

CRM-A-898 of 2015

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

CRM-A-898-MA of 2015
Date of decision: 17.10.2018

Punjab Urban Development Authority

.....Applicant

versus

Mohinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Ashish Grover, Advocate, for the applicant.
Mr. Bikramjit Aroura, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(4) prayer has been made for grant of leave to file appeal against judgment dated 01.11.2014 of the learned Judicial Magistrate Ist Class, Tarn Taran.

Briefly, applicant filed complaint under Section 36 read with Sections 3, 5, 8, 9, 14(2), 15, 18 and 21 of the Punjab Apartment and Property Regulation Act, 1995 (for short the 'Act'), on the allegations that respondent had set up a colony for residential, commercial and industrial purposes dividing a big chunk of land comprising khasra Nos.13//2/1, 13/1/1, 13/1/3, 14/1/2, 18/1 and 19/3 in the area of Village Kajikot, Tehsil and District Tarn Taran, without obtaining any licence, in contravention of the provisions of Sections 3 and 5 of the Act, in which respondent was tried and acquitted vide impugned judgment dated 01.11.2014.

Learned counsel for the applicant referring to the definition of

“colony” given in the Act, *inter alia* contends that trial Court failed to

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appreciate that in case, plots are carved out by a person in an area not less than one thousand square metres by dividing the agricultural land for residential, commercial or industrial purposes, he is liable to be punished under the Act. Trial Court failed to appreciate that as per report Ex.C2/A of the Junior Engineer of the applicant, respondent had carved out a colony for residential, commercial and industrial purposes without obtaining any licence. Site plan C3/A by the Junior Engineer CW1 was also prepared according to the spot. Trial Court also erred in ignoring jamabandi Ex.C5/A proving ownership of the respondent coupled with photographs Ex.C6/A to Ex.C9/A of the spot. Statement of CW1 was sufficient to hold respondent guilty for contravening the provisions of Sections 3 and 5 of the Act. Trial Court also erred in ignoring the sale deeds mark "EFG" proving that respondent had carved out a colony without obtaining any sanction under the provisions of the Act. There was sufficient evidence on record to hold guilty and convict the respondent.

On the other hand, learned counsel for the respondent refuting the above submissions of learned counsel for the applicant, pleaded the legality and validity of impugned judgment, urging that official of the applicant, namely, Jagjit Singh Bedi, A.E. did not ever inspect the spot and for that reason he also did not step into the witness box to support the case of the applicant. In the alleged site plan Ex.C3/A, boundaries or nature of construction has not been shown by the alleged junior engineer of the applicant. Photographs Ex.C6/A to C9/A do not belong to the property of the respondent, rather are of some distinct place.

Having given thoughtful consideration to the submissions made

by both the sides, this Court finds instant application completely devoid of

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any merit for the reasons to follow.

Applicant miserably failed to prove that the alleged photographs belong to the property owned by the respondent.

Even CW1 never visited the spot. Therefore, site plan Ex.C3/A or the photographs relied upon by the applicant were not clicked by its official. Consequently, his entire testimony is based on hearsay.

Certified copies of the sale deeds allegedly executed by the respondent were also not proved. Therefore, allegations that respondent sold out some plots carving out a colony in agricultural land more than one thousand square metres, has no legs to stand.

That apart, out of seven sale deeds relied upon by the applicant, only three belong to the respondent. Therefore, applicant has not been able to prove its case to the hilt, more particularly when execution of the said sale deeds by the respondent could not be proved.

I have gone through the impugned judgment and find no illegality or perversity in the same. Accordingly, leave to appeal is declined.

Dismissed.

October 17, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No