
(2000) 11 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13840 of 1999

Ashwani Kaushal

APPELLANT

Vs

Chandigarh Administration and others

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 11 P&H CK 0102

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : G.C. Dhuriwala, for the Appellant; Vikram Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for grant of declaration that Section 5,11 (1) and 12 (2) of the Punjab New Capital (Periphery) Control Act, 1952 (for short, the Act) are unconstitutional. He has also prayed for quashing of the notice Annexure P-1 and P-2 and the order Annexure P-3 issued/passed by the Sub Divisional Magistrate and Land Acquisition Officer, exercising the power of the Deputy Commissioner under the Act and to restrain the Respondents from demolishing his built up structures.

2. A perusal of the record shows that the Petitioner is doing the business of wood, seet shuttering, storage of cement and iron in village Kajheri since 1992. In September, 1995 he was served with notice dated 21.9.1995 (Annexure P-1) issued u/s 12 (2) of the Act by the Sub Divisional Magistrate exercising the powers of the Deputy Commissioner, Chandigarh (under the Periphery Control Act, 1952) (Respondent No. 2) requiring him to remove the alleged unauthorised construction raised on the land falling within the periphery. After three years, another notice dated 2.7.1998 (Annexure P-2) issued u/s 12(2) of the Act was served upon the Petitioner for removal of the alleged unauthorised construction.

Therefore, the Land Acquisition Officer passed an order dated 18.8.1998 Annexure P-3 for demolition of the disputed construction on the ground that it been raised in contravention of Sections 5,6 and 11 of the Act.

3. The Petitioner has challenged the constitutional validity of Section 5,11 (1) and 12(2) of the Act on the ground that the same are not only unworkable but are also discriminatory. He has averred that the Act does not contain any guideline for exercising the power to remove or to regularise the so-called illegal construction and the Officers of the Union Territory Administration have been following the policy of pick and choose for regularising the illegal construction. He has further averred that the impugned notices and order are ultra vires to the provisions of the Act and are also violative of the principles of natural justice.

4. In the written statement filed on behalf of the Respondents, it has been averred that the Petitioner is guilty of raising structures in violation of the provisions of the Act and, therefore, order for its demolition has been passed after giving him notice and opportunity of hearing.

5. We have heard learned Counsel for the parties. In our opinion, it is not necessary to pronounce upon the constitutional validity of Sections 5,11 (1) and 12(2) of the Act because after perusing the record of the case, we are convinced that the impugned notices and order are liable to be quashed on the ground of violation of Section 12 and the principles of natural justice. Section 12, which deals with the offences and penalties, reads as under: -

12 Offences and penalties (1) Any person who-

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of Section 5 or in contravention of any conditions imposed by an order u/s 6 or Section 7, or

(b) uses any land in contravention of the provisions of Sub-section (1) of Section 11, shall be punishable with imprisonment of either description for a term which may extend to two years and fine which may extend to five thousand rupees and in the case of a continuing contravention with a further fine which may extend to five hundred rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of Sub-section (1), if the Deputy Commissioner, after making such enquiry as he considers necessary and after affording an opportunity of being heard to the person concerned, is satisfied that such person has committed a breach of the provisions of the said Sub-section he may pass an order requiring that person to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said Sub-section has been committed, and if such person fails to do so within six weeks of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures

shall be recoverable from such person as an arrears of and revenue.

6. A perusal of the provisions quoted above shows that under Sub-section (2) of Section 12, the Deputy Commissioner can order demolition of a construction made in violation of the conditions prescribed under the Act and the Rules framed thereunder. But, the exercise of this power is subject to the condition of making appropriate enquiry and of affording an opportunity of being heard to the person concerned. This necessarily means that before making an order u/s 12(2), the Deputy Commissioner or an officer authorised by the Government to exercise the powers of the Deputy Commissioner has to make an enquiry about the violation of the conditions of the Act and the Rules and also give an opportunity of hearing to the concerned person.

7. What has happened in this case reflects total violation of the scheme of Section 12(2). The Sub Division Magistrate and Land Acquisition Officer, exercising the powers of the Deputy Commissioner passed orders u/s 12(2) without making an enquiry by associating the Petitioner and giving prior notice and opportunity of hearing to him. The use of the expression, "I, therefore, order you under Sub-section (2) of Section 12 of the Punjab New Capital (Periphery) Control Act, 1952 as amended upto date to restore the site to its original state and remove the unauthorised construction raised by you within six weeks from the issue of this order" and "In case, you fail to do so before the aforesaid date, I would like to make an enquiry into the matter before ordering the execution of the aforesaid order. You are therefore hereby given an opportunity of being heard by appearing before me in person or through duly authorised agent on 25.10.1995 at 11.00 A.M." In the notices dated 21.9.1995 and 2.7.1998 shows that even before making an enquiry about the alleged unauthorised construction made by the Petitioner, the officer concerned had prejudged the matter and had ordered removal of the construction by presuming it to be unauthorised. This shows that the issuance of notices to the Petitioner was an empty formality and the order for demolition of the construction made by him was passed in violation of Section 12(2) and the rule of audi alter partem, which is statutory ingredient in that section.

8. For the reasons mentioned above, the writ petition is allowed. The notices and orders, Annexures-1 to P-3 are declared illegal and quashed with liberty to the Respondents to pass fresh order in accordance with law after complying with Section 12(2) and the rule of natural justice. We also direct that if the order passed hereafter is adverse to the Petitioner, then the same shall not be given effect to for a period of next two weeks within which time he shall be free to avail appropriate legal remedy.

Sd/-Nirmal Singh, J.