

Kartar Singh and others *v.* State of Haryana and others
(D. V. Sehgal, J.)

of the suit, which right should continue up to the date of decree of the trial Court and not beyond”.

However, in view of the earlier findings in the above-said case, the said observations were in the nature of *obiter dicta*. It may be added that if the Court at the appellate stage is entitled to take into consideration the subsequent events, then in that situation, if during the pendency of the appeal, the plaintiff-pre-emptor has lost his right to pre-empt the sale being a co-sharer by his own act and conduct, then, he is not to blame anybody else and in that situation, he is not entitled to the pre-emption decree being a co-sharer in the suit land.

10. As a result, this appeal succeeds and is allowed. The judgments and decree of the Courts below are set aside and the plaintiff's suit is dismissed with no order as to costs.

R. N. R.

Before : D. V. Sehgal, J.

KARTAR SINGH and others,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 3779 of 1985

July 10, 1986

Punjab Municipal Act (III of 1911)—Section 3(18)(b)—Haryana Municipal Act (XXIV of 1973)—Sections 203 to 210—Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act (XLI of 1963)—Section 4(1)(b)—Government order declaring the area within the municipal limits as ‘unbuilt area’ under Section 3(18)(b) of the Punjab Municipal Act—Municipal authorities forwarding request for preparation of a town planning scheme as envisaged by Section 203 of the Haryana Act—Government notification thereafter issued under Section 4(1)(b) of the Unregulated Development Act declaring the same area as ‘controlled area’—Notification aforesaid—Whether debar the framing of a scheme in respect of the unbuilt area within the municipal limits—Provisions of Section 203 aforesaid—Whether inconsistent with the provisions of the Scheduled Roads Act—Provisions of Scheduled Roads Act—Whether operate in ‘unbuilt areas’ declared

as such under the Municipal Act—Power of the State Government to frame a town planning scheme—Whether fettered by the provisions of the Scheduled Roads Act.

Held, that provisions of Section 203 of the Haryana Municipal Act, 1973, visualise every conceivable eventuality in the course of implementation of a town planning scheme. Provision in the scheme is to be made for erecting or re-erection of the buildings and the prescription of building line on the sides of the streets but also for the amount of land which is to be transferred to the committee for public purposes. The details of internal services including metalling of roads and paving of footpaths, turfing and plantation with trees of open spaces, water supply, etc., are also to be incorporated in the scheme. Sections 204 to 210 of the Haryana Act make detailed provisions for punishing violation of the sanctioned scheme, removal of obstructions in its enforcement, sanction of detailed plans and renewal of such sanctions, modifications of the sanctioned plans. The objective underlying these provisions is that 'unbuilt areas' as defined under Section 3(18)(b) of the Punjab Municipal Act, 1911 (which was then applicable to Haryana) within the municipal limits should be used for building activities consistent with planned schemes and development. On the other hand the purpose of Section 4(1)(b) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, is to prevent haphazard and sub-standard development along scheduled roads and in 'controlled areas' in the State of Haryana. Thus, the domain of Section 4 would operate outside the boundaries of a town. Thus, there is no scope for doubt that atleast in local areas which come within the description of 'town' and are governed by the Haryana Municipal Act, section 4 of the Scheduled Roads Act would not operate. Controlled area within the meaning of Section 4(1)(a) of the Scheduled Roads Act can only be the area which is on the outer side of boundary of any town. Thus, the provisions of Section 203 of the Haryana Act are not at all inconsistent with the provisions of the Scheduled Roads Act. In this view of the matter it is clear that the provisions of the Scheduled Roads Act do not operate in the 'unbuilt area' declared by the order of the State Government falling within the municipal limits and the powers of the authorities under the Municipal Act to prepare and finalise the town planning scheme for the aforesaid unbuilt area are not in any way fettered by the provisions of the Scheduled Roads Act.

(Paras 5, 6 and 7).

Petition under Articles 226/227 of the Constitution of India praying that :—

(a) *after sending for the records in the case, a writ in the nature of certiorari quashing order, Annexure P-2 as*

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also quashing declaration issued under Sub-Section 1 of Section 4 of the Act, 1963 declaring the petitioner's area to be controlled area, be set aside or quashed;

- (b) *In alternative a writ of mandamus be issued to the respondents to frame the scheme either under the provisions of Section 203 of the Haryana Municipal Act, or to make plans under Sub-Section 1 of Section 4 of 1963 within two months from the receipt of notice by the respondents;*
- (c) *to issue any other order, writ or direction as may be deemed fit and proper in the facts and circumstances of the present case;*
- (d) *costs of the petition be awarded to the petitioners.*

V. K. Bali, Advocate, for the Petitioners.

P. S. Duhan, D.A.G. (H), for the Respondents.

Rajesh Choudhary, Advocate, for respondent No. 2.

JUDGMENT

D. V. Sehgal, J.

(1) This judgment will dispose of C.W.Ps. Nos. 3779 of 1985 and 615 of 1986 as both of them involve common question of law and fact.

(2) The facts are being taken from C.W.P. No. 3779 of 1985. The petitioners therein are residents of Dara Kalan, tehsil Thanesar, district Kurukshetra, which area falls within the limits of Thanesar Municipality. All around their land residential and commercial buildings have been constructed and there is a great deal of pressure on their land for setting up a residential colony. The land in question thus has the potential of being developed into a residential and commercial complex. On 28th January, 1969 the Governor of Punjab by a special order Ex. P. 2 confirmed that the area described therein within the limits of Thanesar Municipality including the land of the petitioners is 'unbuilt area' within the meaning of clause (b) of sub-section (18) of section 3 of the Punjab Municipal Act, 1911. The Haryana Municipal Act, 1973 (hereinafter called 'the Municipal

Act') now governs the municipal areas in the State of Haryana. Section 203 of the Municipal Act provides as under:—

“203. *Building scheme* :

- (1) The Committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provides for the following matters, namely :—
 - (a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole of or any part of the municipality, and of the use to which they may be put ;
 - (b) the prescription of a building line on either side or both sides of any street existing or proposed;
 - (c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed forty per centum, and the amount transferred without payment shall not exceed twenty-five per centum, of any one owner's land within such unbuilt area ;
 - (d) the determination of the size and shape of a reconstituted plot so as to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, so far as possible, complies with the provisions of the scheme in respect of open spaces ;
 - (e) the formation of a reconstituted plot by the alteration of the boundaries of an original plot ;
 - (f) the formation of a reconstituted plot by the transfer wholly or partly of the adjoining lands ;

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- (g) the allotment of a plot to any owner dispossessed of land in furtherance of the scheme ;
- (h) the transfer of ownership of a plot from one person to another; and
- (i) the details of the internal services, estimated cost for providing them, the extent of the liability of the owners of buildings and lands for the payment of the cost and the manner of payment of the same.

Explanation—For the purposes of this section :

- (1) the reconstituted plot shall mean a plot which is altered in ownership or otherwise as a result of making of a town planning scheme ;
- (2) internal services shall mean :—
 - (i) metalling of roads and paving of footpaths ;
 - (ii) turfing and plantation with trees of open spaces ;
 - (iii) street lighting ;
 - (iv) adequate and wholesome water-supply ;
 - (v) sewers and drains both for storm and sullage water and necessary provision for their treatment and disposal; and
 - (vi) any other works that the committee may think necessary for the development of the area comprised in the scheme.
- (2) When a scheme has been drawn up under the provisions of sub-section (1), the committee shall give public notice of such schemes and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

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- (3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date; and the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted, as the case may be, with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmission by a specified date.
- (4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the State Government, the Deputy Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner any objection or suggestion which he may wish to make, and the Deputy Commissioner shall forward with his opinion any such objection or suggestion to the State Government, and the State Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the State Government may think fit; and the cost of such scheme or such portion of the cost as the State Government may deem fit shall be defrayed from the municipal fund.
- (5) When sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner or to the State Government, and for the inspection and supervision of the scheme by the State Government.

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(6) After the scheme has been sanctioned, the committee shall proceed to provide internal services as soon as possible and complete it within a period of five years from the date of its sanction."

(3) In pursuance of the provisions of section 203 reproduced above, it was incumbent on the Municipal Committee, Thanesar, respondent No. 2, to frame a town planning scheme for the unbuilt area, but this step was not taken for quite a long time. The petitioners could not take up any building activity because as a consequence of their land having been declared as 'unbuilt area', their building activity was to be regulated by such a scheme. The petitioners applied for the preparation of a town planning scheme for their land. Respondent No. 2 sent the survey plan and ownership statement with shajra plan etc. to the office of the District Town Planner, Kurukshetra, for preparation of the scheme with a request that the scheme should be prepared for the area. However, when the matter was pending with the Chief Town Planner for finalising the town planning scheme, respondent No. 1 in exercise of the powers under section 4(1)(b) of the Punjab Scheduled Roads and Controlled Areas Restriction of unregulated Development Act, 1963 (hereinafter called 'the Scheduled Roads Act') issued a notification dated 26th June, 1980 declaring the area in question, including the land of the petitioners, as 'controlled area'. As a result of the notification under the Scheduled Roads Act, the finalisation of the town planning scheme for the area of the petitioners was stalled. A dispute arose 'whether the area is to be regulated by section 203 of the Municipal Act or by the Scheduled Roads Act'. It is mentioned in a letter dated 8th November, 1982 Annexure P. 4 from the District Town Planner, Kurukshetra, to the Chief Town Planner that the Legal Remembrancer had opined that a town building scheme under section 203 of the Municipal Act in respect of an 'unbuilt area' within the municipal limits, which has been declared as 'controlled area' under section 4 of the Scheduled Roads Act, could not be prepared and finalised. In spite of the letter Annexure P. 4 and a subsequent letter dated 22nd August, 1983 Annexure P. 3 from the District Town Planner for resolving the deadlock, no concrete step has been taken by the respondents, with the result that for over sixteen years the petitioners have not been able to make use of their land which has great building potential. Through these writ petitions therefore they have sought a writ of *certiorari* quashing the order of respondent No. 1 Annexure P. 2 declaring their area as

'unbuilt area' as also for quashing the declaration of the Government declaring the same area as 'controlled area', or in the alternative they have sought issuance of a writ of *mandamus* to the respondents to frame a town planning scheme under the provisions of section 203 of the Municipal Act and to make plans under sub-section (1) of section 5 of the Scheduled Roads Act.

(4) While written statement has been filed by the District Town Planner, respondent No. 3, on behalf of respondents Nos. 1, 3 and 4, a separate written statement has been filed by respondent No. 2. The factual position as given in the writ petition has not been disputed. Respondent No. 2 has in its written statement shown its eagerness to finalise the town planning scheme so as to develop the 'unbuilt area' but has stated that the Town and Country Planning Department of Haryana is not preparing a scheme under section 203 of the Municipal Act on the ground that the area in question has been declared 'controlled area' under the Scheduled Roads Act. Respondent No. 3, on the other hand, has explained that after the area in question has been declared 'controlled area' under the Scheduled Roads Act, a town planning scheme under the Municipal Act cannot be prepared. It has been averred that a plan in conformity with the provisions of section 5 of the Scheduled Roads Act has since been published by the State Government and that if the petitioners want to make use of their land for building activity, they should apply for permission from the Directorate of Town and Country Planning, Haryana.

(5) I have heard the learned counsel for the parties and have given my thoughtful consideration to the dispute involved herein. It appears that because of some misconstruction of the provisions of the relevant statutes, the development of the area in question has been avoidably stultified. I have reproduced above in extenso the provisions of section 203 of the Municipal Act so as to bring out that every conceivable eventuality in the course of implementation of a town planning scheme has been met with therein. Provision in the scheme is to be made not only for erection or re-erection of the buildings and the prescription of building line on the sides of the streets but also for the amount of land which is to be transferred to the committee for public purposes including use as public streets and open spaces etc. The details of internal services including metalling of roads and paving of footpaths; turfing and plantation with trees of open spaces, street lighting; adequate and wholesome water-supply, sewers and drains for storm and sullage water

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and provision for their treatment and disposal are also to be incorporated in the scheme. The committee is bound to prepare and finalise the scheme and get it sanctioned and if it fails to do so, the Deputy Commissioner can prepare the scheme, have it notified for inviting objections and secure its sanction from the State Government and direct the municipal committee to implement it and also to provide internal services as soon as possible and complete it within a period of five years from the date of its sanction. Sections 204 to 210 of the Municipal Act make detailed provisions for punishing for erection or re-erection of buildings in violation of a sanctioned scheme, removal of obstructions in its enforcement, sanction of detailed plans and renewal of such sanctions, modifications of the sanctioned plans, penalty for disobedience in case of violation of the aforesaid provisions, stoppage of construction of buildings and penalty for the failure to comply with the directions of the municipal committee in this regard. The objective underlying these provisions is that unbuilt areas within the municipal limits should be used for building activities consistent with planned schemes and slum like haphazard constructions with insanitary conditions should be checked.

(6) On the other hand, the object of the Scheduled Roads Act is to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the State of Haryana. The provisions of this Act operate in an altogether different field. It is aimed at restricting unregulated development along the scheduled roads and further to ensure a planned development of controlled areas. Section 4 of this Act vests the Government with the power to declare by notification the whole or any part of any area adjacent to and within a distance of—

- (a) eight kilometers on the outer sides of the boundary of any town, or
- (b) two kilometres on the outer sides of the boundary of any industrial or housing estate, public institution or an ancient and historical monument,

specified in such notification to be a controlled area for the purposes of this Act. Thus, the domain of section 4 would operate outside the boundaries of a town. No doubt, in this Act 'town' is not defined. Meaning of 'town' as given in Webster's New World Dictionary is "a more or less concentrated group of houses and private and

public buildings, larger than a village but smaller than a city." Most of the local areas which constitute towns of this description in the State of Haryana are governed by the Municipal Act. Thus, there is no scope for doubt that at least in the local areas which come within the description of 'town' and are governed by the Municipal Act, section 4 of the Scheduled Roads Act would not operate. Controlled area within the meaning of section 4(1)(a) of this Act can only be the area which is on the outer sides of the boundary of any town. Moreover, section 5 of the Scheduled Roads Act provides for preparation of plans showing the controlled area and signifying therein the restrictions and conditions proposed to be made applicable thereto. Such plans are to provide for division of any site into plots for the erection or re-erection of any building; allotment or reservation of land for roads, open spaces etc; development of any site into a township or a colony; alignment of buildings on any site; the architectural features of the elevation or frontage of buildings; the amenities to be provided in relation to any site or building; the prohibition or restrictions regarding erection or re-erection of shops, workshops etc. The provisions of section 5 *ibid* are aimed at achieving the same object in a controlled area which section 203 of the Municipal Act seeks to achieve within the municipal limits of a town. Thus, the provisions of section 203 of the Municipal Act are not at all inconsistent with the provisions of the Scheduled Roads Act. The contention of the learned counsel for respondents Nos. 1, 3 and 4 that in view of the provisions of section 23 of the Scheduled Roads Act, it over-rides the provisions of the Municipal Act is not correct. Section 23(2) of the Scheduled Roads Act lays down that the provisions of this Act and the Rules made thereunder shall have the effect notwithstanding anything inconsistent therewith contained in any other law. The provisions of section 203 of the Municipal Act being consistent with the provisions of the Scheduled Roads Act, therefore, remain operative. Sub-section (3) of section 23 of this Act no doubt lays down that notwithstanding anything contained in any such other law, the permission required under this Act is necessary irrespective of the fact that permission to the approval or sanction required under such other law for doing such act or taking such action has or has not been obtained, but the words any such other law" take colour from sub-section (2) thereof, i.e., any other law which is inconsistent with the provisions of the Scheduled Roads Act. The matter is further clarified when section 24 of this Act is taken into consideration which, *inter-alia*, lays down that nothing in this Act shall affect the power of the Government or any other authority to acquire land

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or to impose restrictions upon the use and development of land comprised in the controlled area under any other law for the time being in force.

(7) In view of the above discussion, it is clear that the provisions of the Scheduled Roads Act do not operate in the unbuilt area declared by the order of Governor of Haryana Annexure P. 2 falling within the municipal limits of Thanesar town, and the powers of the Municipal Committee, the Deputy Commissioner and the State Government to prepare and finalise the town planning scheme for the unbuilt area in which the land of the petitioners is located are in no way fettered by the Scheduled Roads Act. The Government while finalising the town planning scheme is no doubt to take into consideration the fact that such a town planning scheme in no way causes infringement of the law which provides for proper maintenance, expansion and further development of the scheduled roads in the State.

(8) Consequently I allow these petitions and issue a writ of *mandamus* and direct the respondents to prepare for immediate implementation the town planning scheme under section 203 of the Municipal Act for the unbuilt area declared,—*vide* order Annexure P. 2 wherein the land of the petitioners is situate; to notify the same for inviting objections thereto; to dispose of such objections and finalise the scheme within six months from today.

(9) There shall be no order as to costs.

H. S. B.

Before : S. S. Sodhi, J.

SODHAN,—Petitioner.

versus

FAQUIR SINGH and another,—Respondents.

Civil Revision No. 68 of 1986

July 30, 1986

Indian Evidence Act (1 of 1872)—Sections 137 and 138—Statement of a witness partly recorded in a Court—Said witness allowed to be given up by the party calling him on the plea that the witness