
(1998) 07 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 171 of 1989

Municipal Committee

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Municipal Act, 1973 — Section 203

Citation : (1998) 120 PLR 204 : (1998) 3 RCR(Civil) 676

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Ashutosh Mohunta, for the Appellant; S.C. Kapoor and Ashish Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Aggrieved by the order dated 1.11.1988 passed by the learned Single Judge in C.W.P. No. 5057 of 1988 and Civil Revision No. 1102 of 1988, Municipal Committee, Thanesar has filed this appeal under Clause C of the Letters Patent and has prayed for dismissal of the writ petition filed by the respondent.

2. In the year 1972, the Government of Haryana decided that no patrol pump be set up within the limits of the Municipal Committee in the State. This decision was conveyed to all the Deputy Commissioners vide letter No. 7851-5Ka (2)-72/24122 dated 11.8.1972 written by the Secretary to Government, Haryana, Local Government department (Annexure R1). However, on the basis of representation Annexure R2 made by Surinder Singh son of Bagicha Singh, resident of Kurukshetra to the Minister, Local Government, Haryana for grant of permission to set up petrol pump at Kurukshetra within the limits of Municipal Committee, Thanesar by relaxing the ban imposed by the government and after seeking comments from the Deputy Commissioner, the Commissioner and Secretary to Government, Local Department, Haryana conveyed the

government's permission to set up the petrol pump within the limits of Municipal Committee, Thanesar vide memo No. 6823-6 Ka 1-76/23858-59 dated 16.7.1976 (Annexure R4). On 24.5.1976, the District Manager, Indian Oil Corporation, Marketing Division, Chandigarh wrote to the District Magistrate, Kurukshetra for issuance of no objection certificate to Surinder Singh son of Bagicha Singh for installation of petrol pump. This request was accepted by the District Magistrate as would appear from the letter Annexure P1 dated 23.9.1976 written by him to the District Manager.

3. It appears from the record that some dispute arose between Surinder Singh and Municipal Committee, Thanesar with regard to the conditions on which the government had relaxed the prohibition imposed by it against setting up of petrol pumps within the limits of the Municipal Committee. Surinder Singh instituted a civil suit on 2.3.1988 in the Court of Sub Judge, 1st Class, Kurukshetra for grant of permanent injunction against the Municipal Committee and its authorities from disturbing his ownership and peaceful possession. In the written statement filed by it, the Municipal Committee" pleaded that the plaintiff was guilty of making encroachment on land measuring 100" x 40". In the statement made by him before the Sub Judge, 1st Class, Kurukshetra, Surinder Singh admitted that he had given 25% of the land for implementation of the scheme declared by the Municipal Committee in respect of the unbuild area. The relevant portion of the statement made by Surinder Singh is extracted below:-

"States that the disputed land which is with me on lease for 99 years and is in my possession. But the Committee has declared it unbuilt area in its scheme and in my previous statement I had given 25% of my land for the implementation of that scheme. It is this land, which is disputed now. Whenever, the Committee would implement this scheme, then I would hand over the possession of the disputed space to the Committee and would not raise any objection whatsoever. Till then, this land would be used by me and my customers and the Committee would not interfere. Without the approval of the Committee, I would not raise any construction over this land because the land falling in 25 per cent area which I had given in the scheme would be owned by the Committee, but would be used by me. In case, the scheme is modified, the parties would be bound by it."

4. On that very day i.e. 28.5.1988, the parties entered into a compromise and the learned Sub Judge decreed the suit in terms of the compromise. The order passed by the learned Sub Judge reads as under :-

"Parties have come to a legal compromise. So, I allow the same. Parties shall be bound by their statements, made today in court. As per statements made, I pass a decree for permanent injunction in favour of the plaintiff against the defendants restraining the defendants to interfere with the possession of the scheme No. 1 Part (1)- (13) of Town is carried out. In case of the implementation of the scheme, plaintiff shall hand over the vacant possession of the disputed land to the committee without any objection and compensation. Plaintiff can restore the floor at his own expenses which was dismantled/uprooted by the

committee. No order as to costs. File be consigned."

5. After about 5 years of the passing of the decree dated 28.5.1980, Surinder Singh filed another suit on 1.8.1995 and sought an injunction against the Municipal Committee from dispossessing him. The trial Court granted ex parte injunction but the same was vacated on 27.11.1987. Appeal filed by Surinder Singh was dismissed on 5.5.1988 by the learned Additional District Judge, Kurukshetra. These orders were challenged by Surinder Singh in Civil Revision No. 1102 of 1988 which has been allowed by the learned Single Judge along with the writ petition.

6. On 1.6.1988, the respondent instituted C.W.P. No. 5057 of 1988 for issuance or a mandamus to the Municipal Committee, Thanesar (appellant herein) to remove two walls which had been raised by it over the disputed property. The respondent pleaded that the licence for establishing the petrol pump had been granted by the competent authority and the Municipal Committee has no jurisdiction to interfere with the lawful possession of the Corporation. The respondent also pleaded that the scheme notified by the government for the unbuild area had been abandoned and, therefore, the Municipal Committee was not justified in disturbing the petitioner's possession over the disputed land.

7. The Municipal Committee challenged the locus standi of the petitioner and urged that the Corporation has filed the writ petition at the behest of Surinder Singh who failed to secure an order of injunction from the Civil Court. The Committee also pleaded that in view of the statement made by Surinder Singh on 28.5.1980, the Municipal Committee was entitled to take possession of 25% of the land for the purpose of construction of a park. The Committee also pleaded that the installation of petrol pump and equipments has become a public hazard and, therefore, it was in public interest not to allow the Corporation to make additional construction over the property in question.

8. By the impugned judgment, the learned Single Judge held that the Corporation was entitled to institute the writ petition seeking demolition of the construction made by the Municipal Committee over the disputed property. He further held that the Municipal Committee was not entitled to interfere with the possession of the Corporation over the disputed property. Learned Single Judge also held that agreement made by Surinder Singh regarding surrender of 25% of the area for the purpose of implementation of the scheme was not binding on the Corporation and in any case, the scheme will be deemed to have been abandoned because the Municipal Committee did not carry out any development work within the statutory period of five years.

9. Shri Ashutosh Mohunta challenged the correctness of the verdict of the learned Single Judge and argued that the findings recorded by the learned Single Judge on the implication of the statement made by Surinder Singh before the trial Court is unsustainable in law. Learned counsel submitted that the respondent-corporation which had taken the disputed land from Surinder Singh

must be held bound by the express agreement made by Surinder Singh who surrendered 25% of the disputed property for the implementation of the development scheme. He further submitted that interpretation placed by the learned Single Judge on the scope of Section 203(6) of the Haryana Municipal Act, 1973 is erroneous and there cannot be automatic abandonment of the scheme framed by the Municipal Committee u/s 203 of the 1973 Act. Shri S.C. Kapoor defended the impugned judgment and argued that the Municipal Committee cannot interfere with the business of the respondent and the construction made by it has rightly been declared to be unauthorised. In response to a query made by the Court, Shri Mohunta fairly stated that the development scheme framed by the Municipal Committee in respect of the unbuild area has not been carried out so far and residential houses have come up in and around the disputed site.

10. We have given serious thought to the submissions made by the learned counsel for the parties and have carefully perused the impugned judgment. In our opinion, the finding recorded by the learned Single Judge on the locus standi of the petitioner does not suffer from any error warranting interference by the appeal bench. Admittedly, the petrol and diesel pump installed at the site in dispute belongs to the respondent and the walls erected by the Municipal Committee obstruct the business of the Corporation. Therefore, the Corporation was justified in invoking writ jurisdiction of the High Court under Article 226 of the Constitution.

11. On merits, we feel that the order passed by the learned Single Judge regarding the ambit and scope of Section 203 and other provisions of the 1973 Act do not require detailed elucidation in view of the admitted fact that the development scheme framed in respect of the area in question has not been executed by the Municipal Committee. In our opinion, non-execution of the scheme for a period of almost 20 years is sufficient to give rise to an inference that it stands abandoned. Therefore, the Municipal Committee cannot take advantage of the statement made by Surinder Singh in respect of 25% of the portion of the disputed property and its action to erect walls. With the avowed object "of establishing a park has been rightly dubbed by the learned Single Judge to be illegal and arbitrary. We are also of the opinion that the order passed by the learned Single Judge is substantially just and does not require interference in this appeal.

12. For the reasons mentioned above, the appeal is dismissed.