

(2008) 12 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. 12838 of 2006

Baldev Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Haryana Control of Bricks Supplies Order, 1972 — Section 3

Citation : (2009) 1 ILR (P&H) 1140

Hon'ble Judges : Tirath Singh Thakur, C.J.;Surya Kant, J

Bench : Division Bench

Advocate : S.S. Dinarpur, for the Appellant; Rameshwar Malik, Addl. AG for Respondents 1 to 4, Arun Walia, for Respondent No. 5, Rajiv Atma Ram and Sunish Bindlish, for the Respondent

Judgement

Surya Kant, J.—This order shall dispose of Civil Writ Petition Nos. 12838 and 18137 of 2006 as common questions of law and facts are involved in these cases. Both these petitions have been filed in Public Interest, seeking a writ of certiorari to set aside/cancel the licence granted to Respondent No. 6 to establish and run a brick-kiln, allegedly in contravention of the Haryana Control of Bricks Supplies Order, 1972 read with the provisions of the East Punjab Control of Bricks Supplies Act, 1949. For brevity, the facts are being taken from CWP No. 12838 of 2006.

2. The East Punjab Control of Bricks Supplies Act, 1949 (in short the Act) was enacted to secure equitable distribution of the bricks to the public at a reasonable price and to prevent the brick-kiln owners from exploiting the situation by charging exorbitant prices. In exercise of its powers u/s 3 of the Act, the State of Haryana notified the Haryana Control of Bricks Supplies Order, 1972 (for short "the 1972 Order") which has been amended from time to time including the notifications dated 1st June, 1992 and 20th September, 1996. As per the siting parameters prescribed under the 1972 Order, a brick-kiln can not be installed unless it is located at the minimum distance prescribed from the prohibited

places, some of which being relevant to these cases, are as follows:

(d) Village Link Road 30 Meters Distance is to be measured from the nearest edge of the road reservation.

(0 Village Abadi 1 Kilometer Distance is to be measured as the crow flies from the nearest portion of the outer edge of Phirni and where there is no Phirni, the distance is to be measured from the outer edge of abadi.

(g) School/Dispensary 1 Kilometer Distance is to be measured as the crow flies from the nearest portion of the boundary line/wall.

(h) Other educational 1 Kilometer Distance is to be measured and public utility as the crow flies from the institutions nearest portion of the boundary line/wall of the institution.

(j) Garden/Nursery/ 1 Kilometer Distance is to be measured Forest Nursery as the crow flies from the nearest boundary.

(3) Vide a subsequent notification dated 20th September, 2006, the 1972 Order has been further amended and the following Sub-clause (i) (relevant extracts only) in Clause 8 thereof has been added:

?In case during the intervening period the limits of the municipality are changed or (he area is declared as controlled area or some school or college is located in the close proximity of the site of the kiln, the District Magistrate may revoke the licence at any time for reasons to be recorded in writing.....

...Provided further that if due to development and planning of the city the closing of the kiln is considered essential in public interest, the District Magistrate may order the closure of the kiln, after giving a notice of six months or till 30th June of that year, whichever is later, to the licensee .

(Emphasis applied).

4. A brick-kiln, thus, should necessarily be located at a distance of at least One Kilometer from the outer edge of the village "abadi", School, Dispensary, Garden or Nursery, it also appears that even if at the time of its installation a brick-kiln fulfilled the siting parameters but in the intervening period the area has been declared as a "controlled area" or a School or College is opened within the prohibited distance, the District Magistrate may revoke the brick-kiln's licence for the reasons to be recorded in writing.

5. In the present case, Vijay Kumar son of Shri Ishwar Parkash applied on 26th February, 2001 for a licence/No Objection Certificate for the installation of a brick-kiln in the name and style of M/s Ishwar Bricks Industries (Respondent No. 6) over the land measuring 27 kanals 4 marlas situated in the revenue estate of village Basantpura, Sub-Tehsil Radaur, District Yamuna Nagar. The Assistant Food and Supplies Officer, Radaur verified the location of the land and having found that its distance from the village "abadi" and the school was far less than what is

prescribed under the 1972 Order, he recommended rejection of the said application which was eventually rejected by the District Magistrate, Yamuna Nagar,--vide his order dated 19th March, 2001.

6. The Director, Food and Supplies, Haryana, however,--vide his Memo dated 26th April, 2001 asked the District Food and Supplies controller, Yamuna Nagar to send the case file and then passed an order dated 20th/24th July, 2001 intimating the authorities concerned including the District Food and Supplies Controller, Yamuna Nagar that in purported exercise of the power of relaxation contained in Clause 21 of the 1972 Order, the State Government had granted "exemption" to Respondent No. 6 regarding the condition of distance of the brick-kiln from the village Abadi and school, though subject to certain conditions. The afore-stated order dated 20th/24th July, 2001 reads as follows:

2. The State Government has granted exemption under Clause 21 of the Haryana Control of Bricks Supplies Order, 1972 from the operation of sub Clause (iii)(f)(g) of Clause 4 of the Order *ibid* for the grant of brick kiln licence to M/s Ishwar Bricks Industries Village Basantpura, District Yamuna Nagar, subject to the condition that the kiln owner will construct gravitational chamber and chimney of more than 100 feet height at site. It is further subject to the condition that after the installation of gravitational chamber, it will have to be ensured by the BKO that pollution contents are reduced to 1/5th or 1/6th of the present level which may be ascertained from Pollution Control Board, Haryana.

In view of above it may be ensured that initially licence on provisional basis is given to the BKO by the licensing authority. Only after construction of gravitational chamber and chimney of desired height requirement as laid down for the issue of brick kiln licence under the said control order and instructions issued from time to time, you may put up case to the licensing authority for grant of regular licence.

It is further directed that till the time the structures come up and physically verified no brick should be made by the brick kiln owner.

(Emphasis applied).

7. Respondent No. 6 accepted the above reproduced conditions and obtained No Objection Certificates from the District Townner Planner as well as the State Pollution control Board. Thereafter, provisional licence was granted to the 6th Respondent on 23rd November, 2004 which has since been regularized on 6th June, 2005 after verifying the construction of Chimney and gravitational chamber of the brick-kiln.

8. Assailing the grant of licence/No Objection Certificate and consequential installation of the brick-kiln, the Petitioners, who are residents of village Basantpura, allege that since the brick-kiln is located at a distance of 450 yards away from the village Abadi, 460 yards away from the Government Model School, 50 and 70 yards away respectively from the residential houses of Swaran

Singh and Des Raj and 400 yards away from the Mango and Guava orchard of Sohan Singh, not only the siting parameters contained in the 1972 Order have been manifestly violated, the 6th Respondent has become a constant source of polluted emission which is hazardous to the health of the village community and the adjoining agricultural land/orchards.

9. In response to the notice of motion, the Respondents including the brick-kiln, have filed their respective counter-affidavits.

10. The above noticed facts are broadly admitted by Respondents No. 1 to 4, though they defend their action primarily on the strength of Clause 21 of the 1972 Order, coupled with the fact that after it was allegedly fired on 7th June, 2005, the Respondent-brick-kiln submitted a photo copy of the "monitoring reports conducted by the Central Building Research Institute, Roorkee" which has certified that the height of the chimney was 120 feet and SPM (Suspended Particulate Matter) was 377 (maximum) as against the permissible limit of 750.

11. Contrary to it, the State Pollution Control Board in Paras No. 9 and 11 of their counter-affidavit have come up with the following stand:

9. That in reply to the contents of para No. 9 of the writ petition, it is stated that the specific parameters have been fixed for air emission for brick kilns by the Ministry of Environment and Forest. The maximum limit of the air emission of the brick kiln is 750 SPM as per the standard prescribed by the Ministry of Environment and Forest and at present the said brick kiln is achieving 377 (maximum) SPM against the limit of 750, but the said brick kiln can not reduce the level of SPM to 1/5 or 1/6 with the exist ins control measures installed by the brick kiln ".

11. That first part of para No. 11 of the writ petition relates to Respondents No. 1 to 3 and hence would be replied by them. It is further stated that the said brick kiln is achieving the air emission standard prescribed by the Ministry of Environment and Forest, but the said brick kiln can not reduce its pollution contents upto 1/5 or 1/6 level with the existing control measures. Nor they have submitted any scheme for the same". (Emphasis supplied) (12) Respondent No. 6 the brick kiln, on the other hand, has taken a preliminary objection alleging that the writ petition does not espouse any Public Interest, rather it is a frivolous petition filed with mala fide intentions only when the Petitioners failed to obtain ad-interim injunction in a Civil Suit No. 390 of 2004 titled as Gian Singh and Ors. v. Khushi Ram and Ors. instituted before the Civil Courts at Jagadhri in which Plaintiffs No. 1 and 3 were real brothers of Petitioners No. 1 and 4 in the first writ petition. The said civil suit was dismissed on 11th June, 2005 and the appeal preferred against the same was also withdrawn on 24th February, 2006. It is alleged that one of the Plaintiffs--Surinder Singh withdrew his name from the suit after the brick-kiln entered into an agreement with him for the purchase of mud from his land for manufacturing bricks. It is further pointed out that CWP No. 19197 of 2004 was filed by the Gram Panchayat of village Basantpura on the

same cause which was also dismissed as withdrawn on 17th January, 2005. Petitioner No. 2 of the said writ petition is also stated to be real brother of Petitioner No. 1 in the present first writ petition, whereas Petitioner No. 3 was a Member of the Gram Panchayat which had earlier withdrawn its writ petition. On merits, the allegations of causing any pollution have been refuted.

13. We firstly propose to deal with and reject the preliminary objection noticed above. The Civil Court, as its judgment reveals, did not decide the suit on merits rather it dismissed the same after observing that under Clause 19 of the 1972 Order, an appeal was maintainable before the Director against the order of the District Magistrate and in view of that efficacious remedy being available to the Plaintiffs, no injunction could be granted in their favour. The Civil Court further observed that at the time of filing of the injunction suit "Only the physical structures are being made, the brick kiln has not become operative as yet. The gravitational chamber and chimney as desired by the Director, Food and Supplies, Haryana as per the norms are being raised and only after fulfilling the requirements, the brick kiln shall come in operation ". The first appeal was also withdrawn by the learned Counsel as the Appellants were not "interested in pursuing" the appeal. The writ petition filed by the Gram Panchayat before this Court was dismissed as withdrawn with liberty that "the Petitioners may file a fresh petition on the same cause of action". It may be mentioned here that this Court permitted the Gram Panchayat to amend its writ petition, however, instead of amending the same, the Gram Panchayat withdrew the same with liberty to file a fresh writ petition. To be precise, the issues as to whether the siting parameters could be relaxed and if so whether Respondent No. 6--brick-kiln is bound to observe the conditions imposed by the State Government while relaxing the siting parameters, were not adjudicated on merits either by the Civil Court or by this Court. In fact, the Civil Court rightly observed that the issue regarding violation of the conditions imposed by the competent authority against the discharge of emission by the brick-kiln could arise only when the brick kiln became functional (after it was fired on 7th June, 2005).

14. Coming to the merits of the case, we are of the considered view that the question as to whether or not the siting parameters could be relaxed by the State Government in purported exercise of Clause 21 of the 1972 Order and if so to what extent, does not arise at all for consideration. Suffice it to say that while granting exemption, the State Government categorically subjected Respondent No. 6--brick kiln to the condition that "after the installation of gravitational chamber, it will be ensured by the BKO that pollution contents are reduced to 1/5th or 1/6th which may be ascertained from the Pollution Control Board, Haryana".

15. The condition of reducing the pollution contents to 1/5th or 1/6th of the prescribed level has an apparent direct nexus with the reduction of distance of the brick kiln from the village "abadi" and the school. It is an admitted fact that as against the requirement of distance of One Kilometer to be measured as the

crow flies, the actual distance is 400/460 yards only, i.e., 1/5th of the minimum required distance. The normal permissible limit of SPM upto 750 was required to be achieved by the brick-kiln even if it was installed as per the prescribed "Siting Parameters". However, due to substantial relaxation in those parameters, since the brick-kiln was likely to cause air pollution of such a gravity that it could make the life of the villagers miserable, the competent authority decided that the brick kiln should adopt extra ordinary measures and reduce the pollution contents to 1/5th or 1/6th of the present level.

16. The 6th Respondent--brick kiln accepted the afore-stated condition unconditionally and without any demur. It obtained the NOCs from other statutory authorities with an undertaking to comply with the said condition. However, what the Pollution Control Board has reported, is already reproduced by us. It says in no uncertain terms that "the brick kiln cannot reduce the level of SPM to 1/5th or 1/6th with the existing pollution control measures nor it has submitted any scheme for the same". We may clarify here that the SPM which is being achieved presently by the brick kiln would have been required to be achieved or maintained by it had it been located at a distance of at least one Kilometer away from the village Abadi or school. The brick kiln obtained relaxation in respect of its distance from the village abadi/ school, subject to the condition of reducing the SPM level to 1/5th or 1/6th of the prescribed limit of 750 and as per the stand taken by the State Pollution Control Board--Respondent No. 5, the brick-kiln having failed to achieve so, and is also not in a position to achieve the same with its existing pollution control measures, there can be no other conclusion but to hold that the 6th Respondent has failed to comply with the conditions contained in the licence granted to it by the competent authority,--vide its memo dated 20th/24th July, 2001. The licence being conditional in nature and the brick kiln having failed to honour and comply with those conditions, it was imperative upon the District Magistrate, Yamuna Nagar to revoke its licence and not to allow the same to be run unless it installs such pollution control measures which shall reduce its SPM level at least to 1/5th of the maximum prescribed limit of 750.

17. For the reasons afore-stated, we allow these writ petitions and direct the District Magistrate, Yamuna Nagar to revoke the licence granted to Respondent No. 6--brick kiln forthwith, in accordance with law and thereafter not to allow it to run unless it complies with the conditions imposed by the State Government while granting relaxation in the siting parameters,--vide its order dated 20th/24th July, 2001.

18. A compliance report shall also be submitted to this Court. There shall, however, be no orders as to costs.