

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29958-2016
DECIDED ON:14.12.2018

RIMPY KANSAL AND ANR.

..PETITIONERS..

VERSUS

STATE OF HARYANA AND ORS.

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Arun Gupta, Advocate,
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing FIR No.0551 dated 26.07.2015, under Sections 3 and 7(ii) of Haryana Development of Urban Area Act, 1975 (for short, "Act"), Police Station City Thanesar, Kurukshetra (P-1) as well as other proceedings arising out therefrom.

Briefly, District Town Planner vide its letter dated 14.07.2015 received in Police Station City Thanesar on 29.05.2015, requested to lodge FIR against the petitioners under the Act on the ground that they had raised unauthorized construction over the land falling in Khasra No.4//7/1, 7/2, 8/1, 18/3, 9/1, 14/2, 17/1/2, situated in village Sunder Pur, Tehsil Thanesar, District Kurukshetra, in contravention of provisions of Sections 3 and 7(ii) of the Act, without obtaining any

licence to carve out a colony within urban area from the competent authority i.e. Director Town and Country Planning Haryana, Chandigarh, under Section 3 of the Act whereas, Section 7(ii) of the Act prohibits erect or re-erect of any building in any colony without obtaining licence.

Learned counsel for the petitioners contends that aforesaid land falls within the municipality area. Therefore, District Town and Country Planning Haryana, Chandigarh had no legal right to lodge the impugned FIR. He drew attention of this Court to letter Memo No.17407 dated 19.08.2016 (Annexure P-11), written by Additional Chief Secretary to Govt. Haryana, Town and Country Planning Department (Appeals), Chandigarh to one of the petitioners namely, Smt. Poonam informing her that he had no authority to hear her appeal as her land falls within municipal limit. Both the petitioners have purchased a plot measuring 3 marlas plot i.e. approximately 100 sq. yds and 7.5 marlas i.e. 233.33 Sq yds. for construction of their houses respectively. Therefore, the petitioners were not required to obtain any licence, inasmuch as, the same, if any, had to be obtained by their vendor. Even vendor of the petitioners was not required to obtain any licence, because, they were owners of small plots having area of less than 1000 sq. mts. The petitioners are poor persons. During the pendency of instant petition, the petitioners have also got sanctioned their site plan from the Municipal Council, Kurukshetra. Thus, by any stretch of imagination, they are not liable to be prosecuted for the

impugned FIR.

On the other hand, learned State counsel has vehemently opposed the above submissions of learned counsel for the petitioners.

Having given anxious consideration to the rival submissions, this Court finds merit acceptance of this petition for reasons to follow:-

(1) It is not disputed that small plots of the petitioners, on which, they have constructed their houses falls within Municipal Limit. The controversy as to which of the department of State would exercise its jurisdiction over an area falling within municipal limits of a town has been set at rest by this Court in various judgments. One of the same is "**Rajat Kuchhal and others v. State of Haryana and others**" decided on 23.08.2012 (Annexure P-8). Pursuant thereto, Director General, Town and Country Planning Haryana, Chandigarh wrote memo No.1980 dated 20.11.2012 (Annexure P-9) to the Principal Secretary, Urban Local Bodies Department Haryana, Chandigarh, clarifying that any action for the land falling within the municipal limits shall be taken by the Urban Local Bodies Department i.e. municipal committee or municipal corporation. That apart, there is no violation of Sections 3 and 7(ii) of the Act by the petitioners, inasmuch as, they had purchased small plots, less than 1000 sq. mts for construction. The petitioners have not carved out any colony. Complainant-District Town Planner, Kurukshetra wrongly interpreting Sections 3 and 7(ii) of the Act, illegally got registered FIR against the petitioners without having any jurisdiction to lodge the impugned FIR.

He exceeded his jurisdiction, may be for some extraneous reasons and consideration.

Before parting this judgment, it is necessary to mention that in the entire State of Haryana, Senior Town Planner and District Town Planner, time and again lodge false and frivolous FIR against innocent people, taking illegal advantage of their official capacity for some extraneous reasons and consideration, knowing well that they have no powers to take any action for the area falling under municipal limits.

Now, the time has come to curb down such menace or mal-practice to rescue the innocent citizen from the illegal actions of the Town and Country Planning Department and their illiterate officers and if literate, they are ignorant about the exact proposition of law laid down by this Court or Apex Court or take advantage of their official position. Therefore, in future, any request for lodging FIR by District Town Planner or Senior Town Planner against any citizen of the State of Haryana for violation of Sections 3 and 7 (ii) of the Act, for the land falling within municipal limits shall not be entertained by the police authorities.

In view of discussion made above, the instant petition is allowed, FIR No.0551 dated 26.07.2015 along with all subsequent proceedings, is quashed qua the petitioners.

14.12. 2018

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Whether speaking/reasoned

Whether reportable

(RAMENDRA JAIN)

JUDGE

Yes/No

Yes/No