

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

CWP-29976-2022

Date of Decision : 27.02.2023

M/s Mahaluxmi Creations and another

..... Petitioners

Versus

The State of Haryana and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Aashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the petitioners.

VIKRAM AGGARWAL, J

Challenge in the present writ petition is to the order dated 31.03.2022 (Annexure P-10), passed by respondent No.1 vide which the appeal filed by petitioner No.1 M/s Mahaluxmi Creations against the order dated 07.05.2021 (Annexure P-4) was dismissed. The petitioners also seeks quashing of the order dated 07.05.2021, passed by respondent No.2.

2. Petitioner No.1 claims to be the owner of land measuring 20 kanals 17 marlas situated in Village Kohand, District Karnal (hereinafter referred to as 'the land in dispute'). As per petitioner No.1, the land in dispute was sold to petitioners No.2 & 3 and three other persons namely Nitin Kumar, Anil and Rajesh vide registered sale deed dated 02.12.2021 (There is no petitioner No.3 in the present petition though averments in the writ petition mention so). It is claimed that possession of the land in dispute was handed over to the vendees. It is further claimed that the land in dispute is

agricultural land and was sold as such. A show cause notice dated 09.04.2021 (Annexure P-3) under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the 1975 Act') was served upon the petitioners alleging that an unauthorized colony had been carved out on the land in dispute. The said show cause notice also stated that the land in dispute was situated within urban area of Gharaunda and no licence or permit had been taken from the competent authorities in terms of the provisions of the 1975 Act. No reply was filed to the said show cause notice. It has been averred in the writ petition that since the petitioners were under the impression that the land in dispute does not fall within urban area, there was no violation of the provisions of the 1975 Act. However, they appeared before the authorities and orally submitted that the land in dispute did not fall within an urban area and, therefore, no reply was filed.

3. It has further been averred that order dated 07.05.2021 (Annexure P-4) was issued by respondent No.2 calling upon the petitioners to restore the land in dispute to its original state. An FIR (Annexure P-6) was also registered against the petitioners. The order dated 07.05.2021 (Annexure P-4) was challenged by way of an appeal and the said appeal was also dismissed vide order dated 31.03.2022 (Annexure P-10) which has been impugned in the present writ petition.

4. The basic case of the petitioners is that the land in dispute had never been notified by the respondents as an urban area as defined under Section 2(o) of the 1975 Act and, therefore, the provisions of the 1975 Act were not applicable as a result of which the action being initiated against the petitioners was illegal and arbitrary.

5. We have heard learned Senior Counsel for the petitioners and have also gone through the record of the writ petition.

6. Learned Senior Counsel has strenuously urged that since the land in dispute does not fall within the definition of urban area, the action initiated by the respondents is not sustainable. Learned Senior Counsel has referred to Section 2(c), Section 2(o), Section 3, Section 7, Section 7(a) and Section 10 of the 1975 Act and has submitted that the action of the authorities is not in conformity with the provisions of the 1975 Act. Stress has been laid on the point that no notification declaring the land in dispute as an urban area had been issued by the Government and, therefore, the penal provisions would not apply. Learned Senior Counsel has specifically referred to the definition of urban area as per Section 2(o) of the 1975 Act and has contended that the land in dispute does not fall within the said definition. In support of his contentions, learned Senior Counsel has placed reliance upon the judgment of Division Bench of this Court in *Shalimar Estates Private Limited vs. State of Haryana and others* 2016 (4) Law Herald 3270 :2017 (5) R.C.R. (Civil) 822 as well as the judgment of Hon'ble Supreme Court in *State of Haryana and others vs. Shalimar Estates Pvt. Ltd. & Ors.* 2021 (14) Scale 40 : 2022 (1) R.C.R. (Civil) 624.

7. We have considered the submissions made by learned Senior Counsel for the petitioners but are unable to agree with the same.

Section 2(o) of the 1975 Act lays down as under:-

“Urban area” means any area of land within the limits of a municipal area or notified area or the Faridabad Complex or situated within five kilometres of the limits thereof, or any other area where, in the opinion of the

Government, there is a potential for building activities and the Government by means of notification declares.

8. A perusal of the provision of Section 2(o) of the 1975 Act shows that an urban area would be an area which would be within the limits of a municipal area or notified area or the Faridabad Complex or situated within five kilometers of the limits thereof or any other area where in the opinion of the Government, there is a potential for building activities and the Government by means of notification declares the area to be an urban area. Learned Senior counsel has made efforts to cover his case in the last provision of Section 2 of the 1975 Act stating that a separate notification should have been issued to declare the land in dispute as an urban area. The provision clearly shows that if any land is situated within the limits of a municipal area or a notified area or within the Faridabad Complex or within five kilometers of the limits thereof, it would be an urban area. The last provision of Section 2 of the 1975 Act is with regard to any other area which in the opinion of the Government would have a potential for building activities and, therefore, the Government issues a notification declaring the said area to be an urban area. In the previous situation, no separate notification declaring those areas to be urban areas would be required. The effort of learned Senior counsel is to make out a case that in all situations, a notification declaring the area to be an urban area would be required which, in view of the above discussion, is not the case. The case of the petitioners is, therefore, to be tested in terms of the definition of urban area as defined in Section 2(o) of the 1975 Act.

9. The show cause notice (Annexure P-3) which was issued to the

petitioners states that the petitioners had carved out an unauthorized colony and that the land in dispute fell within the urban area of Gharaunda. The petitioners chose not to file any reply to the said show cause notice. Consequently, order dated 07.05.2021 (Annexure P-4) was passed vide which the petitioners were called upon to restore the unauthorized colony to its original state or to bring it in conformity with the provisions of the Act within a period of seven days from the date of issuance of the order. Though it is the case of the petitioners that they had appeared before the authorities, the order (Annexure P-4) clearly mentions that the petitioners had neither submitted any reply to the show cause notice nor had appeared for personal hearing.

10. Aggrieved by the said order, an appeal was preferred by the petitioners which was also dismissed vide order dated 31.03.2022 (Annexure P-10). The said order mentions that though the appellant-petitioner M/s Mahalaxmi Creations had not stated any new facts, the DTP, Karnal had brought on record comprehensive facts by filing drawings showing the urban area application dated 05.06.2021 filed by the appellant-petitioner for regularization of its colony alongwith its site plan. The Appellate Authority then discussed the definition of the urban area as laid down in Section 2(o) of the 1975 Act and held that the land in question was situated within five kilometers from the notified municipal limits and, therefore, was required to conform to the provisions of the 1975 Act. It has further been stated that by filing an application for regularization of the colony, the appellant-petitioner had himself admitted that a colony had been carved out on the land mentioned in the impugned notice. A categorical finding was recorded that the land in dispute falls within the urban area. The appeal was, therefore,

dismissed.

11. We do not find any infirmity in the said order because firstly the petitioners chose not to give a reply to the show cause notice. They did not appear before the authorities. An order was passed against them. They had themselves given an application in June 2021 to regularize the colony. The land in dispute falls within the definition of urban area and has been so held by both authorities. The petitioners have not been able to show that it does not fall within the definition of urban area. As has been noticed in the preceding paragraphs, a separate notification would not be required if the land is situated within five kilometers from the notified municipal limits. There is, therefore, no infirmity in the orders passed by the authorities below.

12. We have perused the judgments relied upon by learned Senior Counsel. In the present case, since the land in dispute was situated within five kilometers from the notified municipal limits, no separate notification was required. In **Shalimar Estates Private Limited's cases (supra)**, challenge in the petition was to the different notifications issued by the Government of Haryana declaring the areas to be controlled areas and urban areas. Therefore, these judgments do not help the case of the petitioners.

13. In view of the above discussion, we do not find any merit in the present writ petition and the same is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE
27.02.2023
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No