

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

**CRM-M-1967-2019
Reserved on: 20.07.2022
Date of Decision: 27.07.2022**

ASHOK KUMAR AND ANOTHERPETITIONERS

Versus

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Surinder Mohan Sharma, Advocate
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The co-petitioners, by filing the present petition, cast under Section 482 of Cr.P.C., seeks quashing of an order of 02.11.2018 (Annexure P-5, passed by learned Additional Sessions Judge, Panchkula, upholding, the order of 31.05.2018 (Annexure P-3), passed by learned SDJM Kalka, whereby the petitioners have been charge sheeted, under, Section 10 of the Haryana Development & Regulation of Urban Area Act, 1975 (hereinafter referred to as “the Act”) in pursuance to FIR No.92 of 27.04.2015, registered at Police Station Pinjore, Tehsil Kalka, District Panchkula.

2. Both the petitioners are validly constituted general powers of attorney of the owner of petition land, one Dev Raj. The land holding of the above owner, is carried in Khasra No.252/165, and, falls in the revenue village, Vasudev Pura, Tehsil Kalka, District Panchkula. In pursuance to the co-petitioners becoming constituted as valid general powers of attorney, by the owner (supra), of the petition khasra number, both made alienations of

some plots carved from the petition khasra number. However, the above carving of plots, and, their alienations thereafter, by the petitioners, to the vendees concerned, hence through execution(s) of registered deeds of conveyance, is alleged, by the respondent, to cause breach qua the mandate of Section 3, 7(i) read with Section 2(c), Section 7(ii) the Act, also vis-a-vis the Rules framed thereunder(s).

3. The petition FIR become instituted on a complaint made, by the District Town Planner (E), Panchkula to the Station House Officer, Police Station Kalka, complaint whereof, is appended as Annexure P-1. The petition FIR becomes appended, as Annexure P-2 to the instant petition.

4. Irrespective of the fact, that the co-petitioners may have lawfully acted, through valid empowerments becoming bestowed, upon them, under a validly executed power of attorney, as, made in their respective favour(s), by the lawful land owner one, Dev Raj, hence in theirs executing registered deeds of conveyance in respect of purportedly impermissibly carved plots, from the petition khasra number, which however has breached the above carried mandate. Nonetheless, the more important question, which requires its becoming determined, is whether, in the face of the mandate carried in Section 9 of the Act, hence empowering the Director to grant exemption(s) to a person, from obtaining the license as required to be obtained, under Section 3 of the Act, but yet upon his making a satisfaction qua the hereinafter extracted hence therein occurring contemplations obviously becoming satiated, rather any penal inculcation was yet drawable against the petitioners.

“9. (1) The Director shall grant exemption to a person from obtaining the licence if he is satisfied that -

(a) the Land-

(i) had been divided into plots and more than twenty per centum of the plots according to the layout plan ;

(ii) is in a compact block ; and

(iii) is not situated within the controlled area ; or

(b)

(i) the land does not exceed 4,000 square meters and is situated within the limits of a municipal area, a notified area or the Faridabad complex ;

(ii) the amenities similar to the one existing in the locality exist or such person undertakes to provide such amenities; and

(iii) the size of the plots divided or proposed to be divided is in conformity with the general layout of the plots in the locality :

Provided that the Director may, by an order in writing giving reasons, refuse to grant the exemption if he, after hearing the applicant, is of the opinion that the application has been made with a view to evade the provisions of this Act.

(2) The application for obtaining exemption shall be in such form and manner as may be prescribed.

(3) If, within a period of three months of the date when an application under sub-section (2) has been made to the Director, no order in writing has been passed by the Director, the exemption shall be deemed to have been granted.

Explanation – The expression “ controlled area” shall have the meaning assigned to it in the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act.”

Furthermore, it is also required to be determined whether given the power of composition of the offence, as arises from the above breach, and, as becomes vested in the Director under Section 13 of the Act, and, which provisions, do imminently save the offender concerned, from inculcation, which otherwise is stigmatic, was rather required to be adopted, and/or, are required to be resorted, and/or, was required to be also adhered by the Town Planner, before his proceeding to draw an inculcation against the petitioners, and, the land owner rather for alleged breaches being caused to the provisions (supra).

5. After delving deep into the above extracted provisions, as, carried in Section 9 of the Act, and, also after considering the mandate carried in Section 13 of the Act, appertaining to composition, of the apposite offence, provisions whereof becomes extracted hereinafter, thereupon too, “the Act”, does save and, protect the violator concerned, from his/her facing the ill consequence, of hers being necessarily entailed with imprisonment.

“13. (1) The Director may, either before or after the institution of the proceedings for prosecution, compound any offence punishable by or under this Act.

(2) Where an offence has been compounded, the offender, if in custody, shall be released and no further proceedings shall be taken against him in respect of the offence compounded.”

6. Section 13 of “the Act” empowers the Director to either before or after institution of the proceedings hence compound the offences, and, the above empowerment, has a further legal sequel, qua the offender concerned, if in custody, becoming released, and, that no further proceedings being drawable against him. Therefore, if the above empowerment is available to the Director, thereupon too, if the Town Planner concerned, has for the reasons (supra), untenably failed to revere the mandate, carried in Section 9 of “the Act”, yet the statutory empowerment vested in the Director under Section 13 of “the Act”, can yet become permissibly exercised by him, rather within the ambit of the relevant statutory provisions. In sequel this above discussion unfolds, that the Town Planner concerned, has in a hasty, and, ill informed manner, and, without application of mind, to the above salutary provisions, rather saving the petitioners from inculpation, hence proceeded to draw incrimination

against them, which however was obviably, in case he meted adherence thereto, and, had enabled the petitioners through a notice becoming served, upon them, to ensure theirs seeking recourses thereto, which however he has not done.

7. In consequence, for ensuring that the holistic purpose of the above extracted provisions does become obviously workable or becomes fully activated.

8. As a sequel, this Court finds merit in the petition, and, the same is allowed, and, the impugned order of 02.11.2018 (Annexure P-5), as, passed by the learned Additional Sessions Judge, Panchkula, is quashed, and, set aside, but with liberty to the land owner concerned, and, also to the co-petitioners, to access the Director for each availing, the mandate of Section 9, and, of Section 13 of the Act.

9. A copy of this verdict be sent by the Registry of this Court, to the Director, Town Planing, and, Urban Development, to the State of Haryana.

(SURESHWAR THAKUR)
JUDGE

27.07.2022
Ithlesh

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