
(1973) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3097 of 1972

Chaman Lal and Sons

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-01-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gram Panchayat Act, 1952 — Section 97(1)

Citation : AIR 1974 P&H 43

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Judgement

1. This writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the order of the Deputy Commissioner, dated September 12, 1972(Annexure "A").

2. The facts giving rise to this writ petition are that the petitioner is the owner of a brick-kiln situated in village Sidhwan, tehsil and district Gurdaspur, which it purchased from M/s R.K. Brothers Amritsar. It is situated on a site measuring 11/2 killas belonging to the Gram Panchayat, Sidhwan (hereinafter referred to as "the Gram Panchayat"). On February 4, 1972, the site was auctioned by the Gram Panchayat at 10.00 A. M. at village Sidhwan after proclamation, dated December 19, 1971. The petitioner gave the highest bid of Rs. 2500/- per annum for a period of three years which was accepted by a resolution of even date. An agreement was also executed on February 13, 1972, between them. An amount of Rs. 2,000/- was paid in advance for the year 1972-73 to the Panchayat on February 13, 1972. The petitioner is carrying on his business of brick-kiln in accordance with the terms of the agreement and licence. An application was filed by Kartar Singh respondent, to the Deputy Commissioner for suspension of the resolution, dated February 4, 1972, passed by the Gram Panchayat. The Deputy Commissioner suspended the resolution and stayed the petitioner from manufacturing bricks. The said order is illegal and void as the petitioner was not given any opportunity of being heard that the order violates the principles of

natural justice and that the order is not a speaking order.

3. A return has been filed by the Deputy Commissioner in which it is stated that he suspended the resolution of the Gram Panchayat under the provisions of sub-section (1) of Section 97 of the Gram Panchayat Act, 1952(hereinafter referred to as "the Act") and that he had the jurisdiction to do so. A notice was also given to the petitioner. The petitioner cannot file a writ petition as it was not necessary to send a notice to it. Kartar Singh respondent, has also filed a similar reply as was given by the Deputy Commissioner. He took up another plea also that the order of respondent had been confirmed by the Director of Panchayats, and that the petitioner had no right to challenge the said order of the Deputy Commissioner without challenging the order of the Director.

4. The only contention of the learned counsel for the petitioner is that no opportunity was given to it of being heard before suspending the resolution. The learned counsel for the State has submitted that though no notice was necessary to be given to the petitioner, yet a notice was given to it and the order was not finally passed by the Deputy Commissioner. It was to be confirmed by the Director after hearing the petitioner.

5. I have heard the learned counsel for the parties and am of the view that there is great force in the contention of the learned counsel for the petitioner. The order which has been produced by the petitioner clearly says that the resolution dated February 4, 1972, has been suspended by the Deputy commissioner. It is further stated in it that further manufacturing of bricks is also prohibited till further orders. The learned counsel for the State has produced the original order which is in the following terms:--

"Resolution be suspended and further action by the Panchayat and lessee is stayed. Further construction is also prohibited. Issue show cause notice and summon record."

6. u/s 97 of the Act, the Deputy Commissioner can suspend the execution of any resolution or order of the Gram Panchayat other than an order passed in the judicial proceedings. Before suspension of the resolution, in my view, it was incumbent on the Deputy Commissioner to have heard the petitioner. During the pendency of the petition for suspension of the resolution, he could stay further proceedings. He however, had no jurisdiction first to suspend the execution of the resolution and simultaneously to issue a show cause notice. In that case, if he agrees with the contention of the petitioner after he has represented the case, it may not be possible for him to review his order. As the order of suspension has been passed at the back of the petitioner, therefore, the said order is illegal. The Deputy Commissioner can, however, pass the order of suspension after hearing the petitioner. The learned counsel for the respondent-State has submitted that the petitioner has no right to challenge the aforesaid order as he is not an aggrieved party. I do not feel convinced from the argument of the learned counsel for the respondent-State that the petitioner is not an aggrieved party. He

has been adversely affected by the order and that appears to be the reason that the Deputy Commissioner considered it proper to issue to him a notice. The learned counsel for the respondents relies on the observations of a learned Division Bench of Bombay High Court in Shankarappa Ramappa Sidalali Vs. The State of Bombay, , wherein it has been observed that it is not for the High Court to consider the validity of opinion of the Collector u/s 99(1) of the Bombay Village Panchayats Act that any order or resolution of a Panchayat, or the doing of anything which is about to be done or is being done by or on behalf of a Panchayat, is causing or is likely to cause injury or annoyance to the public, or lead to a breach of peace, or is unlawful. This is entirely a different matter which has been dealt with in this case. I am not holding that the view of the Deputy Commissioner is erroneous. What I am saying is that he could not pass such an order without notice to the aggrieved party. In my view, the aforesaid observations are not applicable to the facts of the present case. The learned counsel for the State also relies on Subhas Chandra and Others Vs. Municipal Corporation of Delhi and Another, , wherein the matter was decided under the Punjab Municipal Act. The provisions of the Punjab Municipal Act are different from those of the Act. The observations made in that case are not applicable to present case.

7. The learned counsel for the State has also urged that an alternative remedy is available to the petitioner under sub-section (2) of Section 100 of the Act and this Court should not interfere in the present case. I am also unable to agree with the learned counsel for the State. Alternative remedy per se is not a ground for not interfering with the illegal order passed by the Deputy Commissioner. He should have given a hearing before passing the order. I, therefore, reject this contention of the learned counsel for the respondents.

8. For the reasons recorded above. I accept this petition with costs and quash the order of the Deputy Commissioner (Annexure "A"). He shall, however, be entitled to decide the matter afresh after hearing the parties. The parties are directed to appear before the Deputy Commissioner on 8th March. 1973, Counsel's fee Rs. 100-00.

9. Petition allowed.