

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4121 of 2016 (O&M)

Date of decision: 05.12.2018

State of Haryana and others

..... Appellants

Versus

Jai Bhagwan

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Saurabh Girdhar, AAG, Haryana
for the appellants.

Mr. Parmod Parmar, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants-State of Haryana are in the appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

For regulated development of the areas around the cities, the Legislature has enacted The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963. As per Section 4 of the Act, Government is empowered to declare any area outside the limits of the municipal town or any other area, which in its opinion has the potential for building activities, industrial, commercial or institutional or re-creational estates/activities or uses subservient to the above, to be a controlled area for the purpose of this Act. Section 6 restrict any person to erect and re-erect any building in the aforesaid area.

It is not in dispute that in the present case, declaration under

Section 4 has already been published on 13.06.2006 Ex.D-1. The plaintiff-respondent initially applied for permission but without waiting for the same raised construction right on the road which is a highway. Notices were issued for restoring the property to its original position which prompted the plaintiff to file a suit. The plaintiff claim that he is using this construction for the purpose subservient to the agriculture as he stores agriculture produce therein. The suit was contested and apart from objection to the jurisdiction of the Civil Court, it was brought to the notice of the Court that the property is being used for commercial purpose. Learned trial Court after appreciating the evidence dismissed the suit on both the grounds that construction is illegal and the jurisdiction of the Civil Court is barred as per provisions of Section 21 of the Act. However, learned First Appellate Court has reversed the judgment on the ground that the construction is in agriculture land and is 8.6 Kms from the outer boundary of a town. Learned First Appellate Court has also held that the Civil Court has the jurisdiction because notices have been issued to Bazrang properties and not to the present plaintiff.

That is how this appeal has been filed. During the course of hearing, this Court thinking that it is a case of poor farmer granted opportunity to the defendant to file an affidavit that he shall not use the property for any commercial purpose in order to save the construction. Affidavit dated 27.11.2018 was filed. In response thereto, affidavit of the District Town Planner, Jhajjar has been filed wherein it has been brought to the notice of the Court that in fact the constructed site is being used by a private company who is operating check barrier on Haryana Delhi border. Even photographs have been annexed. From the photographs, it is apparent

that the construction is right on the main road and the property is not being used for agriculture purpose as is claimed by the respondent-plaintiff.

For convenience, Section 4, 6 and 21 of the Act are extracted as under:-

“4. Declaration of controlled area.

(1) The Government may, by notification in the Official Gazette, declare any area outside the limits of municipal town or any other area, which in its opinion has the potential for building activities, industrial, commercial, institutional, recreational estates/activities and uses subservient to the above, to be a controlled area for the purposes of this Act.

(2) The Government shall also cause the contents of the declaration made under sub-section (1) to be published in at least two newspapers printed in a language other than English.

6. Erection or re-erection of buildings etc. in controlled areas.

Except as provided hereinafter, no person shall erect or or-erect any building or make or extend any excavation or lay out any means or access to a road in a controlled area save in accordance with the plans and the restrictions and conditions referred to in section 5 and with the previous permission of the Director:

Provided that no such permission shall be necessary for erection or re-erection of any building if such building is used or is to be used for agricultural purpose or purposes subservient to agriculture:

[Provided further that nothing in this section shall apply to a building constructed along the extension of the scheduled road located in the limit of the local authority and which was in existence immediately before the commencement of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development (Haryana Amendment) Ordinance, 2009, on payment of such fee, as may be prescribed.]

21. Bar of jurisdiction of Civil Courts.

No Civil Court shall have any jurisdiction to entertain or decide any question relating to matters falling under this Act or the

rules made thereunder.”

It is clear from the reading of the aforesaid statutory provisions that Government is entitled to declare any area outside the limits of municipal town or any other area to be 'a controlled area'. In the controlled area, construction except for the purposes which are subservient to the agriculture are prohibited unless necessary permission has been sought under the Act.

Learned counsel for the respondent-plaintiff does not dispute that the notification declaring the area to be controlled area has been issued. He also does not dispute that the aforesaid notification declaring the area to be controlled area is not under challenge. He further does not dispute that if the measurement is taken in a straight line on horizontal plan, the distance would be less than 8 Kms from the nearby town. However, he submits that the notices which have been issued are in the name of Bazrang properties and not addressed to the plaintiff.

It is the plaintiff who has challenged these notices. As per the case of the State, previously office of Bazrang properties was running from the site in dispute which is now occupied by a company referred to above. In any case, once the construction is without permission and is being used for commercial purpose, the building cannot be permitted to exist. Still further, learned First Appellate Court has erred while returning a finding that Civil Court has got the jurisdiction. The jurisdiction of the Civil Court is barred under Section 21 of the Act. There is a remedy provided under the Act before the Tribunal constituted. The Civil Court should not allow the party to bye-pass that remedy and invoke the jurisdiction of the Civil Court.

The language of Section 21 is categoric that the Civil Court shall not have

the jurisdiction to entertain and decide any question relating to the matters falling under this Act or the rules framed thereunder.

Hence, on both grounds, the judgment passed by learned First Appellate Court is suffering from error, therefore, the same is set aside and that of the trial Court is restored.

Appeal is allowed.

05.12.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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