

(1997) 03 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16283 of 1996 and Civil Miscellaneous No. 6524 of 1997

Bala Ji Bhatta Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 10

Citation : (1997) 116 PLR 462 : (1997) 2 RCR(Civil) 704

Hon'ble Judges : P.K. Jain, J;M.S. Liberhan, J

Bench : Division Bench

Advocate : M.S. Jain and Adarsh Jain, for the Appellant; Harish Rathi, DAG, for the Respondent

Judgement

M.S. Liberhan and P.K. Jain, JJ.—Replication is allowed to be placed on the record.

2. The petitioner through this writ petition has impugned the order dated 4.7.1996 delivered on 27.9.1996 (Annexure P-5), inter alia, contending that imposition of condition of composition fee of Rs. 42183/- is illegal and not in conformity with the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Developed Act, 1963 (hereinafter referred to as "the Act")

3. The learned counsel for the respondents has raised a, preliminary objection that the impugned order Annexure P-5 is appealable order and since the petitioner has alternative remedy, no writ petition is maintainable. The respondent referred to Section 8(2) of the Act.

4. We have heard the learned counsel for the parties at length and gone through Annexure P-5.

5. From a reading of Annexure P-5 it emerges that the petitioner has been granted necessary licence to run the brick-kiln subject to his payment of

composition fee of Rs. 42183/-. There can be no gainsaying that in substance and for all intents and purposes order cannot be said to be beyond Section 8(2) of the Act which provides or authorises the authority to grant or refuse to grant the licence in conformity with the Act subject to conditions. There can be no gainsaying that while granting the licence the depositing of fee of Rs. 42183/- was imposed which the petitioner has vehemently challenged on various grounds including that the order cancelling the licence has been passed subsequently which is not under challenge. Concededly, the cancellation order subsequently passed has not been challenged. In any eventuality, the order Annexure P-5 independently as well as having merged into subsequent order of cancellation is appealable as envisaged by Section 10 of the Act which runs as under:-

"10. Appeals :- Any person aggrieved or affected by an order of the Director under Sub-section (2) of Section 8 granting permission or licence subject to conditions or refusing permission or licence may, within sixty days from the date of such order, prefer an appeal to the Commissioner of the Division in which the scheduled road or controlled area, as the case may be, is situated and the order of the Commissioner on such appeal shall be final."

In view of the observations made above, that the impugned order Annexure P-5 as well as the subsequent order which has not been challenged before us, are appealable, the petitioner is relegated to alternative remedy of appeal. The petitioner will be at liberty to prefer an appeal. Learned counsel for the respondents states that no objection with respect to limitation would be raised if the appeal is filed within 30 days. Status quo will be maintained for 15 days and if the appeal is filed within the time stipulated above, the Authorities would pass an order with respect to interim relief if any sought in accordance with law after hearing the parties. Appeal may be disposed of within six months. The petition stands disposed of accordingly.