

CASE NO.:
Appeal (civil) 5647 of 2005

PETITIONER:
M/s Royal Parasdisse Hotel (P) Ltd

RESPONDENT:
State of Haryana & Ors.

DATE OF JUDGMENT: 25/08/2006

BENCH:
G.P. MATHUR, P.K. BALASUBRAMANYAN & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
I.A. NO. 3 OF 2005
IN
CIVIL APPEAL NO.5647 OF 2005
AND
CIVIL APPEAL NO.5647 OF 2005
(with I.A. No. 2 of 2005)

P.K. BALASUBRAMANYAN, J.

1. Special Leave Petition (Civil) No. 15503 of 2004 was filed by the petitioner therein challenging the order of the High Court of Punjab & Haryana dated 8.9.2003, dismissing the Writ Petition filed by it on the ground that the order impugned therein was legal, proper and just and the claim for regularization made by the petitioner could not be granted over-riding the stipulated land use of the area in question. When the Petition for Special Leave to Appeal came up, though at the initial stage, it was stated on behalf of the petitioner that the issue arising for the decision was not identical with the issue arising for decision in C.A. No. 2671 of 2004, on the subsequent day when it came up for admission, the same was got tagged with C.A. No. 2671 of 2004 and connected matters after persuading this Court to issue notice on it. It is apparent from the order dated 29.7.2004 that at that stage, this Court was told that the question that arose for decision was the same as the one arising in C.A. No. 2671 of 2004. On 2.12.2004, this Court finally disposed of Civil Appeal No. 2671 of 2004 and the connected matters by upholding the decision of the High Court and granting time to the appellants therein to remove the constructions put up by them found to be offensive in terms of the relevant legislation. Thereafter, the present Petition for Special Leave to Appeal came up on 25.7.2005 and it was adjourned at the request of learned counsel for the petitioner. The Petition for Special Leave to appeal again came up on 26.7.2005 and it was directed that the matters be placed for hearing on 27.7.2005 specifically directing that Special Leave Petition (Civil) No. 15503 of 2004 will also be listed for hearing that day. Ultimately, on 7.9.2005, when this Court took up Special Leave Petition (Civil) No. 15503 of 2004 along with the other matters posted with it, none appeared on behalf of the petitioner, but this Court granted leave and disposed of the appeal holding that the question raised was squarely covered by the decision of this Court in C.A. No. 2671 of

2004 and the connected cases decided on 2.12.2004. In that Petition for Special Leave to Appeal, the petitioner had also filed I.A. No. 2 of 2005 seeking to plead certain facts which were neither put forward in the High Court nor urged at the hearing of the Writ Petition in the High Court. For that matter, these facts were not agitated even before the authorities who had rejected the claim of the petitioner for compounding under the relevant statute.

2. In the Petition for Special Leave to Appeal which transformed into a Civil appeal, the appellant filed I.A. No. 3 of 2005 on 23.9.2005 praying for what it called the restoration of the Civil Appeal by recalling the order dated 7.9.2005 disposing of the appeal. The reason put forward was that the learned counsel for the appellant could not be present when the case was called on for hearing due to the fact that she had to rush to the hospital with a relative of hers for urgent attention and by the time she returned, the matter had been disposed of. Considering that the learned counsel had not been heard as recorded in the order itself, and for no other reason, we entertained the application I.A. No. 3 of 2005 and issued notice therein by our Order dated 5.1.2006. The application for restoration of the appeal, the appeal and I.A. No. 2 of 2005, have all come up again for hearing and final disposal.

3. In the view that the learned counsel was not heard when we passed the order dated 7.9.2005, we allow I.A. No. 3 of 2003 so as to give the appellant an opportunity of being heard.

4. The appeal was reheard with counsel on both sides ably assisting the court at the re-hearing.

5. Mr. K.T.S. Tulsi, learned Senior Counsel appearing for the appellant submitted that the case of the appellant was that refusal to accept the compounding fee and condone the violations made by the predecessor of the appellant by putting up the disputed constructions was challenged in the High Court and it was that Writ Petition that was dismissed by the High Court. Though, he agreed that the decision in C.A. No. 2671 of 2004 and the connected matters dealing with similar constructions found to be unauthorized had some relevance, he contended that the present appeal was not wholly covered by the decision already rendered in those cases and that the appellant's claim had to be considered separately.

6. It was submitted that a construction was put up within 50 mtrs. of the high-way and that at the relevant time that was not impermissible and this aspect had not been considered while considering the claim of the appellant for compounding. It was further contended that the area in question has now come within the municipal limits and the prayer of the appellant had to be considered under the law governing Municipalities. Learned counsel for the respondent submitted that such a construction was impermissible, that the building was constructed in the teeth of notices issued under the Punjab Scheduled Road and Controlled Areas (Restriction of Unregulated Development) Act, 1963 (for short "the Act") and it was

clearly illegal. It was clear defiance of law. The appellant was only an assignee of such illegal construction and therefore this is a case where there is no reason for this Court to interfere with the refusal of the authorities to accede to the prayer for compounding or regularizing the constructions and violations and the decision of the High Court refusing to interfere with that decision. He also submitted that the new point sought to be raised is a point which was never raised before the authorities or before the High Court or even in the Petition for Special Leave to Appeal and they are sought to be introduced only by way of I.A. No. 2 of 2005 and there was no justification in permitting the appellant to raise these factual aspects at this stage especially considering his prior conduct. He pointed out that the notice was got issued on the Petition for Special Leave to Appeal by submitting that it was connected with C.A. No. 2671 of 2004 and now that C.A. No. 2671 of 2004 has been dismissed by this Court by a considered Judgment, there was nothing to be done in this appeal and it deserves to be dismissed.

7. It is clear from the statement of the synopsis and list of dates furnished by the appellant itself, that on 4.2.1998, Mr. Chawla, who put up the construction before it was sold to the appellant received a notice under Section 12 of the Act informing him of contravention of Section 3 or Section 6 and of violation of Section 7(1) and Section 10 of the Act and directing him to stop further construction. When it was found that the appellant was defying the direction to stop, an order was passed on 26.2.1998 under sub-Section (2) of Section 12 of the Act directing him to remove the unauthorized construction and to bring the site in conformity with the relevant provisions of the Act on finding that there was clear violation of Section 7 and Section 10 of the Act. On 16.3.1999, another notice was issued to Mr. Chawla mentioning therein that there is a contravention of Section 7(1) or Section 10 of the Act and directing removal of the unauthorized construction. The copies of the original notices are produced by the respondents along with the counter affidavit filed on behalf of the respondent Nos.1 to 3. Though the copies of such notices have been produced by the appellant also, we find that there are some omissions in the copies produced on behalf of the appellant. Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorized construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorized and put up in defiance of law. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of general public and moving traffic on such highways. Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the Writ

Petition filed by the appellant. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of High Courts to ensure that such defiers of law are not rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regularization of the acts of violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant.

9. As regards the alleged inclusion of this area in Karnal Municipality, we find that such a contention was never put forward. Even if subsequently a Municipality Act has been extended, the illegality and violation of the Act cannot be condoned by the Authorities under that Act or by any Court administering law and justice and no authority, whether the highway authority or the municipal authority, is entitled to reward a person indulging in such illegal activity. Therefore, nothing turns on the point sought to be raised for the first time in this Court by the appellant by way of I.A. No. 2 of 2005. The plea based on that is hence rejected.

10. On the whole, we find that the appellant has not made out any ground for interference with the decision of the High Court. Hence, we dismiss this appeal with costs.

11. We had ordered the status quo to be maintained since we had entertained I.A. No.3 of 2005, the application for rehearing. Now that we have dismissed the appeal after a detailed hearing, we vacate the order of status quo and direct the appellant to remove the offending constructions and the other violations of the Act within a period of six weeks from today. In case, the appellant does not remove the offending constructions and the other violations on its own, within that time, the respondents will remove the constructions and all violations of the Act within a period of ten weeks from today and report that fact of removal to this Court through an affidavit of respondent No.3 to be filed in this Court within twelve weeks from today.

12. Thus I.A. No. 3 of 2005 is allowed and the appeal reheard. Civil Appeal No. 5647 of 2005 is dismissed with costs, but with the directions in paragraph 11 and I.A. No. 2 of 2005 is disposed of in the light of what is stated above.