

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

CRM-M-40912-2021 (O & M)

Date of decision: 28.07.2022

Mr. Jyoti Sagar and anr.

.... Petitioners

V/s

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rohit Khanna, Advocate,
Mr. Arshdeep Cheema, Advocate,
Mr. Rohit Chandel, Advocate, for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 is for quashing of the FIR No.210 dated 22.03.2021 under Sections 3, 7(i), 7(ii) and 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter known as the 'Act') registered by the Haryana Police Citizen Services, Police Station Sector 10, Gurugram, Haryana (Annexure P-1) and all subsequent proceedings arising therefrom.

2. The brief facts leading to filing of the present petition are given as under:-

(i) The petitioners purchased the petitioners' Erstwhile Land (hereinafter known as 'the Land') under various sale deeds executed between 1998 and 2002. At the time of the purchase, the nature of the Land was said to be agricultural. The petitioners owned the Land until October 26, 2018; until then the nature of the Land remained

agricultural. The details of the Land and ownership structure are provided below:-

	Rectangle No.	Killa No.	Kanal	Marla	Sellers Share
	64	22	8	0	Petitioner No.1- Jyoti Sagar and petitioner No.2- Prema Sagar (both in equal share to the extent of 1/2 share).
	82	2/1	5	11	
	64	23/2	2	4	
	82	2/2	2	9	
		3	8	0	
		8	8	0	
		9	8	0	
		1	8	0	
		10	8	0	
		11/1/1	3	10	
		12/1	7	19	Petitioner No.1- Jyoti Sagar and petitioner No.2- Prema Sagar (both in equal share to the extent of 1/2 share).
		19/1/2	2	7	

(ii) The petitioners are said to have sold to Mr Amit Kumar Yadav in entirety, the Land in October 2018 under a sale deed described below:-

Date	Registration No.	Sellers	Purchasers
26 October, 2018	3445	Petitioner No.1- Jyoti Sagar and Petitioner No.2- Prema Sagar	Amit Kumar Yadav

As per the petitioners, they had sold their land, which was clearly agricultural land to Mr Amit Kumar Yadav. The Land was said to be an agricultural land parcel of over 31 Kanal, which was sold to a single person. The sale deed mentions that stamp duty had been exempted by the Government because the purchaser’s (Amit Kumar) agricultural land had been acquired by the Government and the

purchaser was purchasing an alternate parcel of agricultural land from the petitioners. Therefore, as per the petitioners, in these circumstances, the question of them having any prior knowledge of the manner the vendee shall utilize the land later on, did not arise. It is their case that they purchased and sold land which was clearly agricultural in nature. A copy of the sale deed dated October 26, 2018 is annexed to the petition as Annexure P-2.

(iii) Following the execution and registration of the above referred sale deed, the petitioners handed over the peaceful and vacant possession of the land to the purchaser as well as various original documents pertaining to the subject land to Mr Amit Kumar Yadav. This was done under a cover letter dated November 27, 2018, which bears Mr. Yadav's signature as an acknowledgement of receipt. A copy of the cover letter dated November 27, 2018 is annexed to the petition as Annexure P-3.

(iv) On the basis of the aforesaid sale deed, Mutation bearing No. 7149, was sanctioned in favour of the purchaser (Mr. Amit Kumar Yadav) by the AC 11nd Grade on February 8, 2020. A copy of the said mutation is annexed to the petition as Annexure P-4. The document records the factum of transfer of the above-mentioned agricultural land/ the Land.

(v) As per the petitioners, since the sale of their land, they had no interest in that land; they had no control over or role in anything that may have happened on that land. It is the petitioners case that on March 24, 2021, they learnt of the impugned FIR (Annexure P-1) through an article published in the Times of India.

(vi) The petitioners are not said to have been served with any show cause notice by respondent No.3 or any other authority in connection with any alleged violation of the Act. Thus, as per them, they had no opportunity to place the correct facts before respondent No.3, who is the complainant.

(vii) The petitioners then, on 25.03.2021, approached the District & Sessions Court by filing an anticipatory bail bearing BA No.1531 of 2021, titled as “Jyoti Sagar and another versus State of Haryana. In the said bail petition, the ADJ vide its order dated 26.03.2021, granted interim protection to the petitioners and posted the matter for 31.03.2021, awaiting the status report.

(viii) The concession of anticipatory bail was finally allowed to the petitioners on 31.03.2021, by the Ld. ADJ, Gurugram. The copy of the said order dated 31.03.2021 is annexed to the petition as Annexure P-7.

(ix) Thereafter, on 24.06.2021, the petitioners are said to have made a representation to: (i) District Town Planner (Enforcement) DTCP, Gurugram, Haryana; (ii) Principal Secretary, DTCP, Haryana; (iii) SHO, Police Station-Sector 10, Gurugram, Haryana; and (iv) DGP, Haryana, under Sections 3, 7(i), 7(ii) and 10 of the Act. In the representation, the petitioners claimed to have presented the accurate and factual position as established from public records and highlighted their unwarranted and wrongful nomination in the impugned FIR. Accordingly, the petitioners sought removal from the array of the accused in the impugned FIR and requested for preparation of the necessary status report to be filed in the competent

court. The copy of the said representation dated 24.06.2021 is annexed to the petition as Annexure P-8.

3. However, as no action was taken to declare the petitioners innocent, the present petition for quashing of the FIR came to be filed.

4. The learned counsels for the petitioners while referring to the grounds taken in the petition, have raised a number of arguments.

5. By referring to the allegations in the FIR, it is contended that the impugned FIR pertains to the alleged unlawful and unauthorized development of land falling in Khasra Nos 64//19, 64//20, 64//22, 82//2, 82//3, 82//8, 82//9, 82//10/1, 82//11/1, 82//12, 82//19, 82//13, 82//14 and 82//18 situated within the revenue estate of village Sadhrana, Tehsil Harsaru, District Gurugram (the “Subject Land”). The DTCP, Haryana alleged that the unlawful and unauthorized development on the Subject Land was in violation of the provisions of the Act. Based on these allegations, the DTCP, Haryana had sought investigation and prosecution against the “named offender(s)”, i.e. “Dealer as well as land owner”.

It is contended that the petitioners, erstwhile owners of respective shares of the Subject Land (i.e. Khasra Nos 64//22, 82//2/1, 82//3, 82//8, 82//9, 82//10/1, 82//11/1/1, 82//12/1, 82//19/1/2 alongwith other land parcels, situated within the revenue estate of village Sadhrana, Tehsil Harsaru, District Gurugram) had been incorrectly named in the impugned FIR. They had transferred their right title and interest in the Land, being agricultural land, almost three years ago (in 2018). Any alleged development on the Land had been undertaken after the petitioners had sold off the Subject Land and therefore the petitioners could not be liable for the same. After the sale of that land, the petitioners neither had any control over

nor any interest in the Land. The impugned FIR therefore ought to be quashed insofar as the petitioners are concerned.

A careful reading of the FIR shows that the same is extremely vague and has not been drafted in a responsible manner. It is a short document in the form of a complaint email to the Station House Officer where, under the head 'subject' at the initial stage, it is alleged that the persons named therein from (a) to (f) had committed infringement of the Haryana Development and Regulation of Urban Areas Act No.8 of 1975, by carving out an unauthorized colony in village Sadhrana. Thereafter, the Khasra numbers of the land are mentioned. In the latter part, it is mentioned that the contravention/violation of Sections 3, 7 (i), 7 (ii) of the Act of 1975 and Rules, was punishable with imprisonment of upto three years. The names of the petitioners figure against sub-heading (d) in the body of the FIR. The FIR is absolutely silent as to how and in what manner the petitioners and others have committed the contravention or infringement of the provisions mentioned therein. Therefore, from an objective scrutiny of the FIR it cannot be inferred that the petitioners are guilty of the offences alleged.

It is contended that a case of the instant nature requires a methodical scrutiny of the revenue record prior to the fixing of the responsibility of the persons who may be legitimately arraigned as the accused. The crucial issue is the splitting of agricultural land into impermissibly small parcels and the conversion of the land into a colony. It was the incumbent duty of the complainant to mention as precisely as possible how the person being denounced as accused, had committed the offence. The FIR was totally opaque in this regard.

To avoid unnecessary harassment of innocent persons and unwarranted escape of the guilty, it was the incumbent duty of the person filing the complaint, to carry out due diligence by way of a pre-registration inquiry prior to the finalization of the complaint which is later converted into an FIR. Unfortunately, the task had not been undertaken in the present case at all.

The revenue record annexed with the petition coupled with the sequence of relevant facts, unerringly demonstrates that the petitioners were in no way connected or concerned with the alleged creation of the unauthorized colony and had absolutely no role or involvement in the alleged acts of wrong-doing.

The complainant had filed its complaint without application of mind. A proper appraisal of facts would have revealed that the petitioners had sold the Land, being agricultural land, in 2018. In the circumstances, the petitioners had not and could not have carved out any illegal, unauthorized colony, as alleged in the impugned FIR. In fact, the petitioners had never intended to change the nature of the land from agricultural, when the petitioners were having title before 26th October, 2018.

A pre-registration inquiry would have given the informant an opportunity of ascertaining the necessary facts. The appropriate course in the present case was to issue a show cause notice to the persons whose role was required to be scanned. In case of the petitioners, their names appeared in the relevant Jamabandi as owners of certain area of the agricultural land. Had they been joined in a pre-registration inquiry by way of a show cause notice, the entire factual picture would have become graphically clear to the complainant. The FIR was essentially a hastily drawn document that does

It is lastly contended that as per the reply filed on behalf of the State dated 03.12.2021, the petitioners were found to be innocent during the course of investigation conducted by the investigating officer.

6. The learned counsel for the State has also referred to the reply dated 03.12.2021 to contend that both the petitioners have been found to be innocent and in view of the reply, does not wish to add anything more.

7. I have heard the learned counsel for both the parties.

8. The petitioners have raised a number of grounds in the present petition which have been further elaborated during the course of arguments. However, none of them need to be adverted to as the State reply dated 03.12.2021 is categoric to the effect that the petitioners had not committed any offence whatsoever. The relevant extract of the reply which contains reference to the letter No.10706 dated 01.12.2021 (Annexure R-1) despatched by the office of District Town Planner (Enforcement), Gurugram to Station House Officer, Sector 10-A, Gurugram, is reproduced as under:-

“2. That before proceeding further with the present reply/status report, it is imperative to mention brief facts of the case, which are that a memo no.GGN-DTP(E)/926 dated 04.02.2021 of the DTP Enforcement, Gurugram was received in PS Sector 10-A, Gurugram mentioning therein that 1. Pritam Singh, 2. Smt. Kamlesh Saluja, 3. P.M. Sinha, 4. Anjali Sinha, 5. Anjula Bhargava, 6. Jyoti Sagar, 7. Prem Sagar, 8. Rahul Yadav and 9. Pawan have carved out unauthorized colony over land falling in khasra no. 64//19, 20, 22; 82//2, 3, 8, 9, 10/1, 11/1, 12, 19, 13, 14, 18 in the revenue estate of village Sadhrana, Tehsil Harsaru, District Gurugram, in violation of Section 3, 7(i) and 7(ii) of Haryana Development and Regulation of Urban Areas Act, 1975. The aforesaid site falls within notified Urban Area of Gurugram. The above-named persons have violated Section 3, 7(i) read with Section 2(c) Section 7(ii) of the above Act by sub-dividing land for the

purpose of unauthorized colony. They are deliberately continuing with the contravention of provisions of the Act. On the basis of above allegations, FIR No. 210 dated 22.03.2021 under Section 7(i), 7(ii), 3, 10 of Haryana Development and Regulation of Urban Areas Act, 1975 was registered at PS Sector 10-A, Gurugram.

3. That the investigation was initiated by SI Parveen. The relevant record was obtained from the offices of District Town Planner (Enforcement), Gurugram and the concerned Tehsil. The petitioners were joined in the investigation on 27.03.2021, in pursuance of the interim bail granted to them by the Ld. ASJ, Gurugram. The petitioner No.1 produced a sale deed Vasika No.3445 dated 26.10.2018. The petitioners told that they had purchased the agricultural land measuring 31 Kanal 6 Sarsai in Village Sadhrana and sold the same to one Amit Yadav vide sale deed Vasika No. 3445 dated 26.10.2018. The other accused namely P.M. Sinha, Anjali Sinha, Manjula Bhargava were also joined in the investigation on 27.03.2021. The challan against them has not yet been submitted in the court. The investigation regarding other persons named in the FIR ie Pritam Singh, Kamalesh Saluja, Rahul Yadav and Pawan is still under way.

4. That after joining the petitioners in the investigation, the office of the DTP Enforcement Gurugram, i.e. the complainant of the present case was contacted by the investigating officer and asked about the involvement of the petitioners in the present case, on the basis of their assertion that they have sold the agricultural land measuring 31 Kanal 6 Sarsai in Village Sadhrana to Amit Yadav vide sale deed No. 3445 dated 26.10.2018.

5. That the DTP Enforcement, Gurugram has intimated the investigating officer, vide letter No. 10706 dated 01.12.2021, that no violation of any provision of the Act No. 08 of 1975 has been found to be committed by the petitioners. Copy of the said letter of DTP, Enforcement, Gurugram is attached herewith as Annexure R-1.

6. That thereupon, the petitioners were found to be innocent during the course of investigation conducted by the investigating officer and verification of facts conducted by the SHO, P.S. Sector 10-A Gurugram. Thus, the present petition filed by the petitioners becomes infructuous and they are not entitled to approach this Honble High Court to get the present FIR quashed, and as such the present petition deserves dismissal.

It is, therefore, respectfully prayed that in view of the submissions made hereinabove, the present petition may kindly be dismissed, being infructuous”.

9. In view of the categoric reply filed by the State, the continuation of the proceedings in furtherance of the present FIR would be nothing but an abuse of the process of the Court.

10. Thus, the present petition is allowed and the FIR No. 210 dated 22.03.2021 under Sections 3, 7(i), 7(ii) and 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 registered by the Haryana Police Citizen Services, Police Station Sector 10, Gurugram, Haryana (Annexure P-1) and all subsequent proceedings arising therefrom stand quashed qua the petitioners.

11. However, it is made clear that investigation/proceedings qua the other accused shall continue in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

July 28, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No