Before S. S. Sandhawalia, C.J. & S. P. Goyal, J.

HARDAM SINGH AND ANOTHER,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 785 *of* 1980.

May 12, 1983.

Punjab Regulation of Colonies Act (*X of* 1975)—*Sections* 2(c), 3(1), 8(1) *and* 11(1)—*Constitution of India* 1950—*Articles* 14, 19(1) (*f*) *and* (*g*) *and* 31—*Expression 'colony' as defined in the Act—Whether bars absolute transfer of land and violative of Article* 19—*Restrictions imposed on transfer of land—Whether reasonable—Provisions of the Act—Whether regulatory and valid.*

Held, that under the definition of 'colony' in section 2(c) of the Punjab Regulation of Colonies Act, 1975 there is no fetter on the transfer of land howsoever the number of its sub-divisions, if it is done for agricultural purposes or for any purpose subservient to agriculture. There is no blanket bar on the disposal of the land or property under this definition. Barring the four purposes prescribed in the definition, the land may be fragmented into as many parts as the vendor may wish for a profitable disposal thereof. The Act makes it clear that the definition of colony has no relevance to mere ownership etc. but, in the first instance, means a compact area of land. If an owner has three or four compact areas of land, which are not connected with each other, he does not come within the regulatory provisions of the bar under the Act. The Act in terms excluded all sub-divisions resulting from family partition or partition of joint holdings and inheritance, succession or by operation of a will. Consequently, joint holdings could be sub-divided and property flowing from succession, whether testamentary or otherwise, would in express terms be out of the definition of 'colony'. The restrictions under the Act are attracted only in four situations namely, where the transfer of plots is for the residential, commercial, industrial and building purposes. Transfers in sub-divisions for all other purposes, barring these four, would *prima facie* not come within the ambit of the definition of 'colony'. The plain object appears to be that it is only when there is a fragmentation of the land for purposes of haphazard urbanisation that the statute regulates what in essence would be the sowing of a dragons seed for mushroom growth and slums in urban or suburban areas. The limitation is, therefore, confined narrowly to the arena of indiscriminate sub-divisions of a compact area for urban uses alone. Moreover, it is plain on a reading of the definition of 'colony' under the Act that the statute permits without any fetter the sale of a compact piece of land in blocks upto four even for the four urban purposes specified therein. This liberalization to divide into four

blocks actually reduces materially if not altogether removes the rigour imposed on the transfer of land. The original owner can sell his compact area in four blocks for the four specified purposes as well. Once that is done, each individual vendee would again be entitled to sell each of the said blocks into further four sub-divisions and so onwards. This is apart from any sub-division for purposes of agriculture or subservient to agriculture or other exemptions which flow from the definition. This situation cannot, therefore, be read as any blanket bar to the sale, holding or acquiring of property which can possibly be hit by the erstwhile fundamental right of property keeping always in mind that the same was subject to reasonable restrictions. This definition is merely intended to regulate the transfers and the fragmentation of land for strictly urban purposes and can in no way be construed as a blanket bar on the right to sell or acquire property. The control and regulation for building purposes in urban areas would be well within the field of constitutionality and indeed a legislative necessity. If it is so, the legislature is within its right to curb haphazard and ill-planned growth of urban areas and the rise of slums in towns. The Act is only laying down reasonable restrictions on the right to property for that object. It is, therefore, held that both the object and the purpose of the statute are not only laudable but indeed are an essential social necessity in modern urbanization. Far from being in any way unconstitutional, the provisions of the Act subserve to the large social purpose against the narrowly acquisitive ones of individual financial gain and are clearly within the ambit of reasonable restrictions.

(Paras 14, 15, 16, 17, 18 & 22).

Petition under Article 226 and 227 of the Constitution of India praying that the following reliefs be granted :—

(*i*) *the provisions of the Punjab Regulation of Colonies Act, 1975 and the Rules framed thereunder be declared ultra vires the Constitution of India ;*

(*ii*) *a writ in the nature of a writ of prohibition be issued restraining the respondent No. 2 from proceeding with the complaint Annexure P-1.*

(*iii*) *the complaint annexure P-1 be quashed ;*

(*iv*) *any other appropriate writ direction or order that this Hon'ble Court may deem fit in the circumstances of this case be issued;*

(*v*) *further proceedings against the petitioner consequent upon the filing of the complaint Annexure P-1 in the*

court of the Additional Chief Judicial Magistrate 1st Class, Patiala, be stayed pending the decision of the writ petition ;

(*vi*) *the petitioner may be exempted from serving advance notices of motion ;*

AND

(*vii*) *costs of the petition be allowed to the petitioner.*

K. P. Bhandari Advocate with Ravi Kapur, *for the petitioner.*

A. S. Sandhu, Addl. A.G.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Do the regulatory provisions of the Punjab Regulation of Colonies Act, 1975, directed against the mushroom rise of slums and the haphazard and ill-planned growth of urban and suburban areas, violate the erstwhile fundamental right to property under Articles 19(1)(f) and 31 or the equality clause of Article 14, is the primary if not the sole, question which falls for adjudication in this set of nine writ-petitions.

2. The issues of law as also of fact being admittedly common, this judgment will govern all these writ petitions. The factual matrix necessary for the determination of the legal issue may be picked from Civil Writ Petition No. 785 of 1980 (Hardam Singh *v.* The State of Punjab, etc.) Petitioner No. 2 therein being the owner of agricultural land situated in village Naranjanpura, Tehsil Patiala, sold the same through petitioner No. 1, her Attorney, in five pieces by registered sale-deeds on the 6th of January, 1976. It is the petitioner's stand that the aforesaid sales were not intended to set up a residential or commercial colony. However, a communication was addressed to the Senior Superintendent of Police, Patiala, on behalf of the Housing Development and Urban Estates, Punjab, alleging that the petitioner had sold her parental land in five or more than five plots for residential, commercial, industrial or other purposes and construction had been commenced thereon in violation of sections 2(e), 3(1), 4(2), and 8(1) of the Punjab Regulation of Colonies Act 1975 (hereinafter called the Act). Therein it was further alleged that this constituted a cognizable offence and it was requested that a case be registered in the police station against Harbhajan

Kaur petitioner No. 2 and her husband Shri Hardam Singh, petitioner No. 1 for the violation of the Act. In pursuance thereto, a case was apparently registered at Police Station, Kotwali, Patiala. Later on, a complaint was filed in the Court of Additional Chief Judicial Magistrate, Patiala.

3. The writ petitioners assailed the constitutionality of sections 3(1), 8(1) and 11(1) of the Act as being violative of Articles 14 and 19(1)(f) and (g). The basic stance taken is that the definition of the 'colony' in the Act is almost similar to the definition of the 'colony' given in the Haryana Restriction on (Development and Regulation of) Colonies Art of 1971, which was struck down by the Division Bench in *Jai Chand Bhagat and another* v. *The State of Haryana and others* (1). Therein, it was held that since the Haryana Act rested primarily on the definition of the 'colony', the whole of the statute was *ultra vires* of the Constitution. It is pointed out that the provisions under the present Act were also challenged by a number of writ petitions in 1975. But, due to the declaration of the Emergency and the suspension of Fundamental Rights, the question had remained undecided.

4. In the reply by way of an affidavit of Shri Gursewak Singh Sekhon, Deputy Director, Housing and Urban Development Department, Punjab, it is highlighted that the Department had to take notice of the sale of more than five plots made through registered deeds on the same day by the petitioner and that these sales had been made for residential purposes and with the requisite intention of setting up a residential colony. It is reiterated that these transactions came within the mischief of sections 3(1) and 8(1) of the Act and, consequently, criminal prosecution were rightly instituted against the petitioners. The distinction betwixt the definition of a 'colony' under the Act and that under the Haryana Act is highlighted and the firm stance taken is that the provisions of the Act are *intra vires* and beyond the pale of any constitutional challenge.

5. To clear the decks for the examination of the basic issue of the constitutionality of the Act,one may first dispose of a preliminary objection on behalf of the respondents, which was strenuously pressed. On the very threshold it was pointed out on their behalf that Articles 19(1)(f) and 31 having been repealed with effect from the 19th of June, 1979 by the Forty-fourth Amendment, and

(1) 1975 P.L.R. 277.

the writ petitioners, who had moved the Court in 1980 (after the said repeal) and were now relying on the same, were disentitled to challenge the statute on the said ground because these Articles were no longer part of the Constitution. In sum, the argument is that a challenge to the vires of a provision cannot possibly be sustained on the basis of the Articles of the Constitution which now stand repealed.

6. However, in this context, the firm stand on behalf of the writ petitioners is that the impugned Act having come into force on the 9th of August, 1975, has to be tested with regard to its constitutionality on the said date and not on the basis of any subsequent amendments or deletions of the provisions in the Constitution. It was, therefore, argued that the date and time of preferring the writ petition or pressing the challenge at the time of argument is irrelevant to the issue. Reliance was basically placed on *Mahendra Lal Jaini* v. *State of Uttar Pradesh and others* (2), wherein it has been observed :—

> "It is in our opinion absolutely elementary that the constitutionality of an Act must be judged on the basis of the Constitution as it was on the date the Act was passed subject to any retrospective amendment of the Constitution. Therefore, the argument that the constitutionality of the Transfer Act must be judged on the basis of the Constitution as it stood on the date of the present writ petition has no force and must be rejected."

Similar analogous view has been expressed in paragraph 23 of the report in *Saghir Ahmad and another* v. *State of U.P. and others* (3), and in *Deep Chand* v. *The State of Uttar Pradesh* (4).

7. However, it would appear that there undoubtedly is a certain penumberal area, if not an actual discordance of view stemming from the observations in *M. P. V. Sundararamier and Co.* v. *The State of Andhra Pradesh and another* (5). In paragraphs 42 to 47 of the report therein a distinction is sought to be drawn on the one hand, where there is a total lack of competence of the legislature

(2) A.I.R. 1963 S.C. 1019.
(3) A.I.R. 1954 S.C. 728.
(4) A.I.R. 1959 S.C. 648.
(5) A.I.R. 1958 S.C. 468.

enacting the statute and the violation of constitutional restrictions on the other. Whilst in the first case, the statute is styled as still born or non est, in the latter case it is not altogether beyond reprieve but has been opined to be unenforceable and would start operating if the constitutional bar is later removed or rectified.

8. I do not propose to be drawn into, or finally pronounce, on this controversy which undoubtedly bristles with difficulty. This is so because, in view of what follows, it appears to me both academic and unnecessary. Equally, it deserves recalling that the identical issue had also been raised before the Full Bench in *Ram Puri* v. *Chief Commissioner, Chandigarh,* etc. (6), and for somewhat similar reasons, had to be left open. Indeed, I am inclined to take the view that even on the anvil of the fundamental right to property both under Articles 19(1) (f) and 31, the challenge to the impugned provisions of the Act must fail. Therefore, I propose to examine the constitutionality of the Act by placing the case of the petitioners at the very highest on the assumption that it is open to them to raise the challenge on the foundation of the fundamental right of property because, when enacted on the 9th of August, 1975, the Act had to withstand the said test.

9. One must now advert to the provisions of the Act with particular reference to those impugned as unconstitutional. The statute was enforced on the 14th of May, 1975, after receiving the assent of the President of India. Its avowed object was the preventing of haphazard and ill-planned growth in urban areas and to regulate colonies for the construction of residential, commercial, industrial or any other building purposes. Section 2 (c) and (d) of the Act define 'colony' and 'colonizer' whilst the succeeding section 3 bars every person from converting land into a colony without obtaining a licence in accordance with the provisions of the Act and its Rules. Section 4 prescribes the procedure for the receipt of applications by the Director for licensing of colonizers and also spell out the indicia for the grant or refusal of the same. Sections 5 to 7 provide for the maintenance of registers by the Director, the completion of development works by a colonizer and the auditing of accounts of a Colonizer by the Director. Section 8 then places restrictions on the transfer of plots and the erection of buildings in the colony whilst sections 11, 13 and 14 provide for penalties, prosecutions and the offences by companies for violation

(6) A.I.R. 1982 Pb. and Hary. 301.

of the provisions of the Act or the Rules framed thereunder. Section 16 creates a bar of jurisdiction against the Civil Courts for challenging any proceedings under the Act whilst section 18 provides for an appeal by persons aggrieved by orders made by the Director. The power of exemption under section 19 is vested in the State Government wherever it is of the view that the provisions of the Act cause undue hardship or it is expedient to do so.

10. Now, the spearhead of the attack against the provisions of section 2(c) and (d), 3, 4, 8, 11 and 14 was rested primarily, if not wholly, on the Division Bench judgment in *Jai Chand Bhagat and another* v. *The State of Haryana and others* (7). Therein the provisions of the Haryana Restriction on (Development and Regulation of) Colonies Act, 1971, were struck down on the ground that the definition of the 'colony' therein did not satisfy the test of reasonableness and since the whole Act, in substance, rested on the said definition, the provisions thereof were inseparable and the whole of the statute was declared unconstitutional. Mr. K. P. Bhandari's star argument was that the definition of the 'colony' in the present Act is so closely similar that the reasoning in Jai Chand Bhagat's case (*supra*) would, *mutatis mutandis*, apply to the present Act as well.

11. Before I attempt a close comparison of the definition of 'colony' in the two statutes, to test the contention aforesaid, it seems not only apt but necessary to seek the larger purpose and the intent of the legislature in enacting the statute. As the inevitable drift of the people from villages towards the towns gains momentum in a country already overpopulated, the problem of quick urbanization looms large and indeed sometimes appears to defy solution. This is perhaps inevitable in the transitional period from an agricultural economy to an industrial one. It was not disputed before us that the regulated development of urban areas for residential, commercial, industrial and building purposes in the altogether new or developing towns assumes a momentous significance in the country and the State would indeed be failing in its duty if it did not address itself to this problem. With this region, the very concept and the subsequent rise of the planned city of Chandigarh, is a shining example. That the impugned Act was directed to this larger purpose seems to be manifest from the aforesaid resume of

(7) 1975 P.L.R. 277.

its provisions as also by the Statement of Objects and Reasons appended to the Bill which are in the following terms:—

> "The increasing trend towards urbanisation has led to considerable increase in the demand for residential plots to urban areas. This situation has been fully exploited by the private colonisers. As a result of this activity numerous residential colonies have come up, which are badly planned and are substandard from the point of view of provision of basic civic amenities. In the process, however, the private coloniser has amassed considerable wealth. The direct result has been that while the State has not at all profited from the change in the land use, its burden and liability has increased because ultimately the responsibility of providing civic amenities in these colonies devolves upon it. It, therefore, becomes imperative to undertake Legislation to control and regulate colonization by private colonizers."

What then equally calls for attention is the preamble of the Act: —

> "An Act to regulate the colonies in the State of Punjab with a view to preventing their haphazard and ill-planned growth."

That the aforesaid is indeed a laudable purpose could not be denied even on behalf of the petitioners. Indeed, Mr. K. P. Bhandari with illimitable candour had conceded that the control and regulation of urban development was not only warranted by law but indeed a necessary pre-requistie in the present day conditions.

12. With the aforesaid background and in view of the prime contention raised on behalf of the petitioners, it becomes necessary to compare the foundational definition of 'colony' under the

Haryana Restriction on (Development and Regulation of) Colonies Act, 1971 and the present Act:—

Section 2(c) of the Haryana Restriction on (Development and Regulation of) Colonies Act, 1971.	Section 2(c) of the Punjab Regulation of Colonies Act, 1975.
"Colony" means an area of land which has been sub-divided or is proposed to be sub-divided into plots for residential, commercial, industrial or other purposes.	"Colony" means a compact area of land which has been divided or is proposed to be divided for the purpose of transfer, otherwise than by way of gift, into five or more plots for residential, commercial, industrial or any other building purpose, other than for agriculture or for any purpose subservient to agriculture, but does not include any area of land divided or proposed to be divided as a result of— (i) family partition or partition of joint holding, (ii) inheritance, (iii) succession, or (iv) operation of will.

13. Now, an analysis of paragraph 23 onwards of judgment in Jai Chand Bhagat's case (supra) would indicate that the primary, if not the sole consideration for the Bench to stamp the definition of the 'colony' under the Haryana Act as being violative of Article 19(1) (f) was its glaring failure to draw any distinction betwixt the large and the smallest holding of land even when sub-divided in the minimal quantity of two plots for sale. It was in terms observed that if a citizen owns even 25 square yard of land in a city (where all development works may have already taken place and which does not admit of any further development works) and he intends to dispose of the same by dividing the same into two

plots, he would come within the mischief of the statute and the crippling net of being a colonizer and oblige to satisfy all the onerous conditions prescribed therefore. It was further held that the words "any other purpose" in the definition of the colony would include even lands sold for agricultural purposes after being subdivided which would have no relevance to the objects of the Act. On an analysis of the stringent provisions of the Haryana Act and even more so of the Rules, it had, therefore, to be held that the provisions of the Act were unreasonable, harsh and arbitrary restrictions on the right of the citizens to dispose of their lands having no relationship with the object to be achieved.

14. Now. can it be said that any such identical vice attaches to the definition of 'colony' under the Act and the consequential provisions thereto ? The answer, to my mind, has to be rendered in the negative. Perhaps, what deserves highlighting under the impugned definition is the fact that there is no fetter on the transfer of land howsoever the number of its sub-divisions, if it is done for agricultural purposes or for any purpose subservient to agriculture. There is thus no blanket bar on the disposal of land or property under this definition. It was not disputed before us that barring the four purposes prescribed in the definition of the 'colony', the land may be fragmented into as many parts as the vendor may wish for a profitable disposal thereof. The situation under the Haryana Act was entirely different and the blanket use of the expression "other purposes" was rightly construed by the Division Bench of this Court in Jai Chand Bhagat's case (supra) as even prohibiting transfers for agricultural purposes or those subservient thereto and thus plainly unreasonable and a clog on the right of disposal of property. It would appear to me that the definition of 'colony' in the present Act was framed with an eye to avoid this vice and has in terms rectified the evil noticed in the Haryana provision.

15. Apart from the above, there are other significant differences betwixt the two definitions of the 'colony' under the Haryana Act and the Punjab Act. The Haryana Act applied indiscriminately to any area of land which was sought to be sub-divided. The Punjab Act, however, makes it clear that this has no relevance to mere ownership, etc., but. in the first instance, means a compact area of land. Therefore, if an owner has three or four compact areas of land, which are not connected with each other, he does not come even within the regulatory provisions of the bar under the Punjab Act. Again, the Haryana Act was somewhat loosely worded whereas

the Punjab Act is precisely couched and excludes from its ambit transfers which are made by way of gifts. This would involve an added liberalization to sub-divide the lands sought to be gifted. Equaly, the Punjab Act in terms excluded all sub-divisions resulting from family partition or partition of joint holdings and by inheritance, succession or by operation of a will. Consequently, joint holdings could be sub-divided and property flowing from succession, whether testamentary or otherwise, would in express terms be out of the definition of the 'colony' under the Punjab Act.

16. What then calls for notice is that the restrictions under the Punjab Act are attracted only in four situations, namely, where the transfer of plots is for residential, commercial, industrial and building purposes. Transfers and sub-divisions for all other purposes, barring these four, would *prima facie* not come within the ambit of the definition of the 'colony' under the Punjab Act. The plain object appears to be that it is only when there is a fragmentation of the land for purposes of haphazard urbanisation that the statute regulates what in essence would be the sowing of a dragon's seed for mushroom growth and slums in urban or sub-urban area. The limitation is, therefore, confined narrowly to the arena of indiscriminate sub-divisions of a compact area for urban uses alone.

17. Coming now to the pivotal difference betwixt the Haryana Act and the Punjab Act with regard to the number of sub-divisions permitted, it is plain on the reading of the definition of the 'colony' under the latter that the statute permits without any fetter the sale of a compact piece of land in blocks up to four even for the four urban purposes specified therein. It is not as if any sub-division, i.e., at the level of two, is being forbidden as, in fact, was the case under the Haryana Act. This liberalization to divide into four blocks is not a difference of mere quantity but makes a qualitative difference which actually reduces materially if not altogether removes the rigour in this context under the Haryana Act. Counsel are agreed that under the existing provisions in the Punjab Act, the original owner can sell his compact area in four blocks for the four specified purposes as well. Once that is done, each individual vendee would again be entitled to sell each of the said blocks into further four sub-divisions and so onwards even with regard to the four categories mentioned in the definition of the 'colony'. This is apart from any sub-division for purposes of agriculture or subservient to agriculture or other exemptions which flow from the said definition. This situation cannot, therefore, be read as any blanket bar to the sale, holding or acquiring of property which can possibly be hit by the

earswhile fundamental right of property keeping always in mind that the same was subject to reasonable restrictions expressly as also precedentially. The rigid consequences that flowed from the definition in the Haryana Act which barred even a sub-division into two blocks both at the level of the original vendor as also at the level of subsequent vendee and thus was the Achilles' heel of the Haryana statute, is completely absent under the Punjab Act. It would thus be seen that this definition is merely intended to regulate the transfers and the fragmentation of India for strictly urban purposes and can in no way be construed as a blanket bar on the right to sell or acquire property. I may reiterate that even Mr. K. P. Bhandari had to concede that control and regulation for building purposes in urban areas would be well within the field of constitutionality and indeed is a legislative necessity now.

18. Now, once it is held, as it must be, that the Legislature is within its right to curb haphazard and ill-planned growth of urban areas and the rise of slums in towns, it would follow that the Punjab Act is only laying down reasonable restriction on the right to property for that object. It was conceded before us and seems to be otherwise plain that a line has to be drawn somewhere with regard to the fragmentation of land for urbanization in municipal and suburban areas. The legislature in its wisdom has thought that making five or more blocks for the four purposes specified would be indicative of the intention of the vendor to urbanize the land and may well lead to haphazard growth. Even here it is not that an absolute bar is placed if sub-divisions of five or more are created but thereafter it is only a regulation of this right by requiring that the vendor must then secure a licence and conform to the requirements prescribed for colonizers. It would seem reasonable that the person who fragments his compact area into blocks of five or more for clear cut urban purposes is not merely disposing of his property and land but may well be treading the delicate path of colonizing the same for purposes of urban use and development. Once that is so, the provisions regarding the definition of a colonizer, the requirement of a licence and the conditions and regulatory provisions therefor have a distinct social purpose. It calls for pointed notice that mushroom growth of slums and haphazard urbanisation is an evil which is irreversible in nature because once the area is fragmented and built upon, then the vice cannot be easily remedied except at the great and sometimes prohibitive costs of acquisition at full market value and then demolition and rebuilding thereof. This is a luxury which a poor country can ill-afford and is glaringly wasteful. It is, therefore, necessary to take preventive action and nip the evil

in the bud. The tenuous arguments of Mr. K. P. Bhandari that no bar should be placed on original fragmentation for urbanization but later on curbs may well be placed for purposes of buildings and development appears to be fallacious. This in essence would be only robbing Peter to pay Paul. If the vendees in such a situation are first allowed to purchase haphazardly laid out sub-divided plots and are later to be barred from building thereon, then it would mean only an unjust enrichment of the original vendor at the cost of his duped vendees. It must be highlighted that there is no inflexible right to create fragmented cess pools in urban areas in the grab of the erstwhile fundamental right to hold and dispose of property. It would thus follow that considering the larger purpose of curbing or prohibiting the haphazard and ill-planned growth of urban and sub-urban areas, the restrictions sought to be placed by the Act are plainly reasonable and intended to prevent grave and irreversible mischief which may arise from the creation of slums and shanty towns by unscrupulous landowners for purposes of unrestricted financial greed.

19. Lastly, the cushioning effect on section 19 of the Act vesting the power of exemption in the State Government has also to be noticed. The discretion is vested at the highest level and it is to be presumed that it would be reasonably and liberally exercised if necessary. This in a way mellows the rigour of the statute, if any and is couched in somewhat wide terms. The power of exemption can be exercised both to avoid undue hardship and equally for reasons of expediency. It is a flexible power which may be exercised by the imposition of such terms and conditions within its scope to grant exemption to any class of persons or even to a whole area from all or any of the provisions of the Act. It is true that merely the vesting of a power of exemption is not and cannot possibly be conclusive. It is, however, only one factor which may well be taken into consideration for the avoidance of any unseen rigour or harshness in particular cases. Again, section 18 of the Act provides an appellate forum for any person aggrieved by the order of the Director. The regulatory power, therefore, conferred on the Director is not uncanalized but controlled by the right of appeal to the Government therefrom.

20. Before parting with the judgment, one must in fairness notice the contention raised by Mr. K. P. Bhandari, which does credit to his ingenuity. He had argued that the Act compelled a person to adopt the profession of a colonizer in order to sell and dispose

of his property. The heart of this submission was that even whilst offering for sale the land which in law was his own, the citizen, if he wanted to obtain maximum benefit by making five or more than five plots of the compact area, would be obliged to take out a licence and conform to all the stringent provisions of the Act and the Rules applicable to colonizers. This, according to him, was a clog on the right to own and dispose of property. By some further straining, it was argued that just as the Constitution guaranteed the right to carry on a profession or business, in the converse equally implied is the right of not carrying on a particular profession or business. Consequently, it was argued that to compel a landowner into the profession of a colonizer merely in order to dispose of his compact piece of land in more than five fragments, would be violative of Article 19(1)(f) and (g) of the Constitution as well.

21. I am unable to accede to what appears to me as the somewhat doctrinaire stand aforesaid. As has been pointed out earlier, there is not the least bar for the disposal of compact area of land into any number of blocks for purposes other than the four specified in the definition of a 'colony' and particularly for agriculture and subservient to agriculture as also or by way of gift and also other contingencies for sub-divisions. The Act again leaves it wholy open to sell one compact area into four blocks even for the four specified urban purposes. As noticed earlier, it leaves it open to the vendees to further sub-divide each compact area if they are so inclined. Even the erstwhile fundamental right to property was expressly subject to reasonable restrictions which have been liberally construed by precedent. It cannot be easily said that limiting the fragmentation of a compact block to less than five sub-divisions is an unreasonable restriction subserving to the plain object of planned urban development which indeed is now considered and accepted as a social necessity. It is only when a person wishes to urbanize his land into five or more blocks that the restrictions of a colonizer are attracted to the situation. I am unable to hold that this is in any way an unreasonable restriction.

22. In the ultimate analysis it must be concluded that the significant differences noticed above in the definition of 'colony' in the Punjab Act distinguish it sharply from that in the erstwhile Haryana Act. Therefore, the ratio in Jai Chand Bhagat's case (supra) is in no way attracted to the provisions of this Act. Once that is so, both the object and the purpose of the statute are not only laudable but indeed are an essential social necessity in modern urbanization. Far

from being in any way unconstitutional, the provisions of the Act subserve to the larger social purpose against the narrowly acquisitive ones of individual financial gain and are clearly within the ambit of reasonable restrictions. These provisions, therefore, must be up-held and the challenge thereto is hereby replied.

23. Apart from the contentions notices in the earlier part of the judgment, learned counsel for the petitioner did not and obviously could not advance any other argument to assail the provisions of the Act on the ground of arbitrariness or discrimination under Article 14 of the Constitution. Consequently, we are unable to find any infraction of the equality clause in the impugned Section of the Act.

24. In view of the above, all the nine writ petitions must fail and are hereby dismissed. Because of the somewhat intricate nature of the issues involved, I do not propose to burden the petitioners with costs.

S. P. Goyal,—I agree.

N.K.S.

Before R. N. Mittal, J.

RAM PARKASH MANCHANDA,—*Petitioner.*

versus

AMIN CHAND AND OTHERS,—*Respondents.*

Regular Second Appeal No. 245 *of* 1975.

May 13, 1983.

Punjab Municipal Act (III of 1911)—*Section* 3(13) (b)—*Code of Civil Procedure (V of* 1908)—*Section* 91—*Public street vesting in Municipal Committee obstructed by a person—Member of public using such street—Whether has the* locus standi *to file a suit for permanent injunction against the person obstructing—Such member—Whether can maintain the suit without proving special damage.*

Held, that the word 'public street' has been defined in sub-clause (b) of clause (13) of section 3 of the Punjab Municipal Act