
(2000) 05 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : C.P.W. No. 13362 of 1999

Kishori Lal Ved Parkash, Brick Kiln, Village Geeganwal	APPELLANT
Vs	
District Development and Panchayat Officer, Jalandhar	RESPONDENT

Date of Decision : 31-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Control of Bricks Supplies Act, 1949 — Section 3, 4(3)
Punjab Panchayati Raj Act, 1994 — Section 25, 35

Citation : (2001) 3 RCR(Civil) 268

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Ms. Gurvinder Karu, for the Appellant; Mr. K.S. Grewal, for the Respondent

Judgement

G.S. Singhvi, J.—Whether petitioners - M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan (petitioners in C.W.P. No. 13362 of 1999) can excavate earth in violation or the provisions of the Punjab Control of Bricks Supplies, Price and Distribution Control Order, 1998 (for short, the Control Order), notification No. Adm/A 2/F. No.178/94/232/5 dated 10.9.1998 issued by the Punjab .Pollution Control Board (for short, the Board) and the resolution dated 25.8.1998 passed by Gram Panchayat, Geeganwal is the question which arises for determination in these petitions, the first one of which has been filed for quashing of the order dated 26.11.1998 passed by the District Development and Panchayat Officer, Jalandhar (for short, the DDPO) and the second filed by Gram Panchayat, Geeganwal for restraining the petitioners of the first petition from excavating the earth within 880 yards of the village abadi for mounding bricks.

2. A perusal of the record of the two petitions shows that on having come to know that M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan are excavating land near village abadi. Gram Panchayat, Geeganwal passed resolution dated 25.8.1998 (Annexure P.I of C.W.P. No. 2973 of 2000) that kiln owners cannot take village abadi land on lease for excavation of earth within 880

yards. The relevant extract of that resolution is reproduced below :

"That within the estate of Geeganwal there are brick kilns out of which two are close to the village High School, which are under the management of Sham Lal and others and one brick kiln is on road Behram Manikdheri which is being run by Ved Parkash and Kishori Lal. The licence of last mentioned brick kiln is J-35. It was resolved that it should be noticed to them that in future no land within 880 meters of village abadi should be taken on lease for excavation because due to excavation, depressions are created near abadi, roads get damaged which causes inconvenience to village residents and school children. Rain water, during monsoon, gets accumulated in these depressions which can be a cause for some loss to life, stagnated water spreads disease. Nearly a foot deep pulverised dust is made on the roads due to continuous use of brick kiln vehicles which settles on the uniform of school children, depression on road pollute the environment. Panchayat unanimously resolves that concerned brick kiln owner be served with a notice that taking land on lease in the vicinity of the village abadi for excavation be banned. Resolution is approved, should any kiln owner violate this order, appropriate legal action be taken against him. Harbhajan Singh Sarpanch is authorised to take further steps in this regard."

3. In pursuance of the a fore-mentioned resolution, the Gram Panchayat, served noticed dated 26.8.1998 upon brick kiln owners that they should not take land within 880 yards of village abadi for excavation of earth and when they did not stop their activity, it filed an application before the DDPO to restrain them from digging earth from the fields comprising of Khasra Nos. 11/20/2(2-2), 11/11/2(0-17), 10/13/2(2-0). 16/10(7-2) situated in Village Geeganwal. After issuing notice to M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan and hearing the representatives of the parties, the DDPO passed order dated 26.11.1988 vide which he prohibited digging of earth within 880 yards of the populated area of the village. Operative part of that order reads as under :

"The arguments of the counsel of both the parties have been heard and record has been scrutinized, according to which respondent No. 2 is digging the earth within 880 yards of the populated area of the village. u/s 35 of the Panchayati Raj Act, 1994, the panchayat has the right to pass general order for stopping them from digging earth, which the gram Panchayat had done so by passing general order vide, resolution dated 25.8.98 and respondent No. 2 was informed about it. On refusal of accepting the notice, party No. 2 was sent a notice through UPC. In spite of that the brick kiln owners did not stop digging the earth within the limits of 880 yards from the population of the village which is a violation of panchayat order. Therefore. I order respondent No. 2 not to dig earth within 880 yards of the vicinity of the abadi and all other works by which people of the village are affected. I restrain them, [n case respondent No. 2 dig earth, then it can be done by leaving 880 yards from the vicinity of the abadi of the village."

4. M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan have

challenged the order of the DDOP on the ground of lack of jurisdiction. According to them, the power to pass an order of injunction exclusively vests in the Civil Court and, therefore, the DDPO could not have entertained the application filed by the Gram Panchayat. They have also challenged the resolution passed by the Gram Panchayat by contending that this had been done with an oblique motive to stultify their business. They have further averred that without passing an order in terms of Section 25(e) and (f) of the Punjab Panchayati Raj Act, 1994 (for short, the 1994 Act), the Gram Panchayat cannot interfere with the excavation of the land of which they have obtained lease.

5. Gram Panchayat, Geeganwal, who is respondent in C.W.P. No. 13362 of 1999 and petitioner in C.W.P. No. 2973 of 2800 has pleaded that in view of the resolution dated 25.8.1998 vide which excavation of earth within 880 yards of the village abadi was prohibited, M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan cannot carry on excavation activity from the land in question. It has placed reliance on the notification issued by the Board and the provisions of the Control Order in support of its plea that excavation of land within 880 yards of the village abadi is legally impermissible.

6. We have heard counsel for the parties. Section 35(e) and (f) of the 1994 Act, extracts of the notification dated 10.9.1997 and Clauses 4(2), (3)(i) and (ii) of the Control Order, which has been framed by the State Government u/s 3 of the East Punjab Control of Bricks Supplies Act, 1949 read as under:

"Section 35(e) and (f) of the 1994 Act

"Section 35. Power of Gram Panchayat to make general order

A Gram Panchayat may by general order to be published in the manner prescribed -

(a) to (d) xx xx xx

(e) regulate or prohibit the excavation of earth.

(f) regulate or prohibit the establishment of brick kilns and charcoal kilns within eighty hundred and eighty yards and pottery kilns within two hundred and twenty yards of the residential area of the village.

Extract of the notification dated 10.9.1997.

Board Notification No. Admn/A-2/F No.178/94/ 235/5 dated 10 Sept. 1997. The Punjab Pollution Control Board Patiala in its 94th meeting held on 4.7.97 approved the following emission standards and siting guidelines for Rice Shellers, Salla Plant and Brick kilns and Cement Plants.

1. Siting guide lines, Rice shelters and Salla Plants. Brick kilns, cement plants grinding units.

Distance from

(i) Municipal Corporation xxxxxxxx [editor]

(ix) F.ducational institutions/Historical/Religious Place/Protected Monuments. 800 M.

(f) Similar restrictions have been imposed through Punjab Government Gazette (extra) dated 28 Oct. 1998, bearing No. So-55/EPA-1/49/5-3/98 Clause 4(3) copy of clause 4 thereof is attached hereto as Annexure P.6.

Clauses 4(2) (3)(i) and (ii) of the Contral Order

4(2) Subject to the general or special instructions notified by the Government from time to time in this behalf, a licence may, if the site of the kiln is not detrimental to the health of the general public or to the crops, gardens or nurseries in close proximity thereto and also subject to the provisions of clause 5 be granted or renewed by the District Magistrate in Form-8 and such licence shall be subject to the conditions specified thereto and such other conditions as the Director may from time to time specify.

(3) The grant of licence for the operation of a brick kiln under clause (2) shall further be subject to the following conditions, namely -

(i) The brick kiln shall not be installed within the radius of one thousand meters from the residential area in the cities mentioned in the schedule and seven hundred and fifty meters from the residential areas in other towns and villages :

Explanation : The radius from the residential area shall be determined from revenue record i.e. from the Phirni of the village as determined in the latest proceedings for consolidation of holdings of the Department of Revenue and Rehabilitation in the case of the village and the Municipal limits in the case of towns and the notified area limits in the case of notified area committees.

(ii) In case of already installed brick kilns, the licensee shall either shift the brick kiln out of the residential area or obtain NO OBJECTION CERTIFICATE from the State Pollution Control Board before the Thirty First day of March. 1999 failing which the licence shall not be renewed :

Providing that (no) No Objections Certificate from the Punjab State Pollution Control Board would be required if the proposed site for installation of new brick kiln is beyond the distance of limits prescribed by Punjab State Pollution Control Board :

xx xx xx

7. A perusal of the above quoted provisions of law, the extracts of the notification issued by the Board and the resolution passed by the Gram Panchayat shows that a brick kiln can be installed and operated only after obtaining licence in accordance with the provisions of the Control Order. Clauses 4(2) and (3) of the Control Order specify the conditions which must be fulfilled before a licence can be granted. Paragraph 1(i) of Sub-clause (3) of Clause 4 prohibits installation of

brick kiln within the radius of one thousand meters from the residential area in the cities and seven hundred and fifty meters from the residential areas in other towns and villagers. Para (ii) of clause 4(2) of the Control Order lays down that the existing brick kiln owners shall either shift the brick kiln out of the residential areas or obtain No Objection Certificate from the Board before the thirty first day of March, 1999. Notification dated 10.9.1997 issued by the Board provides that no brick kiln shall be set up within 750 meters of the village Lal Dora and within 880 meters from residential area, i.e., pucca house or educational institution/historical/religious place/protected monuments. The object underlying these provisions is that the brick kiln shall not be detrimental to the health of the general public or to the crops, gardens or nurseries and in order to achieve this object in respect of village areas, the Gram Panchayat has been empowered u/s 35 of the 1994 Act to issue a general order to regulate or prohibit excavation of earth and establishment of brick kilns within 880 yards and pottery kilns within 220 yards of the residential area of the village.

8. In the light of the above, we shall now consider as to whether the decision taken by the Gram Panchayat in its meeting held on 25.8.1998 falls within the ambit of section 35(e) of the 1994 Act and whether M/s, Kishori Lal Ved Parkash etc. can be allowed to excavate the land in violation of that decision and the provisions of the Control order. A look at the resolution dated 25.8.1998 shows that it does not make a specific mention of Section 35(e) or (f), but a conjoint reading of the resolution with the notice dated 26.8.1998 (Annexure P.2/T in C. W.P. No. 2973 of 2000) makes it clear that the Gram Panchayat had taken a general decision to prohibit excavation within 880 yards of village abadi keeping in view the interest of the general public and notified the same, therefore, notwithstanding the fact that it has not been formally described as an order, the decision of the Gram Panchayat will be deemed to be covered by the scope of power exercisable by it u/s 35(e) and (f).

9. M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan have not challenged the legality of the resolution of the Gram Panchayat or the provisions of the Control Order and the notification issued by the Board, therefore, they are bound by the said resolution and the provisions of the Control order and the notification issued by the Board and the activities undertaken by them to excavate the land are illegal and violative of the provisions of the Control order and the notification issued by the Board.

10. We have our serious reservation about the entitlement of petitioners-M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan to operate the brick kiln near village abadi because they have not produced the licence issued by the competent authority under Clause 4 of the Control Order. However, as the installation of brick kiln is not under challenge, we do not consider it proper to pronounce upon this aspect of the matter.

11. The question which remains to be considered is as to whether the DDPO had the jurisdiction to restrain brick kiln owners from excavating the land within 880

yards from village abadi. In our opinion, adjudication of this issue has become purely academic because even if we were to accept the plea of M/s. Kishori Lal Ved Parkash and M/s. Kishori Lal Baldev Kishan that the DDPO did not have the jurisdiction to pass an order of injunction relief cannot be given to them by quashing the order dated 26.11.1998 and thereby entitling them to excavate the land in violation of the provisions of the Control Order, the notification issued by the Board and the decision taken by the Gram Panchayat because it is a settled principle of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court will not issue a writ which may entitle the party to act in violation of the provisions of law.

12. For the reasons mentioned above, C.W.P. No. 13362 of 1999 is dismissed. C.W.P, No. 2973 of 2000 is disposed of as infructuous. The interim order dated 20.9.1999 passed in C.W.P. No. 13362 of 1999 is vacated.

13. Petition dismissed.