

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-25708-2015

Date of decision: 28.02.2019

Smt. Roshni Devi and another

..... Petitioners

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Partap Singh, Advocate for the petitioners.

Mr. Ashok Muthreja, DAG, Haryana.

**RAMENDRA JAIN, J. (ORAL)**

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing FIR No. 139 dated 30.10.2013 registered under Sections 3 and 7(1) of the Haryana Development and Regulation of Urban Area Act, 1975 (for short-'the Act') at Police Station Kalayat, District Kaithal and all subsequent proceedings arising therefrom, qua the petitioners.

Briefly, the petitioners purchased plot bearing No. 50/8, measuring 22.22 Sq. Yards, situated in ward No. 8, Kalayat, vide sale deed dated 28.12.2012 to build their shop for their livelihood. Thereafter, they applied for approval of site plan, completing all formalities with the Municipal Committee, Kalayat and also deposited necessary fee of ₹19,228/- towards development charges like building fee, boundary wall fee, sanitary fee, Malba charges, labour charges etc., vide receipt No. 17 dated 23.01.2013 (Annexure P-1). Some objection was raised by Municipal Committee, Kalayat, vide letter No. 222 dated 28.02.2013 (Annexure P-2)

which was also removed by the petitioners. Consequently, Municipal Committee, Kalayat, approved site plan in its meeting dated 25.07.2013. However, thereafter making some cuttings in the proceedings, approval for the site plan of the petitioners was deferred. In the meantime, Town and Country Planning Department of the State, declared the area in which plot of the petitioners was situated as controlled area vide notification dated 10.09.2013 (Annexure P-7) and impugned FIR was lodged against the petitioners, in the next very month under Sections 3 and 7(1) of the Act.

Learned counsel for the petitioners *inter alia* contends that notification (Annexure P-7) was of quite later date, after submission of site plan by the petitioners before Municipal Committee, Kalayat and its approval in the meeting dated 25.07.2013. Therefore, the petitioners have not violated any provision of the Act, as alleged by complainant-District Town Planner. Plot of the petitioners was situated within the Municipal limit. Therefore, the Town and Country Planning Department, had no jurisdiction to lodge FIR. At the most, in case of violation to the approved site plan the same could be compounded by charging composition fee and imposition of fine, in view of the provisions of Section 201 of the Municipal Act, 1973, instead of lodging the FIR.

On the other hand, learned State counsel vehemently opposing the submissions of learned counsel for the petitioners, pleaded the legality and validity of the action taken by the Town and Country Planning Department, on the ground that plot of the petitioners falls under the urban area which includes the municipal area.

Having given thoughtful consideration to the rival submissions, this Court finds the instant petition merit acceptance for the reasons to

follow:

The petitioners did not ever violate any provision of the Act, inasmuch as, they being a law abiding citizen, deposited a hefty fee of ₹19,228/- with the Municipal Committee, Kalayat, towards necessary fee under various heads required to be paid for approval of a site plan. In case, the area in which the plot of the petitioners situates, was not falling within the municipal limits, in that eventuality, Municipal Committee, Kalayat, must not have accepted the site plan of the petitioners for approval and the aforesaid fee deposited vide receipt No. 17 dated 23.01.2013 (Annexure P-1).

That apart, site plan of the petitioners was also approved in a meeting held on 25.07.2013. There is nothing on record that Municipal Committee, Kalayat ever returned the site plan of the petitioners to them, on the ground that it had no jurisdiction to accept the same and approve it. Even aforesaid fee of ₹19,228/- has not been returned to the petitioners by Municipal Committee, Kalayat, till date which automatically means that it, having authority vested in it approved the site plan of the petitioners.

By this time, it has repeatedly been settled by this Court and Hon'ble the Supreme Court that for any area falling within municipal limits, the Town and Country Planning Department, shall have no jurisdiction to lodge FIR. The petitioners are women and purchased a small plot of around 22.22 sq. yards to earn their livelihood, erecting a shop there on.

The instant FIR is gross abuse of the process of law and high handedness of Government Officers/officials of Town and Country Planning Department, in view of the fact that several thousand illegal and un-authorized colonies, are being regularized every year by the State

Government, on or before general elections. The fact also cannot be lost sight of that there is a unchecked mushroom growth of several unauthorized and illegal colonies in the State since last 4/5 decades, due to negligence of the officials of Town and Country Planning Department, Haryana, inasmuch as, even a small building can not be erected in a town without the consent of the officials of Town and Country Planning Department.

Now, the time has come to pose a question to the Government as to why it encourages mushroom growth of illegal and unauthorized colonies by regularizing them on the eve of general elections. Time has come to refrain the State Government from adopting such type of illegal activities of regularization of un-authorized colonies and to book officers/officials of the concerned Departments under the Indian Penal Code, with whose connivance or negligence, such un-authorized or illegal colonies came in existence or developed.

Learned State counsel has not been able to show any demarcation report to prove that plot of the petitioners did not fall into the municipal limits. By simply publishing a notification by the Town and Country Planning Department, declaring some area as urban does not take away lawful jurisdiction of municipality.

In view of the discussion made above, impugned FIR No. 139 dated 30.10.2013 registered under Sections 3 and 7(1) of the Act at Police Station Kalayat, District Kaithal and all subsequent proceedings arising therefrom, qua the petitioners, are quashed.

**February 28, 2019**

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**( RAMENDRA JAIN )  
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No