
(1994) 04 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18949 of 1991

Balbir Singh Saini

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (1994) 107 PLR 479

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Balbir Singh Saini, for the Appellant; S.K. Pipat, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—On December 5, 1991, the Air Officer commanding, Air Force Station, Ambala, ordered that the "building owned by Sh. B.S. Saini, near Dhulkot Gate is placed OUT OF BOUNDS for all service personnel of this Station. Disciplinary action will be initiated against personnel who occupy this building for whatever reasons." The petitioner, who was once upon a time in the service of the Indian Air Force and is now a practising Advocate, challenges this order as being arbitrary and violative of Articles 14 and 19 (1) (f) of the Constitution of India. The respondents contest this claim on the two fold ground that the building owned by the petitioner is in the vicinity of the runway of the military Aerodrome and that the construction raised by the petitioner in violation of the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, is wholly unauthorised. It has been further averred that Respondent No. 2 has passed this order in exercise of the power under "Para 913 of Regulations of Air Force (1964)." Along with the written statement, copies of certain documents including a notification issued by the Ministry of Civil Aviation in exercise of the powers under the Aircraft Act, 1934 has been produced. A perusal of this notification shows that no building or

structure can be constructed "within the limits specified in Annexure I to this notification in respect of Civil and Military Aerodromes existing...." Another document produced as Annexure R.4 with the written statement is an order of Deputy Commissioner, Ambala by which he had ordered the demolition of the Construction raised by the petitioner.

2. The petitioner as filed a rejoinder controverting the averments in the written statement. Along with it, he has produced a copy of the order passed by a Division Bench of this court in C.W.P. No. 18126 of 1991 (Shri Balbir Singh Saini v. Director Town & Country Planning and Anr.). Their Lordships were pleased to dispose of the writ petition with the direction that the Director Town and Country Planning "will dispose of the petition for grant of permission to re-erect the building in accordance with the Rules. He will also dispose of the request of the petitioner for compounding the un-authorised construction made by him on the area declared as controlled area or reserved area in the Development Plan in accordance with the Rules."

3. I have heard the petitioner, who appeared in person, and Mr. S.K. Pipat for the respondents. The petitioner has contended that the impugned action violates his right to own and deal with his property and that Respondent No. 2 was not authorised to issue this order under Para 913, which is only an executive instruction and not a statutory rule. On the other hand, Mr. Pipat learned counsel for the respondents, has submitted that the action was legal and valid.

4. The petitioner alleges that the construction had been raised by him in April, 1991 and that it is not unauthorised. The respondent contest this. Keeping in view the fact that the proceedings before the appropriate authorities are stated to be still pending, it is not necessary to determine this question in this petition. The only question that arises is - - Have the respondents exceeded their jurisdiction and violated the petitioners rights under the Constitution of India?

5. A perusal of the impugned order shows that the commanding Officer has given a direction to the personnel working under his command. Under para 913, Respondent No. 2 was admittedly entitled to issue such instructions. Mr. Saini has, however, contended that Para 913 does not embody a statutory provisions, but is only an executive instruction issued by the Government. Assuming it to be so, the action of the Commanding Officer cannot be said to be without jurisdiction. He has the power to issue instructions and can even declare certain areas out of bounds for the per sons working under his command. This is precisely what has been done. Consequently, the action of the Commanding Officer cannot be said to be without jurisdiction.

6. Equally lacking in merit is the contention that the action violates Article 19(1) (f). This provision was omitted from the Constitution by the Constitution (44th Amendment) Act, 1978. The contention is consequently misconceived.

7. Nor can the action be said to be arbitrary and thus violative of Article 14. Certain controversy with regard to the building in question has already arisen. It

is undeniably close to the Aerodrome. If no account of reasons of security or otherwise, the concerned authority has advised its men to stay away from the buildings, it cannot be said that the order is arbitrary or unfair. The contention is, consequently, rejected.

8. No other point was urged.

9. Consequently, there is no merit in this petition. It is dismissed. However, in the circumstances of the case, there will be no order as to costs.