

GOVERNMENT OF PUNJAB
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(HOUSING –II BRANCH)

Subject : Exemption under section 44 (2) of The Punjab Apartment and Property Regulation Act, 1995

Principal Secretary to Government Punjab, Department of Local Government , may kindly refer to his D.O. No. 309, dated 6.2.2001 on the subject cited above.

1. Punjab Government in the Department of Housing and Urban Development issued a notification No. 2/25/96-2HG2/177 dated 12.1.99 vide this notification powers of exemption under section 44(2) of the Punjab Apartment and Property Regulation Act, 1995 have been exercised, thereby exempting individual land owners in the Town Planning Act, 1911 and Section 275 of Punjab Municipal Corporation Act, 1976 from the purview of the provisions of the above mentioned Act.
2. The provisions of Section 192 (1) (c) of the Punjab Municipal Act, 1911 have been struck down by the Hon'ble Supreme Court of India, in cases reported as AIR 1994-SC-2550. The Town Planning Schemes are still being formulated by the Local Government Department, ostensibly by obtaining written consent of the land owner that he shall not insist on any compensation for the area under streets etc.
3. In the context, advice of L.R. has been obtained by this Department on the following point :-

“These so-called Town Planning Schemes on a mere non-statutory pedestal and are thus not covered under the Notification of Exemption dated 12.01.99 issued by our Department”

As per legal opinion of L.R. the Hon'ble Supreme Court in Yogendra Pal and others Vs. Municipality, AIR 1994-SC 2550, has held the provisions of section 192(1) (c) of the Punjab Municipal Act, 1911 and section 203 (1) (c) of the Haryana Municipal Act, 1973 being violative of article 14 of the Constitution and therefore, void w.e.f. the date of the judgment. In para 14 of this judgment, it has been held that this judgment will not prevent the respondent of State Government from suitably amending section 192 (1) (c) of the Punjab Municipal Act and section 203 (1) (c) of the Haryana Municipal Act, as the case may be, and making appropriate provisions in the statutes on the lines of the enactments prevailing in other States for making the town planning scheme such as the Bombay Town Planning Act, 1954. L.R. has further observed that there is nothing on the record of Housing Department to suggest that any amendment has been made in section 192 (1) (c) of the Punjab Municipal Act, 1911, either on the lines of the enactments existing in other States for making the town planning schemes or other wise in order to provide as to how the land belonging to private owners failing in a particular town planning scheme would be transferred in favour of the Municipal Corporation for its use for public purposes and making such a transfer legal in accordance with the various dealing with the transfer of immoveable property. As per information available, Local Government Department are formulating the town planning schemes by obtaining written consent of the land owner that he shall not insist on any compensation for the area under streets etc. Alienation / transfer of immovable property of the value of more than Rs. 100/- is legally possible by getting the documents of transfer registered under the Indian Registration Act besides completing other

formalities . Therefore, such town panning schemes formulated by the Local Government Departments can be said to be on a mere non-statutory pedestal and therefore, these town planning schemes cannot get the benefit of Notification dated 12.1.99 exempting the land owners from the provisions of the Punjab Apartment and Property Regulation Act, 1995.

Sd/-
Additional Secretary, Housing

To
Principal Secretary,
Department of Local Government.

I.D. No. 2/25/96/2HG2/1908, dated 16.5.2001