

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

102

CRM-M-29323-2022
Date of Decision: 12.07.2022

VIDYAWATI @ VIDYA DEVI

....PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ketan Antil, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana
for the respondent-State.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition, cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.360 of 15.06.2022, registered at Police Station Kharkhoda, District Sonapat, wherein offences constituted, under Sections 7(i) and 7(ii) of the Haryana Development and Regulation of Urban Areas Act, 1975, (hereinafter for short call “the Act”), are embodied.

2. The present bail petitioner is indisputably the recorded owner, in possession, of a tract of land, located in Tehsil Kharkhoda, District Sonapat. Though, she proceeded to after plotting or carving plots from her land holding, proceeded to, alienate the carved out plots to the alienees concerned, but, prior thereto she did not, as enumerated in Section 3 of “the Act”, either make an application to the Director, for the grant of license to develop her land, or, to sub-divide it, for the purposes of creating a colony

therein, nor, obviously thereins, any permission, became accorded to her qua creating sub divisions of the tract of land hold, and, possessed by her. Therefore, the Town Planner concerned, proceeded to institute the petition FIR, against her, qua hers committing the petition offences, in respect whereof, Section 10 of “the Act” makes a prescription, that sentence of imprisonment extending upto 3 years, besides also sentence of fine being imposable upon her.

3. Be that as it may, Section 9 of “the Act”, empowers the Director to grant exemption 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 thereins occuring contemplation becoming satiated.

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 meteres and is situated within the limits of a municipal area, a notified area or the Faridabad complex ;

(ii) the amenities similar tot he one existing in the locality exit 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.”

4. Consequently, the above made provisions in “the Act”, well empower, the Director to make a satisfaction, with respect to satiations of the ingredients carried therein, rather evidently surfacing, and, to thereafter proceed to grant exemption, to the violator concerned, who has purportedly infringed the mandate of Section 3 of “the Act”. Therefore, prima facie, it appears, that the Town Planner concerned, has proceeded to, not mete reverence to the above provisions, whereas, upon his meting reverence thereto, thereupon, upon, an opportunity after notice being served upon the petitioner, she could have become enabled to avail them, hence to satisfy the Director concerned, that she is entitled to the exemption, as becomes contemplated in Section 9 of “the Act”. The reason(s) for the necessity of the above provisions, becoming revered, by the Town Planner concerned, before his proceeding to draw penal inculpations against the petitioner, does obviously stem, from theirs saving the purported violator, from rather becoming entailed with imprisonment, whereas, the above ill consequence was aviodable, in case a notice was served upon the petitioner, necessarily prior to the drawing of any penal inculpation against her, especially when a specific statutory provision (supra), becomes cast in “the Act”, permitting the petitioner to seek the relevant exemption, from the Director, and, also empowers the Director to grant them, on his objectively making the statutory satisfaction, and, obviously after the relevant material becoming

placed before him, by the petitioner, and, that too obviously after notice being served upon him. However, the above cast statutory remedy qua the petitioner has been for no valid reason, rather not accorded to her. Moreover, since there is also a provision cast 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.

5. 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 reverse 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.

6. In consequence, given the Town Planner concerned, not meteing reverence qua the mandate carried in Section 9 of “the Act”,

whereas, it has a holistic purpose qua the violator concerned being saved from becoming inculpated, thereupon, besides with the maximum sentence of imprisonment, if any, as imposable upon the violator concerned, by the trial Court concerned, extends upto a tenure of 3 years, and, also makes it him/her amenable to suffer the sentence of fine. In sequel, the above discussion unfolds that the bail petitioner has not committed a serious offence, rather is one which becomes also saved from penal inculpation(s).

7. In aftermath, this Court is constrained to conclude, that the present bail petitioner is entitled to being accorded the indulgence of pre-arrest bail. However, the learned State Counsel opposes the according of the asked for indulgence, as he submits that the recoveries of sale deeds have to be effected at her instance. However, since the sale deeds are public documents, hence when they can be obtained from the Office of the Sub Registrar concerned, thereupon, even if the present bail petitioner, does not ensure, at her instance, the makings of the recoveries of sale deeds, yet the petitioner cannot be construed to become disentitled to pray for the indulgence of anticipatory bail being accorded to her.

8. Consequently, the present petition is allowed, and, the bail applicant-petitioner is admitted to anticipatory bail, and, in the event of her arrest, she may not be arrested by the investigating officer concerned. However, subject to the bail applicant-petitioner furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the arresting officer. Furthermore, the bail applicant-petitioner shall also give an undertaking before the arresting officer, that as and when she is summoned through a written Hukamnama, she shall ensure hers rendering her

cooperation to the investigating officer.

9. The afore observations are meant only for the disposal of the present petition, and, shall not affect the merits of the trial arising from FIR (supra), However, given the empowerment vested in the Director concerned, to avail the mandate of Section 9 and Section 13 of “the Act”, therefore, when he deals with the apposite application(s), he may lawfully exercise his jurisdiction thereons.

(SURESHWAR THAKUR)
JUDGE

12.07.2022
kavneet singh

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