

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

CR No. 345 of 2020

Date of Decision: 28.1.2020

Newage Education & Welfare Society

...Petitioner

Vs.

SRS Residency Resident Welfare Association and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. This revision petition brought under Article 227 of the Constitution is directed against the order of the learned trial Court, Faridabad dismissing the defendant's application under Order 7, Rule 11(d) of the CPC. The petitioner society is defendant No.1 in the suit and claims to have purchased the land from defendant No.2/colonizer for construction of a nursery school. The plaintiff is the SRS Residency Resident Welfare Association seeking permanent injunction against the defendants prohibiting them from making any construction in what is a park thereby changing the nature of use of land from park to commercial.

2. The application [Order 7, Rule 11(d)] was filed in the suit on the plea that suit was barred by section 15 of the Haryana Development and Regulation of Urban Areas Act, 1975 ('the Act') which application, has been correctly dismissed by the trial Court on the

facts and circumstances by a well-reasoned order relying, inter alia, on the observations made in the division bench precedent of this Court rendered in case Mrs Chandra Tewatia Vs. State of Haryana, 1998 (1) RCR (Civil) 39 which ruling considered the bar in section 15 distinguishing the statutory provision as to its non-applicability in a private dispute from the active bar on disputes between the government and the colonizer. The Court explained that the relationship between the parties in the case before it was based on private contract of sale of land between the colonizer and private business which falls outside the domain of the Act. The Court held:-

“The relation between the licensees/colonizers and the government may be governed by statute and the contract entered into between the government and licensee/colonizer may have statutory flavour but as far as the purchasers and the licensees/colonizers are concerned their relationship emanates from pure contract. The agreement to sell and the sale deed executed between the purchasers and the licensees do not have their source in the provision of the Act and the rules.”

3. The star argument of the defendants in their effort to get the suit dismissed as barred by law is based on an incorrect reading of the judgment by the trial court. There is no substance in the contention and is rejected as the trial court has not misread the ratio in judgment while placing reliance on it in the impugned order. Further, in the judgment it was explained:-

“The jurisdiction of the civil court to adjudicate the dispute between the petitioners [Chandra Tewatia] and the licensees/colonizers is not ousted by virtue of Section 15 of

the Act. That section bars the jurisdiction of the civil court only for resolution of the questions and the rules framed thereunder. It has nothing to do with the private dispute between the purchasers and the licensees/colonizers.”

4. The learned trial Court has accordingly held that section 15 of the Act is applicable only when the colonizers and licensees file any civil suit against the government and not when the purchasers of the plots or their representatives residing in the colony or the residents' society file a suit against the colonizers and licensee, government of any other individual person. Hence, the plaintiff representing its members can legitimately complain of loss of amenities or diversion of land use to their environmental disadvantage in the civil court and seek temporary and permanent mandatory injunction to foil the attempt of colonizer and private party to make way for a school in place of the designated park. The rest is for trial and evidence.

5. The relevant observations of the trial judge and the line of reasoning adopted in dismissing the application are reproduced as follows:-

“If the contention of the defendants is accepted then there would be arbitrariness on the part of the Government institutions who would in collusion with the builders/colonizers/licensees can cheat the public who have purchase the plots in such colony and no purchasers of the plot can file any civil suit in the Court and the Government would not do anything against the builder/colonizer/licensees. Therefore, the argument of the learned counsel for the applicant/defendants cannot be accepted.”

6. Without commenting on the merits of the case, I endorse the

opinion of the learned Judge as well-founded in fact and in law and would dismiss the petition as without substance. The trial court has not committed any error or illegality in declining the application under Order 7, Rule 11(d) of the CPC.

7. Suit to proceed as per schedule.

(RAJIV NARAIN RAINA)

JUDGE

28.1.2020

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Whether speaking/reasoned : Yes
Whether reportable : Yes/No