

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

**CRM-M-24796-2014
Date of decision: 06.1.2020**

Rakesh Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. P. S. Ahluwalia, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Raj Partap Singh Brar, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No. 14 dated 24.02.2012, registered under Sections 36(1) and 36(3) of the Punjab Apartment and Property Regulation Act, 1995 (*for short 'PAPRA'*) along with all the subsequent proceedings including the report submitted under Section 173 Cr.P.C.

Brief facts of the case are that respondent No. 2/complainant, a Junior Engineer in the office of Additional Chief Administrator, Punjab Urban Development Authority, Patiala (*for short 'PUDA'*), submitted a complaint for registration of FIR with the allegations that Amarjit Singh, Mukhtiar Kaur, Santokh Kumari, Gurbachan Singh, Rita Rani, Joginder Singh, Surjan Singh, Jeet Singh and Sardul Singh, as detailed in the FIR, are owners of the land situated in the revenue estate of village Nanowal, Tehsil

Bhadson, District Patiala, measuring 163 bighay 9 bisway and they have carved out an unauthorized colony and have violated the provisions of Sections 36(1) and 36(3) of the PAPRA which provides that the land measuring more than 100 sq. yards cannot be converted into residential/industrial plots without getting registered as a 'promoter' with the competent authority (PUDA) and without obtaining a licence from the competent authority. It is further stated in the FIR that as per Gazette Notification dated 19.03.2007, issued by the Punjab Government Housing and Urban Development Department, the Additional Chief Administrator, PUDA, Patiala is authorized under Section 38(1) of the PAPRA to grant sanction for the prosecution. In the FIR, it is further stated that upon inquiry from the Patwari, it was found that aforesaid persons are the owners of the land and have started carving out residential plots without getting themselves registered as a promoter and without obtaining a licence from the competent authority and thus, they have violated the provisions of Sections 3(1), 5(1) and 21(1) of the PAPRA and further by violating Sections 9, 14(1)(2), 15 and 18(1) of the PAPRA, they have committed the offence punishable under Sections 36(1) and 36(3) of the PAPRA. It is further detailed in the FIR that on the basis of the inquiry, conducted by the Junior Engineer, the S.S.P., Patiala has recommended to register the FIR against the aforesaid persons as they have entered into agreements to sell of the land @ Rs. 2400/- per sq. yard to the petitioners (who were the proposed buyers), vide various agreements to sell executed in the year 2011 and the stipulated date for execution of sale deeds was fixed as 30.05.2012. As per agreements to sell, proposed buyers (petitioners herein) have obtained

permission from the seller/owners/aforesaid persons that they may sell the land either as a single plot or in small plots. It is further stated that the proposed buyers (petitioners) have started carving out plots and have constructed temporary unmetalled (*Kachcha*) road without taking approval from the PUDA and thus, they have committed offence punishable under the penal provisions of PAPRA.

The impugned FIR was registered on 24.02.2012 and thereafter, the petitioners applied for bail and have filed present petition seeking quashing of the FIR, which is pending since 2014.

Upon notice, separate replies have been filed by the State of Punjab and respondent No.2/complainant-Junior Engineer, PUDA, Patiala.

On 04.09.2017, it was noticed that nine persons were exonerated during investigation (all these persons were the land owners), whereas the petitioners, who were the proposed buyers of the land, were kept as accused persons though they were never granted any ownership right and their suits praying for decree of permanent injunction, filed against the land owners, were dismissed. It was also observed that respondent No. 2/complainant had requested for original inquiry report from the Investigating Officer for grant of sanction, therefore, S.S.P., Patiala was directed to file a specific affidavit about the delay in concluding the investigation of the FIR especially regarding the request made by PUDA for submitting the inquiry report in order to decide the question of sanction.

It is also worth noticing here that again on 04.09.2018, on the request of learned counsel for the petitioners that as per the judgment dated 05.10.2013, passed by the Civil Court dismissing the suits filed by the

petitioners, nothing has come in investigation as to how the petitioners, who have never acquired title or possession of the land, have committed offence under Sections 36(1) and 36(3) of PAPRA. Thereafter, the petitioners placed on record the report submitted under Section 173 Cr.P.C.

Learned counsel for the petitioners has argued that a perusal of the FIR and 173 Cr.P.C. report would show that it was registered against the land owners with the allegations that they have entered into agreement to sell with the petitioners (proposed buyers) and since there was a clause in the agreement to sell that the petitioners can either sell the land as a single plot or in small plots, they have been nominated as accused without their being any transfer of title in favour of them.

Learned counsel for the petitioners further argued that the petitioners had paid a huge amount @ Rs. 2400/- per sq. yard and having lost their suit for permanent injunction against the land owners, which was dismissed on the point of maintainability as after expiry of the stipulated date it was not maintainable and only a suit for specific performance was maintainable, which was never filed by the petitioners, therefore, no title has passed in favour of the petitioners (proposed buyers), hence, no offence is made out under Sections 36(1) and 36(3) of PAPRA.

Learned counsel for the petitioners has further argued that during investigation, all the land owners were exonerated and no challan under Section 173 Cr.P.C. was presented against them, though they were the only persons nominated as accused by respondent No. 2/complainant.

Learned counsel for the petitioner further argued that respondent No. 2/complainant never agitated the inquiry report exonerating

the land owners, who were named in the FIR and never asked for further investigation or re-investigation qua them. Learned counsel for the petitioners has, thus, argued that the land owners are still owners in possession of the entire property and all the rights of the petitioners to get the sale deed executed in pursuance to the agreement to sell has already lapsed as stipulated time has already expired way back on 30.05.2012 as no suit for specific performance was ever filed by the petitioners.

Learned counsel for the petitioners has referred to Section 36 of the PAPRA, which reads as under:

“36. Offences and penalties.--

(1) Any person or promoter or his agent registered under the Act, without reasonable cause, fails to comply with or contravenes the provisions of sections 3, 5, 6, 9 or 15 shall, on conviction, be punished with imprisonment for a minimum term of three years which may extend to seven years and with minimum fine of rupees two lac, which may extend to rupees five lac.

(2)xxx xxx xxx

(3) Any promoter or estate agent who, without reasonable excuse, fails to comply with, or contravenes, any other provision of this Act or of any rule made there under, or does not pay the penalty imposed upon him by the competent authority, shall, if no other penalty is expressly provided for the offence, be punished on conviction, with imprisonment for a term not less than one year which may extend to three year and with a minimum fine of rupees ten thousand which may extend to rupees one lac.

(4)xxx xxx xxx

(5)xxx xxx xxx
 (6)xxx xxx xxx”

Learned counsel for the petitioners further submitted that as per Section 2(y), a 'promoter' means a person who is the owner of land, on which a colony is developed or the builder who constructs or causes to construct an apartment or a 'colonizer' who develops a land in colony or a 'property dealer' or 'estate agent' who offers or sells apartments or plots on behalf of the land owner or builder or colonizer or a 'person' who claims to be acting as the holder of a power of attorney from the owner of the land on which the building is constructed or a colony is developed or styling himself as a developer by any other name.

Learned counsel for the petitioners further submitted that the petitioners were simply the proposed buyers of the land and they do not fall in the definition of 'promoter' as they are neither the power of attorney holder of the land owners nor are the 'promoter' who are registered with the competent authority and they have not developed any colony and, therefore, cannot be prosecuted merely on the ground of existence of a clause in the agreement to sell that the petitioner can either sell the entire plot as a single plot or by carving out small plots.

Learned counsel for the petitioners further submitted that even there is no colony developed at the spot and the allegations in the FIR are that some *Kachcha* roads were constructed, which is factually incorrect in view of the joint report submitted by the Investigating Officer and Naib Tehsildar, in pursuance to order dated 04.09.2017.

Learned counsel for the petitioners further referred to spot inspection report dated 22.02.2019, copy attached with this affidavit as

Annexure R-3/T, wherein the Naib Tehsildar, Bhadson along with SHO concerned and Patwari Halqa visited the spot and made the following report:

“Today alongwith Inspector Gurdeep Singh Station House Officer Bhadson, Sub Inspector Lakhvir Singh Additional Station House Officer Bhadson alongwith police party, Kuldeep Singh Field Kanungo Bhadson and Tarlochan Singh Patwari Halqa Bhadson, on receipt of letter No. 514/5A Bhadson dated 16.02.2019 as per writ petition No. 24796 of 2014 filed by Rakesh Kumar before Hon'ble Punjab and Haryana High Court Chandigarh for necessary information reached the spot of village Nanowal and got inspected the land according to Jamabandi for the year 2013-14 in respect of Khewat/Khatoni 18/38 to 61 items 82 measuring 163 Bighas 9 Biswas, then it transpired that Khasra No. 84, 85, 86, 87, 88 625/89, 626/89, 90, 627/91, 628/91, 629/91, 92, 93, 611/94, 612/94, 95, 616/96, 647/96, 630/97, 631/97, 585/98, 586/98, 120, 121, 122, 664/131, 649/131, 650/131, 615/132, 652/616/132, 617/139, 618/139, 619/140, 620/140, 142, 143, 144, 145, 146, 147, 151, 152 total measuring 163 Bighas 9 Biswas out of which land measuring 146 Bighas 9 Biswas is cultivable land according to spot girdawari, in which Haari crops have been sown, in which wheat crops and *barseen* fodder are lying standing out of this area land measuring 17 Bighas 3 Biswas is Gair Mumkin land in which Ex. Abadi and Gair Mumkin Ruries are kept. At this time, there is no unauthorized colony on this land is carved or existing. Report is being presented.

No. 100 dated 22.02.2019

Sd/- Naib Tehsildar, Bahdson.”

Learned counsel for the petitioners has, thus, argued that in the revenue record land still stands in the name of original land owners and there is no change of Khasra Girdawri regarding delivery of possession in favour of the petitioners as the possession of the land in revenue record continues with the land owners and there is a clear finding recorded in the spot inspection report that wheat and Barseen crops are cultivated on the 146 bighay and 9 bisway cultivable land, whereas the remaining 17 bighay and 3 bisway is gair mumkin land i.e. abaadi etc. and no unauthorized colony is existing at the spot.

Learned counsel for the petitioners further submitted that entire land in dispute remains as agricultural land, on which the land owners are still cultivating their crops and there is no mark of any passage at the spot. Learned counsel has, thus, argued that in view of the aforesaid report, even no offence under Section 5 of PAPRA is made out as the land in dispute was never developed as a colony.

Learned counsel for the petitioners further argued that the contents of the agreement to sell, which is between two individuals, cannot be taken as offence as per Section 6 of PAPRA as it applies to a promoter, who on the basis of the agreement to sell with the land owners is developing a colony in contravention of Section 6 of PAPRA. Learned counsel further submitted that agreements to sell were never registered as per Section 7 of PAPRA and no land taken by the petitioners as a promoter or by any third person to invoke the penal provisions of Sections 9 or 15 of PAPRA.

Learned counsel for the petitioners has further referred to affidavit of SHO, PS-Bhadson, District Patiala, who has stated therein that

all the petitioners have registered different FIRs against the land owners (who stand exonerated during investigation in the present FIR) under Sections 379, 447 and 427 of the IPC and the charges have been framed against the land owners and they are facing trial.

In reply, learned State counsel, on the basis of FIR and affidavit of the DSP, Circle Nabha, District Patiala, dated 27.01.2015, has argued that as per report of respondent No. 2/complainant, an unauthorized colony was carved out by the petitioners after entering into agreement to purchase the land from real owners and some *Kachcha* roads were also developed.

Learned State counsel has relied upon inquiry report (Annexure R-1/T), annexed with the affidavit of the DSP, Circle Nabha, vide which the land owners were exonerated by observing that they are small land owners and they did not know anything about the intention of the purchasers (petitioners) regarding construction of temporary roads without obtaining necessary approval from PUDA. Learned counsel has, thus, submitted that as per this report, no action was taken against the land owners, whereas the petitioners were nominated as accused.

Learned State counsel, on the basis of the affidavit dated 27.09.2017 of S.S.P., Patiala, has further submitted that on account of delay in seeking sanction, departmental action has been taken against two ASIs of the police department and a direction was issued to complete the investigation immediately.

Learned State counsel, however, in view of spot inspection report dated 22.02.2019, could not dispute the fact that SHO and Naib Tehsildar have found that neither any colony is existing at the spot nor the

ownership or possession was ever transferred in favour of the petitioners and the land owners are still cultivating the land in dispute and have sown wheat and *Barseen* crop. Learned State counsel further submitted that sanction was granted by PUDA under Section 38(1) of PAPRA for the first time on 25.01.2018 to prosecute the petitioners, thereafter, report under Section 173 Cr.P.C. was prepared on 29.01.2018 and was later on submitted before the Illaqua Magistrate.

Learned counsel for respondent No. 2/complainant, on the basis of reply dated 20.05.2015, has reiterated the version given in the FIR and has argued that as per Section 2(1) of PAPRA, the petitioners have carved out a colony without seeking necessary permission under Section 21 of the PAPRA from the competent authority. It was also stated in the affidavit that original inquiry report dated 08.01.2015 was not received by PUDA, therefore, the department was unable to issue sanction for prosecution against the petitioners/accused persons.

Learned counsel for respondent No. 2/complainant, on the basis of another affidavit dated 26.10.2018 filed on behalf of Tehal Singh, Junior Engineer/complainant, has further argued that the sanction was granted against the petitioners and three other persons.

In reply, learned counsel for the petitioners has argued that it is undisputed fact that at the spot, neither at the time of registration of FIR nor at present, any colony is developed and the nature of land in dispute is agricultural land which is still under the possession of land owners.

Learned counsel for the petitioners has further argued that in fact the petitioners are the victims as the land owners, by posing the land to

be clear titled land, have entered into agreement to sell with the petitioners and have taken huge money as earnest money, whereas no sale deed could be executed as the title of the land was not clear and on that account, the petitioners have got registered different FIRs against the land owners.

After hearing learned counsel for the parties, I find merit in the present petition for the following reasons:

(a) It is admitted case of the parties that by way of agreement to sell in the year 2011, the land owners, named in the FIR, proposed to sell their land with a stipulation in the agreement that the proposed buyers (petitioners) can sell the land either as a single plot or by carving out small plots, however, it is also admitted fact that neither any sale deed was executed in favour of the petitioners nor the petitioners have sold any part of the land to any third person by creating third party right to show that they intended to sell the land by carving out small plots. Even the agreements to sell were never registered and, therefore, the petitioners, not being the promoter, have not violated the provisions of Sections 3, 5, 6, 9 or 15 of PAPRA.

(b) Though there is a recital in the agreement to sell that the possession of the land is handed over to the petitioners, however, the petitioners have stated at bar that the possession is with the land owners and this fact is verified by the SHO as well as Naib Tehsildar, Bhadson, vide spot inspection report dated 22.02.2019 which says that according to spot girdawari, the land in dispute is under cultivation and wheat and *barseen*

crops are cultivated by the land owners. In the said report, it is clearly stated that there is no unauthorized colony on the land either carved out or existing.

(c) The petitioners have also relied upon different orders, passed by the Civil Judge, Nabha, one dated 05.10.2013, vide which the suit for permanent injunction, filed by the petitioners praying for restraining the land owners from alienating the land in dispute to a third person, was dismissed with an observation that since the stipulated date for execution of sale deed expired on 30.05.2012, the suit for injunction is not maintainable and the petitioners have a remedy to file a suit for specific performance, which was never filed by the petitioners as there was no clear title with the land owners. Therefore, the petitioners, who have never acquired either title or possession of the land in any manner, were not capable of carving out any colony at the spot so as to initiate prosecution against them.

(d) A perusal of report dated 03.12.2011, vide which S.P. (D), Patiala has exonerated the land owners by making an observation that they had no knowledge about the intention of purchaser party to construct temporary roads without seeking permission from PUDA and recommending to take legal action against the petitioners, who were the proposed buyers, is factually incorrect as at the first instance, it was the land owners who could be held liable for prosecution if any unauthorized colony was developed on their land. As noticed above, PUDA

has never challenged this report exonerating the land owners and even no challan/report under Section 173 Cr.P.C. was submitted against any of the land owners, hence, no offence is made out against the petitioners, who were simply the proposed buyers and have never acquired title or possession of the land.

Accordingly, the present petition is allowed and FIR No. 14 dated 24.02.2012, registered under Sections 36(1) and 36(3) of the Punjab Apartment and Property Regulation Act, 1995 along with all the subsequent proceedings including the report submitted under Section 173 Cr.P.C. is hereby quashed qua the petitioners herein.

06.01.2020

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No