

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1014/2010

PUNJAB URBAN DEVELOPMENT AUTHORITY

Appellant(s)

VERSUS

SATNAM SINGH & ANR.

Respondent(s)

O R D E R

We have heard learned counsel appearing for the parties at length today.

This appeal has been filed challenging the order passed by the High Court acquitting the Respondents charged under Section 36 of the Punjab Apartment and Property Regulation Act, 1995 read with other Sections including Section 2 (i) and 2 (y) as well as Sections 3 and 6 of the Act in question.

The submissions made before us by the learned counsel appearing in support of the appeal are that mere selling of a plot of land admeasuring less than one thousand square meters to persons would render him a 'promoter' within the meaning of Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as the 'Act'). Section 3 of the said Act provides as hereunder:-

3.(1) Notwithstanding anything in any other law for the time being in force, a promoter, who develops a colony or who constructs or intends to construct a building of apartments, shall, in all transactions with person taking or intending to take a plot or an apartment on ownership basis, be liable to give or produce, or cause to be given or produced, the information and the documents mentioned hereinafter in this section.

Section 3 (2) deals with a promoter who develops a colony and the definition of the promoter has been specifically stated in Section 2 (y) which reads as follows:-

"Promoter" means the person-

(a) who constructs or causes to be constructed a building

consisting of apartments, or, converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other person, and includes his assigns; or

(b) who develops land into a colony, whether or not he also constructs structures on any of the plots, for the purpose of selling to other persons, all or some of the plots, whether open or with structures thereon; and

(c) where the person who constructs or convert a building or develops a colony and the person who sells apartments or plot are different persons, the term includes both of them;

Explanation-(1) Any development authority and any other public body so notified by the State Government are deemed to be promoter in respect of allottees of-

(i) buildings constructed by them on land owned by them or placed at their disposal by the State Government; or

(ii) plots owned by them or placed at their disposal by the State Government;

Explanation.- (2) A person who acts as described in sub-clause (c) of clause (y) shall be deemed to be a promoter, even if.-

(i) he styles himself as a builder, colonizer, contractor, developer, estate promoter or by any other name; or

(ii) he claims to be acting as the holder of a power of attorney from the owner of the land on which the building is constructed or colony is developed."

The contention of the learned counsel appearing for the appellant is that whoever divides a compact area of land of not less than 1000 Sq. Mtrs., as per Section 2 (i) of the Act has to abide by the provisions of the Act.

It appears that the complaint was lodged by the authorities under Section 36 read with these Sections. However, the Trial Court after going through the evidence adduced specifically held that "had both the accused sold the land collectively, to different persons, then, the provisions of Act would have been

attracted to them, but not herein."

In view of that, the Trial Court further held that the complaint against both the accused collectively is not maintainable. Being aggrieved, leave to appeal was sought for from the High Court which has been declined.

In view of the findings recorded by the Trial Judge and on an appreciation of evidence available on record and noticing the finding that accused Satnam Singh and Bahadur Singh had individually sold land less than 1000 sq. meters, the High Court held that there was no necessity for them to take appropriate sanction from the concerned authority for setting up a colony and thus the prosecution had failed to prove that accused - respondents individually are in any manner guilty of setting up a colony in contravention of the provisions of Sections 3 and 5 of the Act without obtaining the licence and without making any application, as prescribed otherwise. Prosecution against them collectively to bring them within the purview of the Act, in the facts of the case was disapproved.

The contentions raised by the learned counsel before us and considered by the two Courts do not bring the respondents within the purview of the said Act in any manner whatsoever. It further appears from the facts before the trial court as well as before the High Court that the appellant has failed to prove that the respondents herein have ever acted or can come within the purview of Section 2 (y) as a promoter.

We do not find that there is any material to interfere with the order so passed by the High court. Further, the view which has been taken by the High Court is a possible one and cannot be said to be perverse.

Learned counsel appearing for the appellant has cited a decision reported in 2009 (3) SCC 497 (State of Punjab vs. Inder Mohan Chopra & Others). We find that the said decision has no application in the facts and circumstances of this case, inasmuch

as it dealt with the matter at the pre-trial stage under Section 482 and thereby cannot be of any help to the appellant - herein.

Accordingly, we do not find any reason to interfere with the impugned order so passed by the High Court.

The Criminal Appeal has no merit and the same is, accordingly, dismissed.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(AMITAVA ROY)

NEW DELHI;
6TH JANUARY, 2016.

ITEM NO.109

COURT NO.11

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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(With office report)

Date: 06/01/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s)

Mrs. Rachana Joshi Issar, Adv.
Mariya Mumtaz Hashmi, Adv.

For Respondent(s)

Ishna Randhawa, Adv.
Mr. S. K. Verma, Adv.UPON hearing the counsel the Court made the following
O R D E RThe Criminal Appeal is dismissed in terms of the signed
order.(VISHAL ANAND)
COURT MASTER(SNEH LATA SHARMA)
COURT MASTER

(Signed Order is placed on the file)

