

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).5885/2012
(From the judgement and order dated 03/05/2012 in CRLM No.880/2010,
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

ARVINDER S BRARA & ORS.

Petitioner(s)

VERSUS

HARYANA STATE POLLUTION CONTROL BOARD
(With appln(s) for stay and office report)

Respondent(s)

WITH

SLP(Crl) NO. 3510 of 2013
(With appln. for stay and office report)

SLP(Crl) NO. 6008 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6021 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6024 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6025 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6026 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6027 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6032 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6033 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6035 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6037 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6046 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6048 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6055 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6061 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6062 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 6063 of 2012

(With appln. for stay and office report)

SLP(Cr1) NO. 6065 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 6067 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 6069 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 6076 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 6079 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 7097 of 2012
(With appln. for stay, impleadment, permission to file addl. documents and office report)

SLP(Cr1) NO. 7171 of 2012
(With appln. for stay, permission to file addl. documents and office report)

SLP(Cr1) NO. 72 of 2013
(With office report)

SLP(Cr1) NO. 730 of 2013
(With applns. for stay, exemption from filing O.T., permission to file addl. documents, permission to urge addl. events and office report)

SLP(Cr1) NO. 7428 of 2012
(With appln. for stay, permission to file addl. documents, impleadment and office report)

SLP(Cr1) NO. 7643 of 2012
(With appln. for stay, permission to file addl. documents and office report)

SLP(Cr1) NO. 7685 of 2012
(With appln. for stay, permission to file addl. documents, permission to appear and argue in person and office report)

SLP(Cr1) NO. 7820 of 2012
(With appln. for stay, impleadment, permission to file addl. documents and office report)

SLP(Cr1) NO. 7821 of 2012
(With appln. for stay, permission to file addl. documents and office report)

SLP(Cr1) NO. 7822 of 2012
(With appln. for stay, permission to file addl. documents and office report)

SLP(Cr1) NO. 7881 of 2012
(With appln. for stay and office report)

SLP(Cr1) NO. 7883 of 2012
(With appln. for stay, impleadment, permission to file addl. documents, exemption from filing c/c of the impugned judgment and office report)

SLP(Cr1) NO. 8046 of 2012
(With appln. for stay, permission to file addl. documents and office report)

SLP(Crl) NO. 8047 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 8048 of 2012
(With appln. for stay and office report)

SLP(Crl) NO. 8049 of 2012
(With appln. for stay, permission to file addl.
documents, impleadment and office report)

SLP(Crl) NO. 8051 of 2012
(With appln. for stay, impleadment and office report)

SLP(Crl) NO. 8167 of 2012
(With office report)

SLP(Crl) NO. 8434 of 2012
(With appln. for stay, exemption from filing c/c and office report)

Date: 17/07/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Petitioner(s) Mr. K.T.S. Tulsi, Sr. Adv.
Mr. Gaurave Bhargava, Adv.
Mr. Amit Sharma, Adv. (SCLSC)

Petitioner-In-Person

Mr. P.S. Patwalia, Sr. Adv.
Mr. Ravikesh K. Sinha, Adv.
Mr. Abhijat P. Medh, Adv.

Mr. Dharmendra Kumar Sinha, Adv.
Mr. Satwinder Singh, Adv.
Mr. Omkar Prasad, Adv.

Mr. D.S. Chadha, Adv.
Mr. Pradhuman Gohil, Adv.
Mr. Vikash Singh, Adv.
Ms. Jaikriti S. Jadeja, Adv.

For Respondent(s) Mr. Manjit Singh, AAG
Mrs. Vivekta Singh, Adv.
Mr. Tarjit Singh, Adv.
Mr. Anil Antil, Adv.
Mr. Kamal Mohan Gupta, Adv.

Mr. Govind Goel, Adv.
Dr. Kailash Chand, Adv.
Mr. Sanjay Kr. Yadav, Adv.

UPON hearing counsel the Court made the following
O R D E R

We notice that a complaint has been filed under Section 15 of the Environment (Protection) Act, 1986 (for short 'the Act') by the Haryana State Pollution Control Board which was authorized to exercise the powers and perform the functions under the Act, for the violation of Aravali Notification No. SO. 319(E), dated 7th May, 1992. It was stated in Paras 4 and 5 of the complaint that there was gross violation of the provisions of the Aravali Notification by the

petitioner. Paras 4 and 5 of the complaint read as follows:

4. That the accused has constructed a farm house at C-L-7, Aravali Retreat, Raisina, Gurgaon. On perusal of the revenue record, the Environment Deptt. / HSPCB noticed that large no. of entries made one year prior to the notification 07.05.1992 in which the category of land earlier categorized as Gian Mumkin Pahar in the khasra Girdwari of Oct. 1990 & was shown as Gair Mumkin farm house in the Khasra Girdwari in March 1991, the changes in the jamabandhi in general and regarding category of land from Gair Mumkin Pahar to Gair Mumkin farm house which could have been done only after following fairly rigorous process as laid down by the State Revenue Laws and Revenue report which is not practically possible in a short span of period. The accused continued to violate the notification after 07-05-1992 and constructed the building and road etc. Similar violators were observed by the Environment Deptt. & HSPCB in Gawal Pahari & Golden heights Sohna but till the date there is no change in the kism of land and the land record shown Gair Mumkin Pahar as on current Revenue record and the ecology is same in Golden Heights, Sohna, Gawal Pahari & Raisina since ancient period which are all adjacent & recovered under Aravali Notification 07.05.1992 and falls in Aravali Range Hills (Photocopy of order dated 23-02-2006 issued by Collector, Gurgaon is attached herewith as Annexure-4).

5. That the Ministry of Environment and Forest issues a Notification No. SO-319 (E), dated 07-05-1992 in which under Section 3(1) and Section 3(2)(V) of the Environment Protection Act, 1986 inviting objections against restricting certain activity in specified areas of Aravali range which are causing ENVIRONMENTAL DEGRADATION in the region, was published in the Gazette of India, Part-II, Section-3, Sub-Section (2) vide S.O.25(E), dated 9th January, 1992. According to the said notification the Central Government hereby prohibits the carrying on the process and operations except with the prior permission, in the areas specified in the table appended to this Notification. The farm house has been constructed as Gair Mumkin Pahar which is the violation of notification dated 07-05-1992. The copy of the said notification No. SO-319(E) dated 07-05-1992 is attached as Annexure C-5. Regarding this the M.O.E.F. As well as HSPCB published public notices in leading National News Paper/Regional Dailies. The accused therefore, was required to obtain prior clearance/permission for Aravali Notification from the M.O.E.F. in the specified areas in which he constructed the said farm house on the Gair Mumkin Pahar. The said farm house is given at point (IV) in the said notification. Accordingly, the accused did not obtain permission from the M.O.E.F. under the Notification No. S.O.319(E) dated 07-05-1992 for Aravali Notification.

Shri K.T.S. Tulsi, learned senior counsel appearing for the petitioners brought to our knowledge a clarificatory letter dated 1st November, 2006 issued by Dr. S. Bhowmik, Additional Director for the Ministry of Environment & Forests which reads as follows:

Dear Sirs,

With reference to your letters dated 1st May and 24th August, 2006 addressed to the Secretary, MoEF, we are giving the clarification requested as follows:-

In case the members of Aravali Plot Owners' Association have plots which in the land records maintained by the State Government as on the date of the Notification i.e. 7th May, 1992 were categorized as "Farm House" i.e. not categorized in any of the categories i.e. a) Gair Mumkin Pahar or (b) Gair Mukin Rada or (c) Gair Mumkin Behed or (d) Banjad Beed or (e) Rundh, then this Notification will not be applicable.

Yours faithfully,

(Dr. S. Bhowmik)
Additinoal Director

Learned senior counsel submitted that by virtue of the said clarification, read with jamabandi for the year 1990-91, prosecution against the petitioners cannot lie. We would like to know under what authority the Additional Director has issued the clarificatory letter stating that the statutory Notification No. S.O.319(E) dated 07-05-1992 will not be applicable and also whether the jamabandi as such has any relevance.

Issue notice to the Ministry of Environment & Forests, New Delhi. Registry to communicate this order to Shri S.N. Terdal, learned standing counsel for the MoEF.

List on Thursday, the 25th July, 2013 as Part-Heard on which date some responsible officer from the Ministry of Environment & Forests should also be present with the relevant records.

| (G. SUDHAKARA RAO)
| COURT MASTER

| | (RENUKA SADANA)
| | COURT MASTER

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