

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 59594 of 2022
Date of decision : 29.11.2023

Dayanand Bainta

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajesh Sethi, Advocate,
Mr. Ajaypal Singh, Advocate,
Mr. Arjun Biriwal, Advocate and
Mr. Paramdeep Singh, Advocate for the petitioner.

Mr. Ramesh K. Ambavta, Asstt. Advocate General, Haryana.

PANKAJ JAIN, J. (ORAL)

The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR No.340 dated 12th of May, 2022 registered for the offences punishable under Sections 3, 7(i), 7(ii) & 10 of Haryana Development and Regulation of Urban Areas (HDRUA) Act, 1975 (hereinafter referred to as '1975 Act'), at Police Station Sector-58, Faridabad and all proceedings subsequent thereto.

2. Petitioner executed following three sale deeds of his agricultural land:

- (i) Sale Deed No. 4190 dated 25.11.2020 in respect of land measuring 1 acre 2 marlas
- (ii) Sale Deed No. 7243 dated 30.03.2021 in respect of land measuring 1 acre 5 marlas.

(iii) Sale Deed No. 580 dated 26.04.2021 in respect of land measuring 1 acre 5 kanals 3 marlas.

3. He was accused of having carved out unauthorized colony and has been alleged as per the FIR as under:

“Act No. 8 of 1975- Sh. Dayanand Bainsa S/o Late Sh. Ramchander Bainsa. Sh. Dayanand Bainsa S/o Sh. Ramchander Bainsa, R/o H. No. 1492, sector -14, Faridabad has carved out an unauthorized colony over the land bearing khasra no. 14//3/2, 4/2, 5/1/2, 7//25, 8//11/1/1/2/1, 11/1/2/2/1, 20/1/1/1, 21/1/1 in the revenue estate of village- Kail Gaon, Tehsil- Ballabgarh, District Faridabad in violation of section 3, 7(i) & 7(ii) of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as Act No.8 of 1975) and Rules framed there under. The aforesaid site/land belongs Sh. Dayanand Bainsa S/o. sh. Ramchander Bainsa R/o H. No. 1492, sector 14, Faridabad through jamabandi year 2015-2016. The show cause notice bearing memo no. 391 dated 04.03.2022 and restoration order vide memo no. 494 dated 09.04.2022 were issued respectively against unauthorized colonization under the provisions of 10(2) of Act no. 8 of 1975. 2. The aforesaid site falls within notified Urban Area of Faridabad. The Section 3 of Act no. 8 of 1975 provides that the land owner shall get a license from the Director, Town Country Planning, Haryana, Chandigarh before carving out a colony within any notified Urban Area. Further, section 7 (1) of Act No. 8 of 1975 prohibits advertisement and transfer of land by way of sub division for the purpose of carving out a colony 7 (ii) of the Act ibid prohibits any type of construction in a colony for which license under section 3 of Act of 1975 has not been granted/obtained by the concerned land owners. Whereas, the above named offenders have violated the provisions of section 3, 7(1) & 7(ii) read with Section 2(c) of Act No. 8 of 1975 by sub dividing land for the purpose to set up a colony without requisite prior permission and even for raising construction thereon. The offenders are deliberately continuing with the contravention of

provision of Act No. 8 of 1975 and Rules framed there under. It is further intimated that the contravention /violation of section 3, 7(1) & 7(ii) of Act No. 8 of 1975 and rules framed there under is a punishable offence under section 10 of the Act ibid with the imprisonment up to 3 years and therefore you are requested to get the said unauthorized colonization stopped immediately and to investigate the matter and thereafter to register FIR against the above named offenders i.e. land owners as well as any other offenders whose name gets associated with them during course of After registration of FIR and before putting the challan in the investigation. 3. After registering of FIR and before putting the challan in the competent court of law, necessary sanction for prosecution of the offenders may be obtained from the Deputy Commissioner-cum-District Magistrate, Faridabad as per provisions of section 11 of Act no, offenders may be obtained from the Deputy Commissioner-cum-8 of 1975. 4. Please find enclosed following documents duly showing the association of above named offender with the aforesaid unauthorized construction existing at site. iii) Copy of show cause notice as well as copy of restoration order issued to the offender as per provisions of section 10(2) of Act no. 8 of 1975. iv) Photographs showing stage of construction of the colony. These documents shall help you to investigate the offence and also during the prosecution of the above named offender. 5. It is further intimated that as per provisions of section 11 B of Act 1975, Police officer not below the rank of sub inspector has power to arrest such offenders. A copy of FIR and progress report of investigation in to this matter may be sent to this office for record purpose, please. This complaint consists of...pages numbered as 1 to...as per detail given below:- Sr. No. Particular Page No. 1. Copy of jamabandi, 2 Copy of Urban Area Plan, 3. Copy notice and restoration order, 4. Copy of site plan, 5. site photographs Sd/- District Town Planner, Enforcement Faridabad xxx”

4. Counsel for the petitioner submits that the allegation against the petitioner, even if taken on its face value, cannot constitute offence

punishable under the Haryana Development and Regulation of Urban Areas Act, 1975 and thus, the FIR needs to be quashed. He refers to Sections 10, 7, and 3 of the 1975 Act to submit that the offence can be said to have been committed under the Act only when a person transfers or agrees to transfer in any manner plots in a colony or make an advertisement or receive any amount in respect thereof, without obtaining licence under Section 3. He submits that there is no such allegation that the petitioner has carved out the plots. Rather the land has been sold for the purpose of agriculture and not for residential, commercial, industrial, cyber city or cyber park.

5. State has filed reply by way of affidavit of Sudhir Kumar Taneja, HPS, Assistant Commissioner of Police, Mujessar, District Faridabad, dated 11th of July, 2023. The precise stand of the State reads as under:

“10. That it is pertinent to mention here that the present FIR has been registered on the complaint of office of District Town Planner and no record has been provided till now to the Investigating Officer regarding whether any plotting was done by the petitioner or not.”

6. Despite the aforesaid stand taken by the authorities, it is being claimed that the petitioner is guilty of offence and the petition deserves to be dismissed.

7. I have heard counsel for the parties and have gone through records of the case.

8. In order to appreciate the contention raised by counsel for the parties it will be apposite to peruse the following provisions of law:

“3. Application for licence—[(1) Any owner desiring to convert his land into a colony shall, unless exempted under section 9, make an application to the Director, for the grant of license to develop a colony in the prescribed form and pay for it such fee and conversion charges as may be prescribed: 26[xxx];

Provided that if the conversion charges have already been paid under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), no such charges shall be payable under this section27{:}.]

[Provided further that owner may enter into an agreement jointly or severally with a developer for pooling of land for grant of licence 29{:}]

[Provided further that in case of migration of licence, the colonizer shall pay the outstanding renewal fee with interest accrued upto the date of payment. However, the external development charges including interest paid thereon for the area under migration shall be adjusted in the licence and the colonizer shall not be liable to deposit the unpaid interest amount on external development charges and infrastructure development charges of the existing project. The conversion charges, licence fee, infrastructure development charges already paid shall be adjusted in case the amount to be paid for migration at the current rate is more than the earlier paid in case of existing project31{:}]

[Provided further that for such colonies located in such land use zones of various notified development plans, where in the opinion of the Government, the licences are to be issued after invitation of bids or following an auction procedure in pursuance of the policy framed by the Government in this regard from time to time, such application shall be considered to

be valid only if it is filed in response to a notice of the Director and fulfils the prescribed terms and conditions]

[(1A) All such applications received in response to the notice issued by the Director against policy for auction of licences that are considered to be in order by the Director shall, in addition to the prescribed requirements, also be liable for payment of location premium, as determined through the bidding/auction process, in such manner and in such time frame as conveyed by the Director. The amount received against location premium shall be utilised for provision, maintenance and augmentation of external development works and shall be recovered in addition to the prescribed rates of development charges received against external development works from a colonizer]

(2) On receipt of the application under sub section (1), the Director shall, among other things, enquire into the following matters, namely:-

- (a) title to the land;
- (b) extent and situation of the land;
- (c) capacity to develop a colony;
- (d) the layout of a colony;
- (e) plan regarding the development works to be executed in a colony; and
- (f) conformity of the development schemes of the colony land to those of the neighboring areas.

(3) After the enquiry under sub section (2), the Director, by an order in writing, shall —

(a) grant a licence in the prescribed form, after the applicant has furnished to the Director a bank guarantee equal to twenty five per centum of the 34[estimated cost of development works in case of area of land divided or proposed to be divided into plots or flats for residential, commercial or industrial purposes and a bank guarantee equal to thirty-seven and a half per centum of the estimated cost of development works in case

of cyber city or cyber park purposes] as certified by the director and has undertaken—

(i) to enter into an agreement in the prescribed form for carrying out and completion of development works in accordance with licence granted;

[(ii) to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director.]

(iii) the responsibility for the maintenance and upkeep of all roads, open spaces, public park and public health services for a period of five years from the date of issue of the completion certificate unless earlier relieved of this responsibility and thereupon to transfer all such roads, open spaces, public parks and public health services free of cost to the Government or the local authority, as the case may be;

[(iv) to construct at his own cost, or get constructed by any other institution or individual at its cost, schools, hospitals, community centres and other community buildings on the lands set apart for this purpose, in a period as may be specified, and failing which the land shall vest with the Government after such specified period, free of cost, in which case the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit:

Provided that in case of licenses issued prior to the notification of the Haryana Development and Regulation of Urban Areas (Amendment and Validation) Act, 2012, the licensee, the purchaser or the person claiming through him shall construct the school, hospital, community centres and other community buildings on the land set apart for this purpose, within a period of four years, extendable by the Director by another period of two years, for reasons to be recorded in

writing, from the notification of the Haryana Development and Regulation of Urban Area (Amendment and Validation) Act, 2012:

Provided further that at the end of the period as specified under the proviso, if the site is not utilised for the purpose, it was meant for, the land shall vest with the Government and in which case, the Government shall be at liberty to transfer such land to any person or institution including a local authority, for the said purposes, on such terms and conditions, as it may deem fit:

Provided further that a show cause notice and an opportunity of hearing shall be issued before vesting the land in the Government37{:}]

{Provided further that the applicant shall be exempted from the provisions of this clause where compliance of clause (iv-b) is sought by the Director.} [(iv-a) to pay proportionate cost of construction of such percentage of sites of such school, hospital, community centre and other community buildings and at such rates as specified by the Director;]

[(iv-b) to hand-over the possession and transfer the ownership of such land, as demarcated and identified in the approved layout plan, in such form and manner, as may be specified by the Director and such land shall vest with the Government to achieve the objective of creation of community buildings, housing, commercial and other physical and social urban infrastructure, in such colonies where a condition to this effect is imposed by the Director, before grant of licence;]

(v) to permit the Director or any other officer authorised by him to inspect the execution of the layout and the development works in the colony and to carry out all directions issued by him for ensuring due compliance of the execution of the layout and development works in accordance with the licence granted;

[(vi) to fulfill such terms and conditions as may be specified by the Director at the time of grant of licence through

bilateral agreement as may be prescribed:] Provided that the Director, having regard to the amenities which exist or are proposed to be provided in the locality, is of the opinion that it is not necessary or possible to provide one or more such amenities, may exempt the licensee from providing such amenities either wholly or in part 42{:}

[Provided further that the applicant shall have an option to mortgage a part of the land for which licence has been granted or being granted in lieu of submission of bank guarantee against cost of internal development works and external development works.] (b) refuse to grant a licence, by means of speaking order, after affording the applicant an opportunity of being heard.

(4) The license so granted shall be valid for a period of 44 [five years], and will be renewable from time to time for a period of 45[two years], on payment of prescribed fee:

[Provided that in the licensed colony permitted as a special project by the Government, the license shall be valid for a maximum period of five years and shall be renewable for a period of as decided by the Government.]

[(5) Each colony may comprise of one or more licences with contiguous land pockets.]

[(6) After the coloniser has laid out the colony in accordance with the approved layout plan and executed the internal development works in accordance with the approved design and specifications, he may apply to the Director for grant of completion or part-completion certificate. The Director may enquire into such matters, as he deems necessary before granting such certificate.

(7) After enquiry under sub-section (6), the Director may, by an order in writing, grant completion or part-completion certificate on such terms and conditions and after recovery of infrastructure augmentation charges, as may be prescribed:

Provided that where in the agreement executed to set up a colony, a condition was incorporated for deposit of surplus

amount beyond maximum net profit @ 15% of the total project cost and the coloniser has not taken the completion certificate of the said project, then notwithstanding the said condition in the agreement, the coloniser shall have the option either to deposit the infrastructure augmentation charges as applicable from time to time at any stage before the grant of such completion certificate and get the exemption of the restriction of net profit beyond 15% or deposit the amount as per terms of the agreement.]

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7. Prohibition to advertise and transfer plots.—Save as provided in section 9, 74[no person including a property dealer shall],—

- (i) without obtaining a license under section 3, transfer or agree to transfer in any manner plots in a colony or make an advertisement or receive any amount in respect thereof;
- (ii) erect or re-erect any building in any colony in respect of which a license under section 3, has not been granted.
- (iii) erect or re-erect any building other than for purposes of agriculture on the land sub-divided for agriculture as defined in clause (aa) of section 2 of this Act.]

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10. [Penalties.]— (1) Any person who contravenes any of the provisions of this Act or the rules made thereunder or any of the conditions of a licence granted under section 3 shall be punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine:

Provided that where only of the provisions of section 9 are contravened the punishment of imprisonment shall not exceed six months.

(2) Without prejudice to the provisions of sub-section (1), the Director or any other officer authorized in writing by him in this

behalf may, by notice, served by post and if a person avoids service, or is not available for service of notice, or refuses to accept service, then by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, call upon any person who has committed a breach of the provisions referred to in the said subsection to stop further construction and to appear and show cause why he should not be ordered to restore to its original state or to bring it in conformity with the provisions of this Act or the rules framed thereunder, as the case may be, any building or land in respect of which a contravention such as is described in the said subsection has been committed and if such person fails to show cause to the satisfaction of the Director or such authorized officer within a period of seven days, the Director or such authorized officer may pass an order requiring him to restore such land or building to its original state or to bring it in conformity with the provisions of this Act or the rules framed there-under, as the case may be, within a further period of seven day.

(3) If the order made under sub-section (2) is not carried out within a specified period, the Director, or any other officer authorized in writing by him in this behalf may, himself at the expiry of the specified period, take such measures, as may appear necessary to give effect to the order and the cost of such measure shall, if effect to the order and the cost of such measure shall, if not paid on demand being made to him, be recoverable from such person as arrears of land revenue:

Provided that even before the expiry of the period mentioned in the order under subsection (2), if the Director or such authorized officer is satisfied that instead of stopping the construction, the person continues with the contravention, the Director or such authorized officer may himself take such measures, as may appear necessary, to give effect to the order and the cost of such measures shall if not paid on demand being

made to him, be recoverable from such person as arrears of land revenue.]”

9. Section 3 prescribes for licence wherever owner desires to convert his land. Section 7 prohibits the advertisement and transfer of plots but Section 7(3) specifically saves the operation of ‘agriculture’ as defined under Section 2(aa) which reads as under:

“2.(aa) “agriculture” includes horticulture, dairy farming, poultry farming and the planting and upkeep of an orchard;]”

10. Thus from the scheme of the Act, as well as the bare provisions it can be safely inferred that the objective of the enactment is to regulate urban development. Legislation is not prohibitory, but regulatory. Owing to urbanization, towns and cities are growing in size eating out agricultural lands. It is for this reason that agriculture has been kept out of the purview, whereas urbanization like housing schemes, commercial use and industrial use are being regulated. By enacting the 1975 Act, the State ensured that the cities should develop and not only grow. Mere transfer of land is not an offence. It is only when the purpose of such transfer falls within the activities which are being regulated and is without license, the offence punishable under the Act is attracted.

11. As a result of above, in order to constitute the offence punishable under the provisions of 1975 Act, there has to be an allegation of advertisement and transfer of plots without licence under Section 3 along with the allegation that such plots are intended to be used for the purpose of

carving colony, cyber city, cyber park, group housing, integrated commercial complex or other purpose(s) for which licence is prescribed under the 1975 Act.

12. Supreme Court in **State of Haryana and others vs. Ch. Bhajan Lal & others, 1992 AIR (Supreme Court) 604** held as under:

““107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

13. Thus, there being no such allegations against the petitioner and the prosecution itself being clueless regarding such purpose, this Court finds

that it is a fit case to exercise jurisdiction in light of parameters laid down in Bhajan Lal’s case (supra).

14. In view of above, the present petition is allowed. FIR No.340 dated 12th of May, 2022 registered for the offences punishable under Sections 3, 7(i), 7(ii) & 10 of 1975 Act at Police Station Sector-58, Faridabad and all proceedings subsequent thereto are hereby quashed *qua* the petitioner.

November 29, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No