

(1978) 03 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4061 of 1977

Daya Ram Garg, etc.

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 30-03-1978

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 31
Haryana Municipal Act, 1973 — Section 258, 258(3)
Haryana Municipal Common Lands (Regulation) Act, 1974 — Section 4, 7

Citation : (1978) 2 ILR (P&H) 211

Hon'ble Judges : A.D. Koshal, C.J.; S.S. Dewan, J

Bench : Division Bench

Advocate : G.C. Mittal and C.B. Goel, for the Appellant; S.C. Mohunta, A.G. and H.S. Gill, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.D. Koshal, C.J.—Taraori, Dodwa and Takhana were having a Gram Panchayat each prior to the 17th of November, 1977. By a notification of that date issued u/s 258 of the Haryana Municipal Act, 1973 (hereinafter referred to as the Act), the Haryana Government declared an area which was comprised of part of the area of village Takhana, part of the area of village Dodwa and part of Taraori town to be a notified area. Earlier to that a similar notification had been issued but withdrawn before the said date. The notification dated the 17th of November, 1977, is challenged in this petition under Article 226 of the Constitution of India on various grounds of which the following have been urged by Mr. Mittal, learned Counsel for the Petitioners, today:

(a) The earlier notification was revoked on the 13th of April, 1977, i.e., only about 7 months prior to the impugned notification. No reasons are apparent such as may indicate that there was a change in the situation which necessitated a repetition of the action u/s 258 of the Act. Consequently it cannot be said that the Haryana Government had applied its mind to the matter before issuing the

impugned notification.

(b) The area notified contains two villages which are purely agricultural and have separate Gram Panchayats to administer them. The impugned notification has, therefore, been issued in contravention of Sub-section (3) of Section 258 of the Act.

(c) The notified area is not comprised exclusively of a town. On that ground also the impugned notification contravenes Sub-section (3) aforesaid.

(d) The notification is ultra vires of Articles 19(1)(g) and 31 of the Constitution of India inasmuch as it deprives the Petitioners of the land forming the shamilat deh in village Dodwa without payment of compensation.

We shall deal with these attacks one by one.

2. In so far as attack (a) is concerned, we do not see how it was incumbent on the Government to show that a change in the situation had taken place between the 13th of April, 1977, and 17th of November, 1977. The earlier notification may have been revoked for various reasons which might even be technical and the only question which would be relevant for determining the validity of the impugned notification would be as to whether the Government had actually applied its mind while making the impugned notification, and even in relation to that matter the onus would be on the Petitioners to show lack of application of mind by the Government towards which no attempt has been made. We do not see that it would be for the Government to satisfy the Petitioners on the application of its mind in the absence of any prima facie evidence to the contrary. In this view of the matter attack (a) is repelled.

3. Sub-section (3) of Section 258 of the Act runs thus:

No area shall be made a notified area unless it contains a town or a bazar and is not a purely agricultural village.

The requirements of the Sub-section are, firstly, that the area notified must contain either a town or a bazar and, secondly, that such area must not be a "purely agricultural village". Both the conditions are fully satisfied in the present case inasmuch as Taraori is admittedly a town and neither a village nor a purely agricultural village. In other words the area notified contains a town and such area does not consist merely of a purely agricultural village. Attacks (b) and (c) are, therefore, wholly without substance.

4. In support of attack (d) learned Counsel for the Petitioners challenges the constitutional validity of Sections 4 and 7 of the Haryana Municipal Common Lands (Regulation) Act, 1974. No such challenge was made in the petition itself or before the Full Bench which, day before yesterday, considered questions of constitutional validity arising in the case. Nor again was any permission sought before the Full Bench for an amendment of the petition. In this view of the matter we refuse to allow Mr. Mittal to raise the point.

5. In the result the petition fails and it is dismissed but with no order as to costs.