

(14) In view of the above, we answer the question posed at the threshold in the negative and hold that the heinousness of the crime is not extraneous to the grant of pardon or pre-mature release. We are also of the view that the decision of this Court in *Mithu Singh's case* (9), *Dalbir Singh's case* (10), and in *Sehaj Ram's case* (11), suggesting that heinousness is irrelevant, do not lay down correct law. The case will now go back to the learned Single Judge for decision on merits.

R.N.R.

Before : Amarjeet Chaudhary, J.

JANTA PROPERTIES (REGD.),—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 10024 of 1990

May 10, 1991.

Punjab Regulation of Colonies Act, 1975—Ss. 2, 4(1), 17—Licence issued to private coloniser under the 1975 Act for the development of colony—Licence issued by Director Housing and Urban Development, Punjab being competent authority—During work in progress Municipal Committee issuing notice to general public, warning purchaser that the colony had not been sanctioned by Town and Country Planning Department and was being developed in violation of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act 1963—Held, notice is liable to be quashed—No violation of licence alleged—Authority of the Director is supreme in according such approval and no other authority has any right to put any hurdle in the works.

Held, that once the licence was granted by the competent authority, no interference either by the Municipal Committee or by the Country and Town Planning Department, Chandigarh was called for. Even it is an admitted case of the Chief Town Planner, Chandigarh, that no approval in the matter was required as the licence is granted by the competent authority if the provisions contained in the Act are fulfilled by the licence holder and it can be cancelled only in case any provisions of the Act is contravened by the colonizer or he fails to comply with any of the terms and conditions on which the licence is issued. In the present case, the respondents have not been able to show that the colonizer has violated any of the provisions of the Act or he has failed to comply with any of the terms

(9) 1989 (1) R.C.R. 238.

(10) 1989 (2) All India Criminal Law Reporters 290.

(11) 1990 (2) Chandigarh Criminal Cases 99.

as specified in the licence, copy Annexure P-2. Under the said Act, it is only the licensing authority, which is empowered to suspend or revoke the licence if it is of the view that the holder of the licence has contravened any provisions of the Act or any other law for the time being in force. As such, the action of the Municipal Committee, Kharar in issuing General Public Notice dated 23rd July, 1990, copy Annexure P-9 alleging that the activity of the petitioner colonizer was in violation of the Punjab Scheduled Roads and Controlled Area (Restriction of Unregulated Development) Act, 1963, cannot be legally sustained being not competent to create any hinderance in the work of development of the colony being executed by the petitioner.

(Para 12)

Held, that the authority of the Director, Housing and Urban Development, Punjab, Chandigarh, was supreme in according such approval and no other authority, as stated earlier, had any right to put any hurdle in the development works of the said colony.

(Para 14)

Writ Petition under Article 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other suitable writ order or direction be issued :—

- (i) *Summoning the records of the case;*
- (ii) *Quashing the impugned advertisement dated 23rd July, 1990 (Annexure P-9 and the orders at Annexure P-3, P-5, P-7, P-10 and P-11;*
- (iii) *Directing the Respondents No. 3 to 5 not to interfere in the development of the colony as duly licenced by the Respondent State.*
- (iv) *Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case;*
- (v) *Condition regarding filing of the certified copies of the Annexures and service of advance notices be dispensed with;*
- (vi) *Costs of the petition be awarded in favour of the petitioner.*

It is further respectfully prayed that pending the decision of this writ petition the petitioner be permitted to continue the development work as duly sanctioned and approved and licenced,—*vide* the licence at Annexure P-2 by the Respondent-State.
C.M. 9692—1990.

Application under section 151 of C.P.C. praying that the demolition of the over head water reservoir/tank and interference in the development work of the colony by respondents be stayed during the pendency of the writ petition.

Balram Gupta, Advocate with Neeraj Jain, Advocate, for the Petitioner.

T. S. Doabia, Advocate, Charu Tuli, A.A.G. Punjab, for the Respondents.

JUDGMENT

Amarjeet Chaudhary, J.

(1) In brief, the relevant facts of the case are that the petitioner applied for the grant of licence under the Punjab Regulation of Colonies Act, 1975 for developing a colony at Kharar, which was issued by the Director, Housing and Urban Development, Punjab, Chandigarh,—*vide* order dated 2nd March, 1990, copy of which is Annexure P-2 to the writ petition. According to the terms of the licence given to the petitioner, he was responsible for the construction of roads, their metalling and paving, turfing and plantation of trees, street lighting, supply of water, provision of sewers/ sewerage and drains for both storm and sullage water, at their own costs. The petitioner in order to comply with the terms stipulated in the licence, started the aforesaid development work and took electric connection as well as telephone connection. When the development work was in progress, respondent No. 3 sent a notice to the petitioner directing him to submit the licence obtained by him for verification alongwith the approval of the Town and Planning Department, Chandigarh. The petitioner immediately,—*vide* letter dated 29th April, 1990 submitted a copy of the licence alongwith the copies of the blue prints duly attested by the issuing authority i.e. respondent No. 2 to respondent No. 3 with the request that the same be got verified from respondent No. 2. It was on 30th May, 1990 that the Municipal Committee, Kharar respondent No. 3 wrote another letter to the petitioner alleging that they have constructed a room in which the electric meter is installed without obtaining the prior permission from it. Copy of this communication is Annexure P-6-A to the writ petition. The petitioner replied that it was only a temporary shed and would be demolished on the completion of development of the colony. Thereafter respondent No. 3 issued a Memo which was received by the petitioner on 22nd June, 1990, copy Annexure P-8 to the writ petition. According to the said Memo, the Administrator, Municipal Committee, Kharar directed respondent No. 5 with a copy to the petitioner, that since the petitioner's colony has not been approved by the Town and Country Planning Department and does not meet the planning and development requirement, appropriate action be taken against the petitioner. It was further in the memo that the Municipal Committee did not approve the buildings, plans in the area. What forced the petitioner to file the writ petition under Articles 226/227 of the Constitution of India was the General Public Notice which appeared in the Punjabi Tribune dated 23rd July, 1990, copy Annexure P-9 to the writ petition, wherein it was pointed out to the General

Public that the activity of the petitioner colonizer was in violation of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and the Punjab New Capital (Periphery) Control Act, 1952 and the rules framed thereunder. Further, as per this notice, the general public was informed that they should not purchase the plots from the said colonizer as no permission for the construction in this colony will be granted by the Municipal Committee, Kharar. The purchaser shall be liable for all types of loss.

(2) The petitioner has challenged the aforesaid action of the respondents on the plea that it was only respondent No. 2, Director, Housing and Urban Development, Chandigarh, who could get the work of development stopped being competent authority and neither the Town and Country Planning Department nor the Deputy Commissioner, Ropar, respondent No. 4 had any right or authority to say in the matter. It was strongly urged that the Town and Country Planning Department could have objected to the issuance of the licence prior to its having been actually issued. It was contended that the Town and Country Planning Department had raised certain objections before the issuance of the licence which were duly met by the petitioner. As such, even that Department cannot object to the development of the said colony.

(3) The case of the petitioner is that the licence was issued to them under the provisions of the Punjab Regulation of Colonies Act, 1975 and no authority other than issuing authority can create any obstacle in the development of the colony. The learned Counsel for the petitioner has invited this Court's attention to the various provisions of the Punjab Regulation of Colonies Act, 1975 and the rules framed thereunder, which will be discussed in later part of the judgment.

(4) The Director, Housing and Urban Development Punjab, Chandigarh, who had filed a detailed written statement on 5th September, 1990, has supported the case of the petitioner. The Chief Town Planner, Punjab, Chandigarh, respondent No. 6 also filed a detailed written statement in which the stand taken by him is not in line with the one taken by the Punjab Government. He has admitted in para No. 9 of the written statement that the Director, Housing and Urban Development, Punjab, Chandigarh, respondent No. 2, was the competent authority to issue the licence to the petitioner and it was not mandatory upon him to take the concurrence of the Chief Town Planner. He has further stated that it would

have been desirable if the respondent No. 2 had sought the approval of the colony from the Town and Country, Planning Department prior to the issuance of the licence. The stand by the Municipal Committee, Kharar, respondent No. 3 is that for the purpose of construction of building, the approval of the Committee was required to be taken.

(5) I have considered the respective submissions of the Counsel for the parties and perused the paper-book.

(6) In order to appreciate the respective stands of the parties, it is worthwhile to quote the various relevant provisions of the Punjab Regulation of Colonies Act, 1975, hereinafter referred to as the 'Act'. First of all it will be desirable to examine the procedure envisaging the grant of licence for setting up of a colony. The required procedure has been laid down in sub-section (1) of Section 2 of the Act, which is reproduced below :—

“(2) Any person desiring to obtain a licence under sub-section (1) shall make an application to the Director in the prescribed manner which shall be accompanied by income-tax clearance certificate obtained from an appropriate authority appointed under the Income Tax Act, 1961 and such fee as may be prescribed.”

On receipt of an application, the Director shall among other things, make an enquiry into the following matters, namely :—

- (a) title of the applicant to the land which is proposed to be converted into a colony;
- (b) extent and situation of the land;
- (c) financial position of the applicant;
- (d) the layout of the colony;
- (e) plan regarding the development works proposed to be executed in the colony; and
- (f) conformity of the development scheme of the land in question with any other plan drawn or scheme framed for the use or development of that land under any other law for the time being in force.

After the said enquiry, the Director shall, by an order in writing either (a) grant licence to the applicant in the prescribed form on payment of the prescribed fee subject to the condition of his furnishing to the Director in the prescribed manner, a bank guarantee

equal to fifty per cent of the estimated cost of development works as certified by the Director and on such other conditions as may be prescribed or as may be specified in the order; or refuse to grant the licence. Section 6 of the Act envisages that no colonizer shall realise from any plot-holder more than seventy-five per centum of the full amount of the consideration stipulated for the transfer of a plot in his favour till the development works in the colony have been completed to the satisfaction of the Director and in case his licence is cancelled under section 9 he shall not realise the remaining twenty-five per centum unless permitted to do so by an order in writing by the Director. As per sub-section (2) of Section 6, the Coloniser on receipt of the amount realised by him from time to time from any plot holder within 10 days of its realisation, shall deposit 50 per cent of the amount realised in an account to be maintained jointly with the Director in a prescribed Bank. This amount can be utilized towards meeting the cost of development works in the colony.

(7) Section 8 of the Act provides that no person can, without obtaining a licence under sub-section (2) of Section 4, negotiate or agree to transfer or transfer in any manner any plot in a colony for residential, industrial, commercial or any other purpose. According to sub-section (2) of the *ibid* section, no person can erect or re-erect any building in any colony respect whereof licence under sub-section (2) of Section 4 has not been obtained.

(8) Sub-section (3) of the said Section further envisages that every person erecting or re-erecting any building in a colony in respect whereof a licence has been obtained under sub-section (2) of Section 4 shall comply with such conditions regarding use of land, layout plan, zoning regulation, site coverage, height of building, set-back lines, structural and sanitary requirements, architectural control, design of buildings and material to be used in erection thereof, as may be prescribed.

(9) Section 17 of the Act lays down that where a licence is granted under sub-section (2) of Section 4 for converting any land, comprised in a controlled area declared under the Punjab New Capital periphery Control Act, 1952, the Punjab Nagal Township (periphery) Control Act, 1955, the Talwara (periphery) Control Act, 1961, or the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, into a colony and a plan for that controlled area has been published under any of the aforesaid Acts and is in operation on the date the licence is granted

then the restrictions and conditions contained in such plan shall apply to that colony as if such restrictions and conditions had been included in the licence issued under sub-section (2) of Section 4, but in all matters not provided for in such plan the provisions of this Act and the rules made thereunder shall apply.

(10) The Director, Housing and Urban Development Punjab, Chandigarh, respondent No. 2, who had filed a detailed written statement, has supported the case of the petitioner stating categorically that the petitioner applied for grant of licence to respondent No. 2 which was granted after examining all aspects of the case as required under the rules. In para 9 of the written statement it is stated that the colony being set up does not violate the provisions of Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963, the Punjab New Capital (Periphery) Control Act, 1952 and the Punjab Regulation of Colonies Act, 1975 as they do not contain any provision for the approval of the Town and Country Planning Department in the matter of grant of licence. In view of the above stand taken by respondent No. 2, the position would have been simple, but the Chief Town Planner, Chandigarh, respondent No. 6, who has also filed the written statement, has taken a stand which is not in line with the one taken by the Government. As to what would be the effect of the said stands will be discussed in the later part of the judgment, but, as stated, it is a fact that the colony was being developed in an area which is meant for residential purposes under the Kharar Town Draft Master Plan. It is further stated in para 8 of the return filed by respondent No. 6 that the land use of the colony is in conformity with the Punjab New Capital (periphery) Control Act, 1952. It is also averred in the aforesaid para of the counter that under the Punjab New Capital (periphery) Control Act, it was necessary in terms of letter dated 28th July, 1986 that a specific term under Section 5 of the Act ought to have been incorporated for the change of use of this land from agriculture to commercial and residential. Certain defects and objections were raised in the plan for development and it was intimated that as the shops were being developed on the highway, the requisite width of the road should be kept in view and the colony should be set up in such a manner that it shall remain in line with the town planning scheme area.

(11) In para 9 of the reply filed by the Chief Town Planner, Punjab, Chandigarh, respondent No. 6 the stand is that it was not mandatory for respondents No. 1 and 2 to seek his concurrence though it is pointed out that it would have been desirable to seek

the approval of the colony from the Town and Country Planning Department also.

(12) Mr. Doabia's contention is that if supermacy is to be accorded to the Colonies Act, even then the plan for development works is to be in conformity with the scheme. In order to fortify his contention, the Counsel has relied upon Section 4(1)(i) of the Act which envisages that the licence is required to be in conformity with the development scheme of the land in question with any other plan drawn or scheme framed for the use or development of that land under any other law for the time being in force. The other contention raised by the learned counsel for the Municipal Committee, Kharar, respondent No. 3 is that in case the writ petition is allowed, it would lead to the regularisation of the scheme, which is not in conformity with the provisions contained in the Municipal Act. I am of the view that this contention is without any substance and deserves rejection straightway without being based on any material whatsoever. Once the licence is granted by the competent authority, no interference either by the Municipal Committee or by the Country and Town Planning Department, Chandigarh was called for. Even it is an admitted case of the Chief Town Planner, Chandigarh, that no approval in the matter was required as the licence is granted by the competent authority if the provisions contained in the Act are fulfilled by the licence holder and it can be cancelled only in case any provisions of the Act is contravened by the colonizer or he fails to comply with any of the terms and conditions on which the licence is issued. In the present case, the respondents have not been able to show that the colonizer has violated any of the provisions of the Act or he has failed to comply with any of the terms as specified in the licence, copy Annexure P-2. Under the said Act, it is only the licensing authority, which is empowered to suspend or revoke the licence if it is of the view that the holder of the licence has contravened any provisions of the Act or any other law for the time being in force. As such, the action of the Municipal Committee, Kharar in issuing General Public Notice dated 23rd July, 1990, copy Annexure P-9 alleging that the activity of the petitioner colonizer was in violation of the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963, cannot be legally sustained being not competent to create any hinderance in the work of development of the colony being executed by the petitioner.

(13) The plea of the learned Counsel for the Municipal Committee is that what has been sanctioned under the Colonies Act is the lay out

plans. It speaks of internal and external development only. According to the Counsel, external development works include sewerage, drainage, roads and electricity which are to be executed in the periphery or outside the colony for the joint benefit of the inhabitants of the colony. So far as the internal development works are concerned, they will deal with metalling of roads and paving of foot-paths, turning and plantation with trees of open spaces, street lighting, adequate and wholesome water supply, sewerage and drainage both for storm and sullage water and necessary provision for their treatment and disposal and any other work which the respondent No. 2 i.e. licence issuing authority may think necessary or in the interest of proper development of the colony. The argument of the Counsel for the Municipal Committee, Kharar, respondent No. 3 is that the Coloniser after development of the colony is to sell the plots and the persons purchasing the property, have to abide by the bye-laws of the Municipal Committee at the time of construction of the same and building plans have to be sanctioned by it. In this behalf, the Counsel has invited the attention of the Court to the definition of building, as given in Section 3(2) of the Municipal Act. In order to support this argument, the Counsel has placed reliance upon *M/s United Taxi Operators v. Municipal Corporation, Delhi* (1). This argument is liable to be rejected as there is no dispute with regard to the proposition that any activity of similar nature would be covered by the definition of building, but it is a case of external and internal development. As such, it would be outside the purview of the Municipal Committee, Kharar and its sanction would be deemed to be there as the Punjab Regulation of Colonies Act, 1975 was enacted with a view to regulate the private colonies and sub-section (3) of Section 8 of the Act clearly envisages that every person erecting or re-erecting any building in a colony in respect whereof a licence has been obtained under sub-section (2) of Section 4 has to comply with such conditions regarding use of land, layout plan, zoning regulation, site coverage, height of building, setback lines, structural and sanitary requirements, architectural control, design of buildings and material to be used in erection thereof.

(14) In the light of the above clear provisions of the Act, the authority of the Director, Housing and Urban Development, Punjab, Chandigarh, was supreme in according such approval and no other authority, as stated earlier, and any right to put any hurdle in the development works of the said colony.

(15) In view of the foregoing discussions, this Court has reached to the conclusion that the objection of respondent No. 3 to the effect

(1) A.I.R. 1967 Punjab 82.

that the colony has not been sanctioned by the Town and Country Planning Department and the colony is being developed in violation of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 cannot be legally sustained having regard to the provisions of Section 17 of the Act.

(16) Since the Municipal Committee, Kharar, respondent No. 3, has not been able to show that the petitioner has violated any of the terms of the Act, therefore, the impugned Notice appeared in the Punjabi Tribune dated 23rd July, 1990, copy Annexure P-9, is quashed with the direction to respondents No. 3 to 5 not to interfere in the development of the colony. It is further directed that the Director, Housing and Urban Development, Punjab, Chandigarh, respondent No. 2 shall extend the period of licence for another six months from the receipt of this judgment enabling the petitioner to complete the development works which could not be completed within the stipulated period of licence being valid upto 1st March, 1991 due to the present litigation.

(17) In this case, I would not hesitate to say that if there was any dispute between the official respondents, the proper course for them was that it should have been resolved at their own level and in case it was not possible, then they should have sought the legal advice in the matter and for this lapse on their part, the petitioner should not have been made to suffer and forced to resort to the recourse under Article 226 of the Constitution of India. No costs.

R.N.R.

Before A. L. Bahri & H. S. Bedi, JJ.

HINDUSTAN FOREST COMPANY (PVT.) LIMITED,—*Petitioner.*

versus

UNITED COMMERCIAL BANK,—*Respondent.*

Company Appeal No. 5 of 1989

October 29, 1991

Companies Act, 1956—Section 125—Bank holding ex parte decree with direction to recover decretal amount by sale of mortgaged property, hypothecated property and hypothecated goods—Bank a secured creditor—Under S. 125 any charge created by company on its property to be registered—No register produced to show that claim of Bank not registered—If Bank attached property other than hypothecated or mortgaged it would cease to be a secured creditor.
(Para 5)