

CRM-A-155-MA-2016

Date of decision : 14.05.2018

Haryana State Pollution Control Board

.....Applicant-Appellant

versus

Shakuntala Saharan and Others

..... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Lokesh Sinhal, Advocate for the applicant-appellant.

SURINDER GUPTA, J. (Oral)

Heard.

The applicant-appellant launched the prosecution of respondent under Section 15 of the Environment Protection Act, 1986 for raising illegal construction in Aravali Retreat, Raisina, Gurgaon without the permission/consent of the complainant-revision petitioner and in violation of the Aravali Notification by way of which illegal construction in that area was prohibited. While recording acquittal of the respondents, the learned Presiding Officer-cum-JMIC, Special Environment Court, Faridabad has observed in para 21 as follows:-

“The other defence/argument of Id. Counsel for accused is that the Notification was applicable only on the land shown as Gair Mumkin Pahar on the date of Notification in the revenue record and as such the Notification was not applicable upon Aravali Retreat the land of present accused. But the version/allegation

of complainant is that these revenue entries were not changed as per status and were changed to Gair Mumkin Farm house by revenue officials. Perusal of language of Aravali Notification dated 7.5.1992 shows that prior environment clearance is required to be obtained from Environment Department Haryana for carrying on certain processes and operations like construction of any clusters of dwelling unit, farm houses, sheds, community centre, information centres and any other activity connected with such construction(including road or part of any infrastructure relating thereto) and Electrification “laying of new transmission lines” etc. Areas where carrying on the process and operations without permission are prohibited are

(i)

(ii) All areas shown as:

Gair Mumkin Pahar, or

Gair Mumkin Rada, or

Gair Mumkin Bahed, or

Banjad Beed, or

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.

Thus the language of the Notification clearly establishes that the Notification is only applicable upon the area/land shown as Gair Mumkin Pahar in the land/revenue records maintained by the State Government on the date of Notification. It is admitted fact that the present land in question has been shown as Gair Mumkin Farm house etc. in the khasra girdawari of Haadi 1991 and in the jamabandi of 1990-91 i.e. in the land/revenue records maintained by the State Government. Now it was incumbent upon the complainant to prove that this record has been wrongly/falsely prepared in collusion with revenue officials.

But surprisingly no any evidence regarding collusion between accused and revenue officials has been brought upon file.”

The similar point was also in issue in a bunch of appeals before this Court and a Coordinate bench of this Court in those appeals titled as **Haryana State Pollution Control Board v. Ashok Tuli, CRM-A-1109-MA of 2016** decided on 01.12.2016 observed that the area where the construction has been found was not shown in the revenue record as Gair Mumkin Pahar, as such, there is no violation of the notification dated 07.05.1992. Learned counsel for the appellant has not disputed that this case is covered by the aforesaid judgment and hence there are no merits in this appeal. Consequently leave to appeal is declined and the appeal stands dismissed.

(**SURINDER GUPTA**)
JUDGE

14.05.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No