, in the case, in hand, is squarely covered by decisions in ***Criminal Misc. No.M-34362 of 2009*** titled as ***M/s Ispace Developers***

Private Limited and others vs Regional Officer, Gurgaon Region, Haryana State Pollution Control Board and another, decided on **08.09.2011**, **Criminal Misc. No.M-26803 of 2010** titled as **M/s Wellworth Construction Private Limited vs Haryana State Pollution Control Board and another**, decided on **23.08.2011** as well as **Criminal Misc. No.M-37105 of 2012** titled as **M/s Ultra Home Construction Private Limited and others vs Regional Officer, Gurgaon Region, Haryana State Pollution Control Board**, decided on **01.03.2013**.

Learned counsel for the respondent-State as well as learned counsel for respondent No.2 submit that the arguments raised in this petition can be raised during trial of the complaint. However, learned counsel for the respondents have not disputed regarding passing of orders under similar circumstances.

Heard the arguments of learned counsel for the parties and have also perused the complaint as well as summoning order.

As per the case of the petitioner, the allotment letter of the land was issued to the petitioner-Company on 18.04.2006 and possession thereof was handed over on 23.08.2006. The application for Environmental Clearance was filed on 14.12.2006 and thereafter, the building plans under Self-Certification Scheme was submitted to Divisional Town Planner, IMT, Manesar on 16.05.2007. The certificate of environment clearance was issued on 17.05.2007 and the building plan was approved on 07.11.2007. It is also not disputed that the impugned complaint was filed on 05.12.2008 and the summoning order was passed on 10.08.2009.

The facts, as mentioned above, clearly show that the Environmental Clearance Certificate was issued on 17.05.2007 and the construction of the building was not started as building plan was approved on 07.11.2007.

As per the allegations in the complaint, the petitioner-Company had started construction on the site without obtaining Environmental Clearance Certificate, which is in violation of Section 15 of the Environment Protection Act, 1986. It has also been mentioned in the petition that the present petition has been filed by the petitioner being **Bharti Realty Private Limited**, which is accused No.1 in the complaint but the said Company ceased to exist as a corporate entity with effect from 05.12.2007 as per order dated 05.12.2007 passed by the High Court of Delhi at New Delhi, approving the Scheme of Amalgamation under Section 391-394 of the Companies Act, 1956 which was merged into with M/s Bharti Realty Private Limited. Accused no.2 i.e M/s Mitbrau Realty Private Limited also ceased to exist as a corporate entity with effect from 05.03.2008 vide order dated 05.03.2008 and it was also merged with M/s Jasmine Projects Private Limited. The name of M/s Mitbrau Realty was also changed to M/s Bharti Realty Private Limited and a fresh certificate of incorporation was issued by Registrar of Companies with effect from 27.06.2006. It is also the argument of learned counsel for the petitioner that the accused have wrongly been impleaded in Complaint No.42 of 2009 and otherwise also, the accused No.3 in the complaint i.e Mr. Rakesh Bharti Mittal has been impleaded as Director and alleged to has been responsible for day to day functioning of accused No.1. The averments made in the complaint are not only incorrect but false as well.

The submissions made by learned counsel for the petitioner have not been disputed by learned counsel for respondent No.2. Even on perusal of allegations in the complaint, it appears that no date and time has been mentioned as to when the construction was started, whereas, it could not have started without the approval of the Building plans.

The impugned summoning order has been passed without

taking into consideration the material facts, which amounts to abuse of process of law. The Environmental Clearance Certificate was issued on 17.05.2007 and the present complaint has been filed after a delay of almost 19 months from the date of grant of Environmental Clearance Certificate.

On perusal of allegations in the complaint, it is apparent that the same has been filed only on the basis of allegation that the construction has been started without obtaining any prior Environmental Clearance Certificate from the Ministry of Environment and Forests. Even it has not been mentioned in the complaint as to how the offence under Section 15 of the Act has been committed by the petitioner-Company. Moreover, the controversy, in the case in hand, is squarely covered by decision in **M/s Ispace Developers Private Limited** case (supra), **M/s Wellworth Construction Private Limited** case (supra) and **M/s Ultra Home Construction Private Limited** case (supra).

Accordingly, both the petitions are allowed. Complaint No.42 of 2009 dated 08.01.2009 titled as **Haryana State Pollution Control Board vs M/s Prime Rose Projects Private Limited and others** as well as summoning order dated 10.08.2009 and all subsequent proceedings arising therefrom are hereby quashed.

09.09.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE