
(2002) 04 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 2947 and 3198 of 2000

Manohar Singh Marwaha

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Madhya Pradesh Pashu (Niyanttran) Adhiniyam, 1976 — Section 4, 6

Citation : AIR 2003 MP 136 : (2003) 1 MPJR 12

Hon'ble Judges : Uma Nath Singh, J;Dipak Mishra, J

Bench : Division Bench

Advocate : Manoj Sharma, R.N. Singh, R.P. Agrawal, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.

The petitioners, owners of Dairy farms in the Gwarighat area of Jabalpur have called in question the validity of the notification dt. 19-3-1999 issued by the Municipal Corporation, Jabalpur in exercise of powers vested under Clause 19(1) (b) of Municipal Corporation, Jabalpur Pashu (Niyanttran) Adesh, 1978 towards the implementation of the resolution No. 70 dt. 21-10-1997 passed by the standing committee thereof, which was incompetent to do so. By the impugned notification a complete ban was imposed on carrying out dairy farming in two villages, namely, Gwarighat and Lalpur which were earlier exempted from being out of bounds for keeping catties. In its hind-sight, the resolution No. 70 dated 21-10-97 was passed by the standing committee of Municipal Corporation Jabalpur for shifting all dairies by the end of 1997 from city area to out-skirts of the township, with a view to protect the residents against any health hazards as also to keep the city clean and absolutely free from water pollution, feared to be more likely on account of the region being prone to frequent earthquakes and location of the dairy farms also being in close proximity of water pipe line passing through that area. The challenge is directed, inter alia, mainly on the grounds

that (a) the standing committee lacked jurisdiction being incompetent to pass any such resolution as the powers anchored to, u/s 4 of the M.P. Pashu (Niyamtran) Adhiniyam, 1976 (hereinafter to be referred to as Act No. 21 of 1976) regarding control, maintenance, supply, and distribution, etc. have been delegated by the State Government u/s 6 of the Act, to the Municipal Corporation and not to its standing committee;

(b) that it was mala fide act which also suffered from the vice of non-application of mind and colourable exercise of power; and (c) that it is a pronounced case of procedural ultra vires.

As per averments in the petitions, the petitioners are established in the business of dairy farming for quite some time. Presently, they are running their dairy farms from villages called Gwarighat and Lalpur in Jabalpur. They allege that the respondents herein have been pressurising the dairy owners of Jabalpur on one pretext or other, right since 1971 to shift their dairy farms from the township of Jabalpur to places outside its Municipal Area which led to protracted litigation on various counts.

The action as such of the Municipal Corporation (resp. No. 2) was questioned by way of a writ petition registered as M.P. No. 738/1971 (Sundarlal and 76 Ors. v. The Municipal Corporation, Jabalpur and Anr.), which was disposed of in view of a scheme, where under, the respondent No. 2 was to reserve three huge plots in the outskirts of the township for dairy farms.

Thereafter, there was another set of litigation by way of writ petition No. M.P. No. 643/76 (Sardar Santok Singh and 66 others v. Municipal Corporation) filed in this Court which impugned the payment of development charges. The said writ petition was dismissed on 2-7-76. As a result, the dairy owners of Jabalpur were either to shift their dairy farms on to three reserved plots or to make their own arrangements. The dairy owners preferred the later and chose to make their own arrangements. They purchased agricultural lands situated in the out-skirts of the township and shifted their dairy farms. In the mean time, the respondents came out with the Act No. 21 of 1976. The relevant provisions of the Act namely, Sections 4 and 6 on reproduction read as under :

"4. Powers to control maintenance, supply, distribution, etc. (1) If the State Government is of the opinion that it is necessary or expedient so to do for the purpose of promoting the public safety or public convenience or public health, it may, by a notified order, prohibit or regulate the keeping, maintaining or movement of any cattle in any particular place or area specified in such order.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), and an order made thereunder, may provide--

(a) for prohibiting or regulating stalling or herding of cattle in regard to the number thereof, and the place to be used for the purpose;

(b) for the inspection of the cattle and regulating the construction, dimension,

ventilation, lighting, cleaning, drainage and water supply of dairies and cattle sheds, in the occupation of persons following the trade of dairy men or milk seller:

- (c) for establishment or construction of Gwala colonies, dairies and cattle pens;
- (d) for prohibition or regulation of import of cattle In the specified place or area;
- (e) for regulating by licence, permit or otherwise any of the matters under the Act;
- (f) for any incidental or supplementary matters, including the charging of the fees.

Delegation of powers. The State Government may, by notified order, direct that the power to make orders u/s 4 shall be exercisable also by such officer or authority including local authority and in relation to such matters and subject to conditions, if any, as may be specified in the order."

The petitioners aver that a water pipeline of Public Health Engg. Deptt. and another that of Railways pass through, at some distance from their dairy farms at Gwarighat and also submit that the said pipe line of Public Health Dept.. is embedded at about 5-10 ft. under the earth, whereas that of the railways, is raised on pillars above the earth. They clarify that these pipelines are made of cast iron and are absolutely safe. According to them, one Shri K. K. Naikar, a Mimicry Artist purchased a plot of land and constructed his house in Gwarighat area which is at a distance of about 500 yards from the dairy farms. They say that Mr. Naikar purchased the land and constructed a house much after the establishment of dairy farms at Gwarighat, an area exempted from being out of bounds for cattle.

Mr. Naikar is alleged to dislike the dairy farming near his house and therefore, filed a complaint u/S. 133, Cr. P.C. being the complaint No. 337/1996 before the Sub-Divisional Magistrate, Jabalpur. It is further alleged that during the pendency of the said complaint, Mr. Naikar sponsored a public interest litigation before this Court which was filed by a forum known as Nagrik Upbhokta Marg Darshak Manch, Jabalpur charging the dairy owners with polluting the drinking water pipes with cow dung. The PIL being registered as WP No. 3320/1996 was disposed of on 16-12-1996 with directions to shift the dairy farms from Gwarighat and to allot lands in village Tilhari to the Dairy owners through proper channel. Being aggrieved by the said order, two special Leave petitions were filed before the Supreme Court, being the SLP (C) No. 2926/1997 (Ramji Patel v. Nagrik Upbhokta Marg Darshak Manch) and the SLP (C) No. 2927/ 1997 (Manohar S. Marwaha v. Nagrik Upbhokta Marg Darshak Manch and Ors.). On 3-2-1997 show cause notices were issued to respondents therein including the Divisional Manager, Railways, Jabalpur and the operation of the order passed by this High Court dated 16-12-96 in writ petition No. 3220/1996 was also stayed. Thereafter on the subsequent dates of hearing, the Hon''ble Supreme Court

directed the Central Pollution Control Board to inspect the site through some expert and suggest the mechanism for treating the cow-dung and urine of cattle to prevent it from flowing over the said pipe lines so as to avoid a possibility of contamination of the drinking water supplied through the pipe lines. It is mentioned that on 16-1-98 the Hon''ble Supreme Court also directed issuance of a notice to the State Pollution Control Board of M.P. Thereafter a further direction was issued to the Central Pollution Control Board to prepare a project report suggesting suitable measures to contain the contamination of water. The petitioners say that they also paid a sum of Rs. 93,000/- towards the expenses for the preparation of the project report. Further on the recommendations as contained in the project report, the petitioners claim to have established two huge bio-gas plants which were to be monitored by the M.P. Urja Vikas Nigam. They''also claim to have complied with another recommendation of the Central Pollution Control Board as regards construction of a larger boundary wall in order to secure a water tight compartmentalization of the flow of cow dung and dairy waste so as to avoid any contact with the water pipe lines. It is submitted that during the pendency of the said petitions before the Hon''ble Supreme Court, the standing Committee of the Municipal Corporation Jabalpur, passed the impugned resolution on 21-10-97 resolving that all the dairies situated within the Municipal limits of Jabalpur shall be shifted to out-skirts. However it contained a specific mention that the dairies situated in village Lalpur shall also be shifted, as there were complaints against them. The impugned notification dated 19-3-99 was issued to carry but the said resolution dated 21-10-97 of the standing committee which was brought to the notice of the Hon''ble Supreme Court only during the course of final arguments. The Hon''ble Court by the judgment dated 17-2-2000 which is reported as 2600 (3) SCC 29, disposed of the said SLPs with following-directions ;

"(a) In view of the notification published in the Government Gazette on 19-3-99, milk dairies and the keeping of cattle at the place in question or for that matter, in Villages Lalpur and Gwarighat, cannot be permitted to continue nor can anyone be permitted to establish it in those villages, specially in the proximity of the main pipeline through which drinking water is supplied to the city of Jabalpur.

(b) Whether the notification published in the Government Gazette dated 19-3-99 is valid or not cannot be decided in the present proceedings as there are no pleadings in that regard. It will be open to the petitioners to challenge the notification by instituting appropriate proceedings questioning its validity on all the grounds which have been orally urged before us, including the ground that the notification reflected a colourable exercise of power in the hands of the Municipal Corporation, or that it intended to interfere with the proceedings pending in this Court, but such proceedings shall have to be, instituted by the petitioners within three months from the date of this judgment. The interim orders passed by this Court in these petitions shall continue for another period of three months and two weeks thereafter, to enable the petitioners to approach the High Court and make appropriate application for interim relief.

(c) Since the notification dated 19-3-99 was issued by the Municipal Corporation during the pendency of these proceedings at a stage when this Court had already allowed the petitioner to set up the Bio Gas plant and the petitioner in SLP (C) No. 2927 of 1997 has incurred an expenditure of Rs. 5,86,000, the Municipal Corporation, Jabalpur, shall after deducting the amount of subsidy as may have already been paid by the Government, pay that amount to the petitioner in SLP (C) No. 2927 of 1997 at; the time of their shifting to the new locations pursuant to the notification dated 19-3-1999 and in the event of their challenge to the said notification being turned down by the High Court, he and petitioner 1 in SLP (C) No. 2926 of 1997 will also be entitled to all the benefits indicated by the High Court in the impugned judgment while dealing with the Individual cases of the petitioners.

(d) The petitioners namely, Mr. Shiv Kumar Patel and Hariram Rajak in SLP (C) No. 2926 of 1997 have Indicated their willingness to shift to new locations in terms of the judgment passed by the High Court. Consequently, the SLP on their behalf shall be treated to have been dismissed as not pressed."

Heard Shri Manoj Sharma, learned counsel for the petitioners, Shri R. P. Agrawal, learned Senior Counsel for the Municipal Corporation, Jabalpur, Shri R. S. Jha, learned Dy. Adv. General with Shri S. K. Yadav, learned Govt. Adv. for the State and Shri R. N. Singh, learned Senior Counsel with Shri Vivek Ahuja, counsel for the intervenor, (Nagrik Upbhokta Marg Darshak Manch) and perused the documents on record. Shri Sharma submitted that the impugned notification dated 19-3-99 purported to have been passed by the Municipal Corporation, Jabalpur, in exercise of powers under Clause 19(1)(b) of the Municipal Corporation, Jabalpur, Pashu (Niyam-tran) Adesh 1978, has in-fact, not been passed by the Municipal Corporation but, has come into existence on the basis of resolution No. 70 dated 21-10-97 passed by the Standing Committee which cannot substitute the legal entity of the Municipal Corporation. As per the challenge in the petitions, u/s 6 of the M.P. Pashu (Niyamtran) Adhiniyam 1976, the Municipal Corporation has been delegated with power which is also clear from the Municipal Corporation, Jabalpur, Pashu (Niyamtran) Adesh 1978 wherein the Corporation has been defined to mean Municipal Corporation Jabalpur and it Includes the administrator when the house of Municipal Corporation is dissolved in-accordance with Section 422 of " the Municipal Corporation Act and consequences thereof follow u/S. 423 of the Act. Therefore, Municipal Corporation being a delegatee could not have sub-delegated the power, which amounts to an unauthorised sub-delegation. Thus, the exercise of power for passing resolution by the standing committee suffers from procedural ultra vires in as much as there was no such proposal put up before the standing committee but even then resolution was passed. As per further challenge in the petition, it is averred that the act of sub-delegation suffers from improper purpose and colourable exercise of power; that though there are number of other villages, only two villages have been denotified for exclusion from the list of the exempted villages of the Municipal Corporation; that when the dairy establishment of the

petitioners became pollution free, there was no reason, whatsoever, to uproot it; that the Corporation made an attempt to over reach the process of law by issuing impugned notification when the matters were pending before the Supreme Court and information about that notification was brought to the notice of the Court only at the stage of final hearing, and that the said act of the respondents smacks of malice.

The petitioners further mention that issues pertaining to pollution and public interest were raised before the Apex court and the same were considered before rendering the aforesaid directions; that the petitioners paid Rs. 93,000.00 towards survey charges and thereafter also, spent huge amounts on implementation of measures as contained in the recommendations after survey; that in the Master Plan of Jabalpur, villages Gwarighat and Lalpur have not been ear-marked as residential places and in fact, these areas are essentially meant for agricultural purposes and dairy farming is a part thereof; that the respondents have deliberately confused the issue by not drawing a delimitation between city limits and corporation limits, and that like other villages, Gwarighat and Lalpur only fall within the Municipal limit, therefore, they ought to have not been singled out for deletion from the list of villages exempted from animal control order. The petitioners also state that it was well within the knowledge of the respondents, when the exemption was granted to villages Gwarighat and Lalpur that the Lalpur water works had not become functional and it was on record that the Municipal Corporation was fully aware many years prior to that, that Lalpur water works is being commissioned and shall be operational at any time. Despite that knowledge, the respondents granted exemption to villages Lalpur and Gwarighat and for all the years the exemption continued. Therefore, it is a case of colourable exercise of power with oblique motive to defeat the claim of the petitioners. The petitions mention that a huge amount, worth lacs was spent for carrying out the recommendations of the Central Pollution Board to keep the area free from Pollution. Despite that, if they are to uproot their dairies and shift to other places, it would cripple their entire business and thereby, would deprive them of their livelihood. Further, if at all, the respondents are serious in their professed crusade in ousting Dairies from village Lalpur & Gwarighat they should have taken steps to issue notice to oust other 31 dairies from that area. Therefore, the acts of the respondents not only suffer from malice-in-law but also malice-in-fact and they are designed to help only one person namely K. K. Naikar a Mimicry artist who has been sponsoring public interest litigations against the petitioners.

Shri R. P. Agrawal, learned Senior counsel appearing on behalf of the respondent No. 2 (Municipal Corporation Jabalpur) and the respondent No. 3 (Commissioner, Municipal Corporation, Jabalpur) defended the impugned notification as well as the resolution and submitted that defects, if any, are curable by the statute though he could not point out any such specific provision. However, the return filed on behalf of the respondents says that the population of Jabalpur Town has been increasing fast and now it has reached a figure of about 14 lacs.

Accordingly, dairy farms have also increased beyond proportion. There are about one thousand dairies operating in the city, which are creating unhygienic condition and polluting the environment besides causing nuisance and road accidents. It further says that the respondent-Corporation has been consistently taking measures for removal of the dairy farms from Municipal limits which are being defied by the dairy farms on one count or the other. In that sequence only, "The Madhya Pradesh Pashu (Niyanttran) Adhinyam 1976" was enacted in the interest of general public and for the maintenance and movement of cattle, which came into force within the Municipal Limits of the city of Jabalpur with effect from 27-1-1978. That apart, in 1978, under the provisions of Section 423 of the Municipal Corporation Act, the Administrator of the city of Jabalpur while acting as Municipal Corporation, Jabalpur made "Municipal Corporation Jabalpur Pashu (Niyanttran) Adesh 1978" in exercise of the powers conferred by Section 4 of the Act No. 21 of 1976 read with orders of the State Government in the Agriculture/ Veterinary Department No. C. 17/2/77/PC/ 14 dated 13-9-77. Under this order, the dairy owners were required to obtain a licence in the prescribed form to operate a dairy on the terms and conditions mentioned in the licence. The position in the year 1978 was different from what it is today. That time Gwarighat Ward, of which Lalpur is an integral part and popularly known as Gwarighat-Lalpur Road, was not densely populated, the Lalpur Water Treatment and Filtration Plant had not been commissioned, water supply from such Filtration plant from 700 M.M. dia metre pipe line had not started and, therefore, under those circumstances, the dairies were permitted to be located at Gwarighat Lalpur in the year 1978. It is also averred that the State Government had approved the Narmada Water Supply Scheme for the City of Jabalpur and pursuant thereto, laying of 700 MM dia metre pipe line was started in the year 1979, Water Treatment and Filtration Plant at Lalpur of 42 MLD Capacity was established in the year 1982, and the water supply from 700 MM dia metre pipe line commenced from such Filtration Plant in the year 1983. It also says that Gwarighat and Lalpur were not densely populated in the year 1978-79, Lalpur Water Treatment and Filtration Plant had not commenced, the water supply from 700 MM dia metre pipe line had also not started, therefore, dairies were permitted to be located at Gwarighat and Lalpur villages. In 1982, number of cattle in the dairy farms of the petitioners was few and now they have been increased in hundreds. That apart, a number of other dairies were also shifted to Gwarighat and Lalpur near about the same time and the population of these villages considerably increased. As a result cow-dung and urine started flowing above water pipe-lines. As regards the vires of the impugned resolution and notification, the respondents submit that these documents are absolutely valid for the reasons that public interest is more Important than individual interest, and that Narmada river which is the feeder source for the water Filtration plant for Jabalpur became greatly polluted by the cow and buffalow bathing in the said river, If the dairy farms of the petitioners are allowed to continue, it would be difficult to remove other about 300 dairies situated in the same area, The Development plan of the city of Jabalpur was prepared by the Director of Town &

Country Planning, Bhopal under the provisions of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, wherein Gwarighat and Shanker Shah Nagar Wards have been earmarked for residential colonies.

The respondents state that villages Jamtara, Paraswara and Southern bank of Pariyat river are ideally suited for the dairy farmers since they are in the proximity of pasture land and water bodies with convenient approaches to the city. The Master Plan also provided that the existing dairies scattered in the city area are proposed to be shifted to the dairy site. The impugned resolution No. 70 dated 21-10-97 is neither mala fide nor improper. The respondents further state that the petitioners did not take any preventive measures as suggested in the Project Report prepared by the Central Pollution Control Board, nor did they appear to have any land of their own where their dairies were to be situated, nor did they file any document to substantiate the ownership of Khasra where they alleged to have shifted their dairy farms in village Lalpur. The respondents further submit that except Gwarighat and Lalpur, other villages mentioned in the notification dated 24-3-78 do not fall in the Municipal limits and therefore, it is wrong to say that only two villages namely Gwarighat and Lalpur have been taken out from the list of excepted villages so as to remove the petitioners' dairies and to harm their interest. It was also submitted that the impugned resolution does not suffer from the vice of sub delegation of powers. u/s 6 of the 1956 Act as it existed on 21st October, 1997, the Municipal authorities which were charged with carrying out the provisions of the Act, were namely : (i) the Corporation; (ii) The Standing Committee, and (iii) The Commissioner. u/s 37 of the Act, the Standing Committee is to consist of the Mayor, the Chairman of the Departmental Committees constituted u/s 46 and three elected councillors nominated by the Standing Committee, The decision to remove the dairies by resolution dated 24-10-97 was taken unanimously by the Standing Committee, which was the most powerful Committee of the Corporation, The Corporation works through its functionaries and the then standing committee was a high powered committee enjoying all the powers of the Corporation, Thus, it is not a case of sub-delegation. The Standing Committee was presided over by the then Mayor and decision was taken unanimously, therefore, the impugned resolution must be deemed to have been passed by the respondent-Corporation itself. The standing committee of the Corporation consisted of 10 elected councillors with the Mayor as the Ex-officio Chairman and also other persons. The resolution dated 21-10-97 and the subsequent notification dated 19-3-99 were passed validly and the same were defended by Corporation itself by filing an affidavit of the Health Officer of the Municipal Corporation before the Supreme Court.

Thereafter the Corporation also moved an application for vacating stay before the Supreme Court as per affidavit dated 3-3-97. An endeavour was made to impress upon the Court that the act of the standing committee stood rectified by the Corporation. The respondent's say that supply of pure drinking water under Chapter 16 of the M.P, Municipal Corporation Act 1956 is a statutory duty and place reliance on the decision of the Apex Court rendered in the case of Ramji

Patel and Others Vs. Nagrik Upbhokta Marg Darshak Manch and Others, . Thus according to the respondents, shifting of the dairies from Lalpur and Gwarighat was with an object to supply pure drinking water.

Shri R. N. Singh, learned Senior Counsel for intervenor, namely, Nagrik Upbhokta Marg Darshak Manch, supported the stand of respondents for removal of dairies from villages Lalpur and Gwarlghat on the ground of public interest. He also submitted that if the resolution and notification in question are quashed, it may create a chaotic situation. In the pleadings on record on behalf of the intervenor, it has been emphasised that ,the earlier notification dated 27-1-78 prohibiting keeping of cattle in the entire Municipal area of Jabalpur except the area comprising of villages mentioned therein was itself defective in a sense that except the villages Gwarighat and Lalpur, all other villages are not within the limits of the Municipal Corporation and as such the Municipal Corporation lacked Jurisdiction over that area. Therefore, there was no reason whatsoever for excepting villages Lalpur and Gwarighat which fall within the Municipal limits. Now the entire Municipal areas has become out of bounds for dairy farms. Further in view of the fact that the main water pipe line goes through the area adjacent to the dairy farms of the petitioners, even in the case of resolution and notification being declared ultra vires, these dairy farms have to be shifted from that place.

On a juridical analysis of the rival pleas on facts as well as in law, it is clear that they have different emphasis and different consequences but the main thrust thereof is essentially directed towards the validity of resolution No. 70 dated 21-10-97 passed by the Standing Committee of the Corporation as also the notification dated 19-3-99 issued by the Municipal Corporation, Jabalpur, towards implementation of the said resolution. The issue in question is squarely covered by a time tested rule adopted and reiterated in various judicial pronouncements that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. A three Judge Bench of the Apex Court in the matter of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, para 25) held as under :

"25. A century ago, in Taylor v, Taylor (1875) 1 Ch D 426 Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. The rule was applied by the Privy Council, in AIR 1936 253 (Privy Council) (2) and later by this Court in several cases, Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; Deep Chand Vs. The State of Rajasthan, to a Magistrate making a record under Sections 164 and 364 of the code of Criminal Procedure, 1898. This rule squarely applies where, indeed the whole, aim and object of the legislature would be plainly defeated if the command to do the thing in particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of statutes, 11th Edn. Pp. 362-363." The rule will be attracted with full force in

the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3) (b)".

This decision while reiterating the old rule is a timely reminder that an act done in a manner contrary to the rule would amount to procedural ultra vires.

The Apex Court further in the matter of Myurdhwaj Cooperative Group Housing Society Ltd. Vs. The Presiding Officer, Delhi Cooperative Tribunal and Others, , has again reiterated the principle propounded in the case of Taylor v. Taylor.

In the matter of Smt. Prabharani Vishwakarma Vs. State of Madhya Pradesh and Others, , this Court held that the Municipality is a body corporate, having its own juristic personality and a notice addressed to the Chief Municipal Officer is not a notice to the Municipality. Para 11 at page 233 of the report reads as under :

"In view of the preceding analysis It is amply clear that the Municipality being a body corporate has its own Juristic personality, and therefore, the requirement of law that President intending to resign has to give a notice in writing to the Municipality, means, it has to be addressed to the Municipality. It may be delivered to the Chief Municipal Officer or any other person who has been authorised to receive it on behalf of the Municipality but the notice has to be addressed to the Municipality not the Chief Municipal Officer. The Chief Municipal Officer may be the Chief Executive Officer of the Municipality and might have given authority to perform various functions but he cannot be substituted for the Municipality. It has been observed in the case of Laxmi Narayan Dubey (supra) that he has the duty to receive papers for or on behalf of the Municipality. In this regard we may say that the Chief Municipal Officer of the Council might have the authority to receive papers for or on behalf of the Municipal Council but when a notice is to be given in writing to the Municipality, though there is no explicit expression, it has to be addressed to the Municipality. It is inhered in the language employed as it has to be addressed to the Municipality which is a body corporate. In view of the analysis we are of the considered view that the decision rendered in the case of Amrit Chandra Rajpal (supra) and Laxmi Narayan Dubey (supra) do not lay down the correct law to the effect that notice on the Municipal Officer is notice to the Municipality. As the learned single Judge in the instant case has relied on the aforesaid decisions and has arrived at the conclusion that notice on the Chief Municipal Officer has been properly served on the Municipality, we are not able to subscribe to the said view. Resultantly, our view is that the requirement of the statute is that the notice to writing has to be addressed to the Municipality and a notice to the Chief Municipal Officer does not meet the requirement of law,"

In the matter of Shri B.S. Khurana and Others Vs. Municipal Corporation of Delhi

and Others, , it was held by the Apex Court that there was no legal right to claim ownership on the basis of resolutions passed by Corporation as the said resolutions were without any power or authority, Hence the petitions were dismissed. Para 16 of the Judgment reads as under :

"The scheme of the aforesaid Sections makes It abundantly clear that the entire executive power for the purpose of the Municipal Corporation Act vests in the Commissioner. His functions and duties are statutorily prescribed. His appointment is also to be made by the Central Government by notification in the Official Gazette. Similarly, the functions of the Standing Committee and other committees are also prescribed. In the light of the aforesaid statutory provisions, we have to consider the scheme of Section 200 which empowers the Commissioner to dispose of the movable property or grant lease of any immovable property or to sell the same subject to the conditions provided thereunder. On the condition of obtaining sanction of the Corporation, the power to transfer immovable property, the value of which exceeds fifty thousand rupees vests in the Commissioner. Result is the Commissioner can transfer such immovable property only after obtaining sanction of the Corporation. Obtaining of sanction by the commissioner is mandatory. The effect of the "non-observance of the statutory provisions would vitiate the transfer. This would also mean that the power to dispose of the property would vest in the Commissioner and not in the Corporation. No. specific power is conferred upon the Corporation for such transfer. The scheme envisages checks and balances for disposal of immovable property on the power of the Commissioner. In the light of aforesaid interpretation of Section 200, it is not necessary for us to deal with other contentions raised and dealt with by the High Court. In the facts and circumstances of the case; at no point of time, Municipal Commissioner has decided or agreed to transfer the Municipal quarters in favour of its employees allottees. There is no legal right to claim ownership on the basis of the resolutions passed by the Corporation as the said resolutions are without any power or authority. Hence, there is no substance in these petitions."

In the premises discussed hereinabove, the position is very clear that the Resolution No. 70 of 1997 was passed not in a manner as statute mandated, therefore, it suffers from procedural ultra vires and further the Municipal Corporation being a body corporate is a separate entity and it cannot be substituted by its Standing Committee. Thus it could not have sub-delegated its power to the Standing Committee for passing the resolution in question. Consequently, the Standing Committee is incompetent to do what a body corporate is required to do. Accordingly, the standing committee had no jurisdiction or power to pass the impugned resolution. It is worth mentioning that this resolution is the *raison detre* of the notification dated 19-3-99, a *bete noire* for the petitioners. It is demonstratively manifest that the resolution which is beyond the pale of competence of the Standing Committee is indefensible, and hence, it is hereby quashed. As a corollary, the notification is held to be null and void. It may not be out of place to add that the resolution and consequently the

notification have been quashed on the lone ground that the resolution was not passed by the Municipal Corporation but by the Standing Committee,

As, for the present, it is unwarranted to labour on and deal with other contentions of the parties in the precincts of the case, it would be open to the Municipal Corporation to take appropriate action in that regard, if so advised.

Resultantly, the writ petitions are allowed with no order as to costs.