
(1983) 10 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3778 of 1976

Mahant Ram

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 06-10-1983

Acts Referred:

Citation : (1984) ILR (P&H) 10 : (1984) PLJ 52 : (1984) RRR 256

Hon'ble Judges : S.S.Kang, J

Advocate : Mr. J.K. Sibal, Advocate., Advocates for appearing Parties

Judgement

S.S. Kang, J.—This order will dispose of Civil Writ Petitions Nos 3778 and 3779 of 1976 as common questions of law and fact are involved.

2. The petitioners in these two writ petitions are residents and house owners of two colonies known as Guru Ravidas Pura and Guru Arjan Dev Nagar situate near Chowk LudhianaSamrala road and LudhianaJullundur bypass. After purchasing the land from different landowners, the petitioners have built residential houses or shops. By a notification dated October 3, 1975 issued by the State Government in exercise of the powers conferred on it by subsections (1) and (3) of section 5 of the Punjab Municipal Act ('the Act' for short), the entire area where the buildings of the petitioners have been constructed and stretch of the LudhianaSamralaJullundur road has been included within the limits of the Municipal Committee, Ludhiana and this area is now governed by the provisions of the Act. The Municipal Committee, Ludhiana, runs the municipal administration and the jurisdiction regarding these areas have come to vest in it with effect from October 3, 1975. It is alleged by the petitioners that the authorities under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as 'the 1963 Act', are illegally harassing them by issuing notices calling upon them to show cause why action should not be taken against them in connection with the unauthorised construction made by them. One of such notices dated 7th June, 1976 has been appended as Annexure P.1 in Civil Writ Petition No. 3778 of 1975 and two notices

dated 1st July, 1976 and November 26, 1974 addressed to Sarvshri Tarsem Lal and Karnail Singh, petitioners, respectively have been appended as Annexures P.1 and P.2 respectively in Civil Writ Petition No. 3779 of 1976. Aggrieved by this illegal conduct of the respondents, the petitioners have filed these writ petitions.

3. The respondents have shown cause and controverted the allegations in the writ petitions. It has been alleged that the petitioners have made constructions in violation of the provisions of the 1963 Act. Some of the petitioners have demolished their buildings themselves. Only notices have been given to some of the petitioners and no demolition orders have been served upon them so far. The cases in which action has been taken in respect of the unauthorised construction, the petitioners were given opportunity of hearing but they did not furnish any proof in support of their contention that the buildings were constructed before the enforcement of the 1963 Act. It was admitted that notices to some of the defaulters were served between 1968 and 1970. By the mere extension of the municipal limits or the inclusion of the disputed area within such limits the jurisdiction of the authorities under the 1963 Act does not come to an end. The petitioners contention that they had raised constructions prior to 1963 was stoutly denied.

4. Though a number of grounds were taken in the writ petition by the petitioners in support of their claims yet Shri J.K. Sibal, learned counsel for the petitioners, has raised before me only two contentions; firstly he has argued that by definition as given under subsection (10) of section 2 of the 1963 Act, 'Scheduled road' means a road specified in the Schedule to the Act but it does not include any part of such road or portion not being a bypass, which is situated within the limits of a local authority. By their inclusion portions of the Samrala Ludhiana road (within the Municipal Committee) it ceased to be a Scheduled road within the meaning of this term given in the 1963 Act. No action, therefore, could be taken under section 3 of the 1963 Act. He, however, conceded that the bypass connecting Ludhiana Samrala Road with the G.T. Road on Jullundur side is not excluded from the definition of Scheduled road as given in section 2(10) and the authorities under the Act can take action for violation of the provisions of section 3. It is plain from the language of section 2(10) that that portion of a Scheduled road, which is not a bypass but is situated in the limits of a Municipal Committee, does not fall within the ambit of the term 'Scheduled road'. The petitioners, cannot therefore, be proceeded against for any violation of section 3.

5. Secondly, it was contended by Mr. Sibal that with the inclusion of the disputed areas within the municipal limits the authorities exercising jurisdiction under the 1963 Act became functus officio with regard to the included areas. The freshly included area by virtue of section 5 of the Act came to be governed by Municipal Committee. All Rules, notifications, bye laws, orders, directions and powers made, issued or conferred under the Act and in force throughout the municipal limit at that time, came to apply to the areas on which the buildings in dispute

have been constructed. These rules, byelaws, etc. cover the same ground, which is the subject matter of the 1963 Act. These include the powers to regulate and control of the construction and erection of the buildings. They also authorise the Municipal Committee or its authorised officers to control, by rules, the constructions, conversion and alterations of the buildings. As a matter of public policy the two sets of authorities cannot be vested with the same powers in relation to the same area. Therefore, after the inclusion of the areas in which the petitioners' building, have been constructed within the municipal limits the authorities under the 1963 act cease to have jurisdiction. They cannot take action on the basis of alleged violations of different provisions of the 1963 Act which took place Before October 3, 1975. On first flush the argument seems to be attractive but it does not bear a close scrutiny. The Punjab Municipal Act was passed by the Punjab Legislature in 1911. The Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, was enacted by the Legislature in 1963. The knowledge regarding the presence of the Punjab Municipal Act on the statute book can very legitimately be the attribute of the Punjab Legislature who framed the 1963 Act. Fully aware of the prevailing situation the Punjab Legislature passed the 1963 Act. The preamble states that this Act was passed to prevent haphazard and substandard development along Scheduled roads and in the controlled areas, in the State of Punjab. The object of this Act is not so much to regulate and control the individual buildings in an area where there is no restriction for raising constructions of such buildings. The purpose of the act is to prevent the growth of slums areas in and around the big towns and cities and along side the Scheduled roads. It is to prevent the proliferation of unauthorised colonies in and around the vicinity of towns in Punjab. The Punjab Municipal Act was not fashioned with this end in view. This Act was passed to make better provisions and for the administration of municipalities in Punjab. The provisions regarding streets and buildings have been enacted in sections 169 to 187 of the Act. These mainly deal with the provisions, maintenance and protection of streets, arrangement of lighting therein. Section 189 prohibits the erection or construction of the buildings without the sanction of the committee. The emphasis under the Act is to see that the buildings constructed conform to the norms prescribed keeping in view the hygienic and sanitary conditions of the areas. The Municipal Committee has no power to prohibit the construction of buildings in a particular area. The purpose of the 1963 Act is to control building activities in a particular area. The two acts have been framed to meet the two entirely different and distinct situations.

6. There is no provision either in the Act or the 1963 Act which may expressly or by necessary implication exclude the application of the 1963 Act to the areas which came to be included within the municipal limits. The schemes of the two Acts also do not lead to any such conclusion. Rights and liabilities created by a special statute cannot be done away with without the express statutory mandate. Certain officers have been invested with certain powers and have been given certain duties to implement the provisions of the 1963 Act. No provision of the

Act puts any restriction on the exercise of their jurisdiction or powers. Mr. Sibal has not been able to refer to any principle or precedent in support of his second contention.

7. For the foregoing reasons I find no merit in these writ petitions and the same are dismissed but there shall be no order as to costs.