

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 09, 2015

(i) CWP No. 16862 of 2013 (O&M)

Anil Kumar and others

.....Petitioners

Versus

Union Territory Chandigarh & Others

.....Respondents

Present: Shri R.S. Bains, Advocate, for the petitioners.

Shri Sanjeev Sharma, Senior Advocate, with
Shri Amit Arora, Advocate, for the respondents.

(ii) CWP No.3286 of 2014 (O&M)

Lokesh Kumar and others

.....Petitioners

Versus

U.T., Chandigarh and others

....Respondents

Present: Shri Deepak Saini, Advocate, for the petitioners.

Shri Sanjeev Sharma, Senior Advocate, with
Shri Amit Arora, Advocate, for the respondents.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

- i) Whether Reporters of local papers may be allowed to see the judgment?
- ii) To be referred to the Reporters or not?
- iii) Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

This order shall dispose of Civil Writ Petition Nos.16862 of 2013 and 3286 of 2014, raising identical questions of law and facts. However, for the facility of reference, the facts are taken from CWP No. 16862 of 2013.

The petitioners claim to be residing in Chandigarh for the last 20-30 years. It is pleaded that most of the petitioners are working as Class-IV employees in the Government institutions on contract basis and are getting the minimum wages. It is pleaded that initially, the petitioners and their families were living in rented accommodations in Chandigarh within the Abadi land of the villages. After the villages were included in the Municipal Corporation, the rentals have increased, therefore, it was difficult for them to afford accommodation within the Lal Dora, therefore, they are residing outside the abadi area which was demarcated in 1918. It is pointed out that the Punjab Settlement Manual defines Abadi to mean as under:-

“The village site should be measured in one number, together with the small plots attached in which cattle are penned, manure is stored and straw is stacked and waste attached to the village site. The entry in the column of ownership and occupancy will be simple abadi deh.”

The petitioners rely upon the judgments of this Court reported as Ishwar Singh v. State of Haryana and others, 1996(2) RRR 61; State of Haryana v. Pritam Singh, 2001(3) PLR 94 and a Single Bench judgment of the Himachal Pradesh High Court reported as Kewal Ram v. Gram Panchayat Bhutti, 1989(5) Punjab Legal Reports and Statutes page 417, to contend that the abadi area is required to be extended so as to exempt the petitioners from the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (for short ‘the Act’) in terms of Section 15 of the Act. The argument is that abadi area with the passage of time is required to be extended and once abadi area is extended, the land in question would cease to be governed by the Act. It is also pointed out that the Punjab Land Revenue Act, 1887, is not applicable to the area which forms part of the Abadi. The petitioners have made reference to certain statutory provisions prevailing in the

State of Haryana, but we find that such provisions in the neighbouring State of Haryana, are not relevant to determine the claim of the petitioners for allotment of flats to the petitioners on the same pattern were allotted to the slum dwellers under the Chandigarh Small Flats Scheme, 2006.

In reply, the stand of the respondents is that the petitioners are residents of Dhanas, a controlled area under the Act. The petitioners have raised constructions within the abadi without the permission of the Deputy Commissioner under Section 5 of the Act and thus contravened Sections 5, 6 and 11 of the Act by raising illegal constructions. The notices under Section 12(2) of the Act were served upon the petitioners and sufficient opportunities were provided to them, but without filing reply to the show cause notices, the petitioners have approached this Court for quashing of the notices. It is pointed out that the petitioners have no right or equity in law, when they have violated the provisions of the Act. It is pointed out that the Act came into force on 12.1.1953 and the Administration declared the land within the limits of 5 miles from the outer limits of Capital side of Chandigarh as controlled area. The said limits were later on extended to 10 miles as controlled area. The petitioners were entitled to use the land for the purpose of agriculture and for the purposes subservient thereto. Similar argument as raised by the petitioner for extension of Lal Dora, was raised before this Court in CWP No. 6169 of 2010 – Vijay Bansal vs. State of Haryana’ decided on 24.3.2014 and such argument was declined. Therefore, to prevent the haphazard growth and to keep the land reserved for future growth of the Chandigarh, it has become important to preserve the area. No individual can be allowed to develop the same as per his choice as the same would lead to utter chaos. The Act does not restrict the use of the land in question by its owner, but only puts reasonable restrictions on the use of the land. It is also pointed out that the

petitioners are not entitled for allotment of dwelling units on the pattern of the economically weaker sections of the society. The intensive programme of the housing is meant for the weaker sections of society living in slum conditions in labour colonies. It is also pointed out that the eligibility conditions are prescribed in the Chandigarh Small Flats Scheme, 2006. Therefore, only those persons, who were identified in the survey of about 18 colonies, alone are to be given flats under such scheme.

We have heard learned counsel for the parties and find no merit in the present writ petition.

The argument that abadi area with the passage of time is required to be extended keeping in view the changed requirements is not sustainable. Such argument is based on the fact that once abadi area is extended, the land in question would cease to be governed by the Act.

The abadi as per the Punjab Settlement Manual has been defined to be a village site measured in one number, together with the small plots attached in which cattle are penned, manure is stored and straw is stacked and waste attached to the village site. In Kewal Ram's case, the Single Bench of the Himachal Pradesh High Court, considered the challenge to the action of the respondents in removing the illegal encroachment on the parcel of the land. It has been held that abadi deh is the inhabited site of the village consisting of the sites where the houses of the members of the brotherhood or proprietary body are usually built together. The abadi deh is a land of joint ownership and is treated for the common purposes of the community. It is indivisible and the members of the community cannot call for redistribution of the area by way of partition. It was held as under:-

“Cleaning through the aforesaid relevant material contained in the Settlement and Land Administration Manuals, which continue to apply in Himachal Pradesh, and the judicial dicta, the position which emerges is that Abadi Deh, that is, the

inhabited site of the village, consists of sites on which the houses of the members of the brotherhood or proprietary body are usually built close together, small plots attached or annexed thereto which are used for penning the cattle, storing manure or stacking straw, empty or vacant sites unoccupied by any individual, common plots set apart for public use such as the chapel or hujra, for dharamshalas, mosques, graveyards, burning ghats, tanks, wells etc. and public paths or ways. The village site is measured in one number for the purposes of the revenue records and the entry in the column of ownership and occupancy will be "Abadi Deh"., The Abadi is almost always excluded from the operation of the Land Revenue Act, except so far as may be necessary for the record, recovery and administration of village cases. The proprietary body or brotherhood holds Abadi Deh in joint ownership and it is treated as the common property of the community. Still, however, generally speaking, the greater part of Abadi Deh is in most cases indivisible and members of the community cannot call for a redistribution of the area or for a partition according to the khewat or ancestral shares. The members of the community, who have built their houses or ghers in the portion of the village site for long with the assent or acquiescence of their co-sharers, cannot be ousted from the sites, on which they have built, in the guise of partition. So also the portions of the land set apart by common consent for public use cannot be brought into any scheme of redistribution or partition at the instance of any member of the community. If the village site in which such portions are comprised is assessed to land revenue, which would be in a very rare case, the revenue authorities may determine the extent and manner to and in which the co-sharers may make use thereof and the proportion in which expenditure, if any, incurred thereon and the profits if any deprived therefrom are to be borne by and divided by those persons or any of them. However, so far as empty or open sites in or about the village, unoccupied by the members of the community and not used by them for any public purpose, are concerned, whether they are enclosed by shrubs, bushes etc. or not any member(s) of the proprietary body can call for the partition of such vacant or open site according to the rule applicable in a particular case which, more often than not, determines the share of each proprietor therein according to the land revenue paid by him."

In Pritam Singh's case (supra), a Division Bench found that Khasra No. 65 was outside the Lal Lakeer, but has been left out for the residential houses. It was, thus, found that the disputed site falls within the extended Abadi Deh as per the Scheme.

In Ishwar Singh's case (supra), a Division Bench of this Court was examining the location of the stone crushers consequent to the direction issued by the Hon'ble Supreme Court in the case of M.C. Mehta v. Union of India, (1992)3 SCC 256. The Court examined the question as to point from which the distance was required to be measured from village abadi.

We find that none of the judgments deal with the right of the inhabitants of the village to seek extension of the Lal Dora or the abadi deh land only because some land was reserved for abadi while demarcating abadi or at the time of consolidation.

The Act deals with the regulated development of the peripheral area of Union Territory Chandigarh. Section 15 of the Act, however, creates certain exceptions, i.e. the categories, on which the provisions of the Act, would not be applicable. Said Section reads as under:-

“15. Nothing in this Act shall apply to:-

- (a) any building for residential purposes or for the purposes subservient to agriculture in the abadi area of any village as defined in the revenue records;
- (b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, cenotaph or Samadhi on land which is, at the time of the notification under sub-section (2) of section 3, occupied by or for the purposes of such place of worship, tomb, Samadhi, cenotaph or graveyard;
- (c) excavations (including wells) or other operations made in the ordinary course of agriculture;
- (d) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.”

Punjab Land Revenue Act, 1887 excluded the abadi land from the operation of the land revenue. It is the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, which defines the common purpose to include the land for extension of the village abadi. The relevant extracts from of the statutory provisions would read as under:-

The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

Section 2. In this Act, unless there is anything repugnant in the subject or context, —

(a) to (b)

(bb): “common purpose” means any purpose in relation to and common need, convenience or benefit of the village and includes the following purposes:-

- (i) extension of the village abadi;
- (ii) providing income for the Panchayat of the village concerned for the benefit of the village community.
- (iii) village roads and paths; village drains, village wells, ponds or tanks; village watercourses or water-channels; village bus stands and waiting places; manure pits; hada rori; public latrines; cremation and burial grounds; Panchayat Ghar; Janj Ghar; grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and....”

Section 18. Land reserved for common purposes.--

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct-

- (a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;
- (b) that any land under the bed of a stream or torrent flowing through or from Shiwalik mountain range within the State shall be assigned for any common purpose;
- (c) that if any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose.”

The East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1949.

16(i) The area to be reserved for the common purpose of extension of abadi for proprietors and non-proprietors under section 18(c) of the Act shall be reserved after scrutinizing the demand of proprietors desirous of building houses and of non-proprietors including Harijans families working as agrarian labourers who are in need of a site for house. The land reserved for extension of abadi shall be divided into plots of suitable sizes. For the plots allotted to proprietors area of equal value shall be deducted from their holdings but in case of non-proprietors including Harijans families these shall be allotted without payment of compensation and they shall be deemed to be full owners of plots allotted to them.”

In view of the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the land for abadi is carved out during the consolidation or can be reserved for extension of the abadi during consolidation, which is again a common purpose. The petitioners, who are in occupation of small portions of the land outside abadi have no right to assert that abadi area should be extended, as extension of abadi is the common purpose for which the land can be reserved in the manner prescribed under the Statute alone. It is for the consolidation authorities as and when the consolidation is undertaken to reserve the land for extension of abadi. As is made out from the record, the land over which the petitioners are in possession, is part of the land falling within the Municipal Corporation. For planned city of Chandigarh, haphazard growth over the private land, is not contemplated. It will change the edifice of the city.

In Vijay Bansal's case (supra), the Court has examined the argument of the Chandigarh Administration that extension in Lal Dora would be counter productive. The Court found that an

administrative decision taken for a good cause, does not call for interference in the public interest. It was held as under:-

“The stand of the U.T of Chandigarh is that there should be no extension of Lal Dora as the Administration has limited land and the extension in Lal Dora would be counter-productive and is an endeavour only to obtain plotting of agricultural land by villagers not for their own families but for dealing with such carved out plots unauthorizedly. In order to discourage unauthorised construction in periphery areas, notification have been issued on 25.9.2007, 8.4.2008 and 25.5.2009 whereby the provisions of the Periphery Act of 1952 were extended beyond the abadi area of villages, Maloya, Palsora, Kajheri, Dadumajra and Hallomajra. It has also been observed that it was not practical to apply the Capital Act to the areas of villages which have been constructed in haphazard manner and illegal constructions are stated to have taken place which is against the very spirit of extension of Lal Dora and the objectives and reasons of the Periphery Act. Thus, where residential structures have been raised by original owners and inhabitants themselves for their own habitation/settlement, the matter can be considered on case-to-case basis, but there was no proposal to withdraw the application of the Periphery Act. It was necessary to maintain the unique character of the Chandigarh city with the Master Plan Committee being seized of the matter. In fact, no demand is stated to have been made by residents of villages in this behalf and, thus, it is really a proxy litigation styled as a public interest litigation by people having vested interests.”

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As far as the State of Punjab and U.T. of Chandigarh are concerned, they have already explained the rationale in not extending the abadi area, a matter of administrative decision taken for good cause and thus, there is no reason for this Court to interfere in a PIL petition.”

The extension of abadi is a common purpose in terms of Section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Such extension can be ordered only at the time of consolidation. The process of the

consolidation is not a right which can be claimed by a proprietor at any time. The act of consolidation of agriculture holdings is a matter of policy, which cannot be directed by this Court in exercise of the writ jurisdiction.

In respect of the applicability of the Chandigarh Small Flats Scheme, 2006 to the occupants of the private land, suffice it to state that the petitioners claim to be owners of the private land and thus cannot be treated at par with encroachers on the public land. Even if the petitioners are purchasers of a small portion of land, but they claim to be in possession as owners. There is, thus, no parity of the petitioners with the slum dwellers, for whose benefits the aforesaid scheme was framed. It is policy decision of the Administration, which does not call for interference in the writ jurisdiction of this Court.

In view of the above, the present petitions are dismissed.

(Hemant Gupta)
Judge

(Hari Pal Verma)
Judge

February 09, 2015
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