

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

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**CWP No.26552 of 2021
Date of decision : 22.12.2021**

Bhupinder Singh and anr.

.....Petitioners

VERSUS

U.T. Chandigarh and anr.

.....Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present:- Mr. Atul Goyal, Advocate,
for the petitioners.

VINOD S. BHARDWAJ, J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

2. Instant petition raises a challenge to the order dated 23.11.2021 (Annexure P-4) passed by the Sub Divisional Magistrate (South), Chandigarh, exercising the powers of the Deputy Commissioner, Chandigarh under the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as 'Act of 1952') directing demolition of illegally raised 40 tin sheds (each measuring 10x10 feet) by the petitioners on the agricultural land situated in Village Maloya, UT Chandigarh, for being in violation of the provisions of the Act of 1952.

3. We have heard learned counsel for the petitioners and with his assistance have gone through the pleadings as well as the documents appended with the writ petition.

4. Learned counsel for the petitioners has argued that he and his

brother jointly inherited a total land measuring 9 Kanals from their father Late Sucha Singh. Petitioner No.1, thus, is the owner of four and a half (4½) Kanals of land. It was submitted that the petitioner carries on agricultural activity jointly along with his paternal family and the collective ownership of the entire family is four and a half (4½) acres of land. Forty tin sheds have been constructed on the land owned by the petitioners for housing of the labourers employed by the petitioners in carrying out the agricultural activity, hence, the purpose behind construction of the tin sheds was subservient to agriculture and is thus exempted under Section 15 from the operation of the Act of 1952.

5. The documents appended along with the writ petition are the Transfer Deed dated 25.05.2021 (Annexure P-1), mutation of transfer (Annexure P-2), electricity bill (Annexure P-3) and the impugned order dated 23.11.2021 (Annexure P-4). Having gone through the said documents and considering the arguments advanced by the learned counsel for the petitioners, we do not find ourselves in agreement with the contention raised by the petitioners. Before proceeding into the matter, we may refer to the relevant statutory provisions under the Act of 1952:-

Sub Section 2 of Section 2 of Periphery Control Act, 1952

(2) "building has the same meaning as is assigned to it in clause (2) of Section of the Punjab Municipal Act, 1911.

Section 5 of the Periphery Control Act, 1952

"Restrictions in a controlled area:- *Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and*

with the previous permission of the Deputy Commissioner in writing.

Section 6 of the Periphery Control Act, 1952

Application for permission and the grant of or refusal of such permission.

“6. (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner after making such enquiry as he considers necessary, shall by order in writing, either—

(a) grant the permission, subject to such conditions, if any, as may be specified in the order ; or

(b) refuse to grant permission.

(3) When the Deputy Commissioner grants permission subject to conditions or refuses to grant permission under sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case and the interest of the general public.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, if such building is required for purposes subservient to agriculture not shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for agricultural purposes.

(5) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the notification 1[under sub-section (1) of section 3] was made, nor shall he

impose any conditions in respect of such erection or re-erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than that for which it was used or designed on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner permission shall, without prejudice to the restriction signified in the plans under section 4 be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register as may be prescribed with sufficient particulars of all cases in which permission is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.”

Sub-Section 2 Section 12 of the Periphery Control Act, 1952

(2) Without prejudice to the provisions of sub-section (1), [if the Deputy Commissioner, after making such enquiry as he considers necessary and after affording an opportunity of being heard to the person concerned, is satisfied that such person has committed a breach of the provisions of the said sub-Section he may pass an order requiring that person] to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed, and if such person fails to do so within [six weeks] of the order, may

himself taken such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrears of land revenue.”

Section 15 of the Periphery Control Act, 1952

15. Exemption- Nothing in this Act shall apply to—

(a) any building for residential purposes or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records:

(b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, cenotaph or samadhi on land which is, at the time of the notification under sub-section (2) of section 3, occupied by or for the purposes of such place of worship, tomb, samadhi, cenotaph or graveyard ;

(c) excavations (including wells) or other operations made in the ordinary course of agriculture ;

(d) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

Section 2 of Sub-Section 3 of Punjab Municipal Act, 1911.

(2) “building” means any shop, house, hut, outhouse, stable, a factory, an industrial shed and a temporary structure erected by means of tents and structures raised for entertainment purposes whether roofed or not and whether used for the purposes of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever, and includes a wall and a well.”

6. A perusal of the said provisions would show that the construction of tin sheds would be a 'building' within the meaning of Section 2(2) of the Act of 1952 and permission would be required to be obtained from the competent authority before raising any

building/construction.

7. The same would thus lead us to examine whether the 40 tin sheds erected by the petitioners would be exempted in terms of Section 15 of the Act of 1952, as it exempts a building used for residential purposes or purposes subservient to agriculture in the *abadi* area of any village as defined in the Revenue record.

8. Learned counsel for the petitioners argued that the land in question is an agricultural land and has corroborated the same in the recital made in the transfer deed as well. There is no averment in the petition or argument raised that the land falls within the *abadi* area of village Maloya as defined in the Revenue record. The exemption from the application of the Act of 1952 is available only with respect to the land, which is situated in the *abadi* area of the village as per the Revenue record and is being used for the residential purpose and/or purpose subservient to agriculture.

9. Even though the case of the petitioners falls on the first principle itself, however, the counsel for the petitioners had emphatically argued that the construction of tin sheds for housing of the labourers is an activity which is subservient to agricultural purposes. The question, although is merely academic for determination of the instant petition, however, upon consideration of the same, we find that even this argument of the petitioners is merit-less.

10. In order to ascertain the true nature of agricultural activity, a specific query was raised to the learned counsel for the petitioners to substantiate the nature of activity undertaken by him on his four and a half (4½) acres of land (even though his ownership was 4½ kanals and there was

no document to show his possession over 4½ acres), as would require housing arrangement in 40 tin sheds. Learned counsel, however, failed to show any document pertaining to the nature of activity being undertaken. There can thus be no presumption of fact required to be established by the petitioners.

11. We are thus required to ascertain as to whether the activity can be held to be subservient to agricultural purposes. The Periphery Control Act of 1952 however does not define the activity which can be termed to be subservient to agriculture.

12. It is well settled in law that in the absence of any definition in the relevant statute(s), it may be permissible to look to the dictionary meaning of the term. The legal jurisprudence relates back to the observation recorded by Lord Coleridge in **R. Vs. Peters (1886) 16 QBD 636 at Page 641**: *“I am quite aware that dictionaries are not to be taken as authoritative exponent of the meanings of words used in the Acts of Parliament, but it is a well known rule of Courts of Law that the words should be taken to be used in their ordinary sense, and we are therefore sent for instructions to these books”*. The said view was further reiterated by Cozens-Hardy, M.R., in the matter of **Camdem (Marquis) Vs. Inland Revenue Commissioners (1914) 1 QB, 641 at page 647**: *“It is for the Court to interpret the statute as best it may. In so doing the Courts may no doubt assist themselves in the discharge of their duty by any literary hill they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries”*. The aforesaid principle was followed by a Full Bench of Madhya Pradesh High Court in case titled as **“Rao Shankar**

Pratap Singh Vs. The State of Madhya Pradesh, reported as AIR 1960 (MP) Page 86.

13. 'Agriculture/agricultural activity' having not been defined in the Act of 1952, hence to understand the same, the meaning as per dictionary has been looked into. The interpretation as contained in the Oxford English Dictionary Vol. IV P.47 and Vol. I. P.191 defines 'agriculture' to be “*the science and art of cultivating the soil; including allied pursuits of gathering in the crops and rearing livestock; tillage, husbandry, farming*”. The word 'agriculture' has been defined in the Webster's New International Dictionary as “*art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming etc., and also including in its broader sense farming, horticulture, forestry, butter and cheese-making etc*”. 'Agriculture' has been defined in Bouvier's Law Dictionary as “*the cultivation of soil for food products or any other useful or valuable growths of the field or garden; tillage, husbandry; also by extension, farming, including any industry practised by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying etc*”. In Corpus, term 'agriculture' has been understood to mean: “*art and science of cultivation of land especially in large quantity including protection of soil, planting of seeds, raising and harvesting of crops and rearing, feeding and management of livestock; tillage, husbandry and farming*”. Anderson's Dictionary of Law holds 'agriculture' to be “*an activity of cultivation of the ground for the purpose of procuring vegetables and fruits and includes gardening or horticulture and the raising or feeding of cattle and other stocks*”. The distinction was thus made between

'cultivation' and 'agriculture'. While cultivation was restrictive and limited in its meaning to the tilling of land, agriculture has a much wider import.

14. Hence, in its wider import, the activity of agriculture/agricultural purpose broadly relates to the activity of raising periodical crop/garden produce, horticulture, forestry, planting and upkeep of orchids, preserving the land for fodder, grazing, thatching grass, breeding and rearing of livestock, dairying, butter and cheese-making etc. For any activity to be classified as an activity which is subservient to the agriculture purpose, the same must be useful directly in some inferior capacity, for the said purpose. In order to classify an activity to be subservient to agricultural purpose, the substantive activity itself must bear a direct proximity to the agricultural activity noted above. A remote/extended/indirect link of the activity, to encompass it under 'purpose subservient to agriculture' would not attract the exemption. The activity of housing undertaken by the petitioners in the present case cannot be said to be an activity which is subservient to agriculture. The predominant object of tin sheds is to facilitate housing activity.

15. To seek benefit of an exemption, it is incumbent upon the person seeking such exemption to establish that he is entitled to avail of the exemption within the plain reading or by necessary inference of the statute. Such benefit would not fall upon the petitioners in a case of an indirect remote link or interpretation.

16. Case of the petitioners must also fail for the reason that the impugned order reveals that numerous opportunities were granted to the petitioners to submit their response. It is recorded in the impugned order that

no response to the notices was filed. The counsel for the petitioners does not controvert the finding so recorded by the learned Sub Divisional Magistrate (South), Chandigarh despite being specifically asked. The necessary inference which thus flows from such failure, has to be read against the petitioners and that the submission made before this Court is an afterthought.

17. While examining the legality or validity of an order passed by the competent authority, the Court is required to examine whether the authority has exercised the power as per the Statute and the procedure prescribed by it and that the same is without any malice, arbitrariness or discrimination and after taking due regard of the defence pleaded and arguments advanced.

18. Learned counsel for the petitioners has failed to point out any infirmity, illegality, perversity or violation of the procedure in law and/or non-appreciation of any argument advanced/document submitted by the competent authority. The impugned order thus does not suffers from any illegality, infirmity or perversity in law. The writ petition is thus dismissed, as being devoid of any merit.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

22.12.2021
S.Sharma(syr)

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