
(1999) 07 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10156 of 1998

Municipal Committee

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Haryana Municipal Act, 1973 — Section 203, 205(5)

Citation : AIR 2000 P&H 24 : (2000) 1 ILR (P&H) 174 : (1999) 123 PLR 759 : (1999) 4 RCR(Civil) 53

Hon'ble Judges : Mehtab S. Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Chaudhary, for the Appellant; Jaswant Singh, D.A.G. and V.B. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Municipal Committee, Thanesar (hereinafter described as the petitioner) has filed this petition under Article 226 of the Constitution with the prayer that the orders dated 23-1-1986 and 28-3-1997 passed by the Sub-Divisional Officer (Civil), Thanesar (respondent No. 2) and the Commissioner and Secretary to Government, Haryana Local Government Department (respondent No. 1) resulting in the deemed sanction of the building plan submitted by respondent No. 3 be quashed.

2. The facts relevant for deciding the issue raised in the petition are that on receipt of the application dated 27-9-1994 submitted by respondent No. 3 for sanction of the building plan, the petitioner wrote letters dated 8-11-1994, 16-2-1995, 29-3-1995, 23- 8-1995 and 15-12-1995 requiring him to meet the objections one of which was that the building plan is contrary to the Town Planning Scheme No. 1 (Part-II). Respondent No. 3 did not take any tangible step to meet the objections raised by the petitioner. Instead, he filed a petition u/s 240 of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") before respondent No. 2 with the prayer that the petitioner be directed to

sanction his building plan. By an order dated 23-1-1996, respondent No. 2 accepted the prayer of respondent No. 3 and directed the President of the Municipal Committee to sanction the disputed building plan. The appeal preferred by the petitioner for quashing the" order dated 23-1-1996 has been dismissed by respondent No. 1.

3. The all important question which arises for determination in this petition is whether the rule of deemed sanction of build-Ing plan contained in S. 205(5) of the Act can be invoked for compelling the competent authority of the Municipal Committee to sanction building plan irrespective of the fact that the same is contrary to the duly sanctioned town planning scheme or it is contrary to the provisions of law.

4. Shri Rajesh Chaudhary, learned counsel for the petitioner argued that the directions given by the official respondents to the petitioner to sanction the building plan of respondent No. 3 is plainly illegal, arbitrary and unjustified. Learned counsel submitted that the petitioner had declined to sanction the building plan because it was found to be contrary to the Town Planning Scheme No. 1 (Part-II) which had been sanctioned by the government on 19-5-1977. He further submitted that the principle of deemed sanction contained in Section 205(5) of the Act can be invoked only if the building plan does not violate the town planning scheme or bye-laws and" rules framed by the Municipal Committee/Council and not otherwise. Shri Chaudhary then argued that the illegal and fraudulent sanction obtained by another person, namely, Shri Ashok Kumar could not have been made the basis by respondent Nos. 1 and 2 for directing the petitioner to sanction the building plan of respondent No. 3 notwithstanding the fact that it was contrary to the town planning scheme. Shri V. B. Aggarwal, learned counsel for respondent No. 3 vehemently supported the orders passed by respondent Nos. 1 and 2 by arguing that building plan of his client does not violate the sanctioned town planning scheme. He submitted that the width of the road is only 50 feet and not 80 feet as claimed by the petitioner. He further submitted that the building sought to be erected by respondent No. 3 is in line with the shop of Ashok Kumar and, therefore, there could be no justification to decline the sanction of building plan submitted by his client. Shri Aggarwal then placed reliance on the decision of the Supreme Court in Yogendra Pal and others Vs. Municipality, Bhatinda and another, and argued that in view of the striking down of Section 203, of the Act by the Apex Court, Town Planning Scheme No. 1 (Part-II) will be deemed to have been nullified and sanction of the building plan submitted by respondent No. 3 could not be refused on the ground that it does not conform to the said scheme.

5. We have thoughtfully considered the submissions of the learned counsel.

6. Section 203 of Act provides for framing of a building scheme for built-up areas and a town planning scheme for unbuilt areas. Sub-sections (2) to (6) of Section 203 lays down the procedure for framing of the scheme and its implementation. Section 205 confers power upon the committee and/or the Executive Officer to

sanction or refuse to sanction erection or re-erection of buildings. The extracts of Section 203(1) and (3) and Section 205(1), (2) and (5) of Act which have bearing on the issue raised in this petition read as under:--

"203. Building scheme.-- (1) The Committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely :--

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole of or any part of the municipality, and of the use of which they may be put;

(b) the prescription of a building line on either side or both sides of any street existing or proposed;

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(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of Sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may if he thinks fit, return it to the committee for reconsideration and re-submission by a specified date; and the Deputy Commissioner shall submit the plans as forwarded, or as re-submitted, as the case may be, with his sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and re-submission by a specified date.

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205. Powers of committee to sanction or refuse erection or re-erection of buildings.-

(1) The committee or the Executive Officer, as the case may be, shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under Sub-section (1) of Section 202 or in contravention of any scheme mentioned under Sub-section (3) or Sub-section (4) of Section 203. unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee's inability to pay compensation as required by Section 184 for the setting back of a building.

(2) When the erection or re-erection of a building is likely, in the opinion of the committee or the Executive Officer, as the case may be, to interfere with the enforcement of a scheme proposed u/s 203, the committee may refuse its sanction, and in such case shall communicate its refusal in writing together with the ground therefor, to the applicant within sixty days of the receipt of his application, and the applicant may thereafter by written notice require the

committee to proceed with the preparation of the proposed scheme with all possible speed. The application shall be deemed to have been sanctioned if an order of refusal is not passed by the committee, or the Executive Officer, as the case may be, within the time specified above, or if the proposed scheme has not received the sanction of the State Government within twelve months of the date of delivery of the applicant's written notice hereinbefore referred to ;--

(3) The committee, or Executive Officer, as the case may be, may re-use to sanction the erection or re-erection of any building for any other reason, to be communicated in writing to the applicant, which it, or he as the case may be, deems to be just and sufficient as affecting such building, or if the land, on which it is proposed to erect or re-erect such building is vested in the Government or in the committee and the consent of the Government concerned or, as the case may be, of the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or any Government.

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(5) Notwithstanding anything contained in Sub-section (1) or Sub-section (3) but subject to the provisions of Sub-section (2) of Section 202 and Sub-section (2) of this section if the committee or the Executive Officer, as the case may be, neglects, or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect" or re-erect a building, or within one hundred and twenty days, if the notice relates to a building, on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months, to pass orders sanctioning or refusing to sanction such erection or re-erection such, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any bye-law. or any building or town planning scheme sanctioned u/s 203:

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7. A careful and conjoint reading of the provisions quoted above shows that power to sanction or not to sanction a scheme framed by the Municipal Committee vests in the State Government u/s 203(3) and (4) of Act and once the scheme is sanctioned, the Municipal Committee is under an obligation to implement and enforce the same. First part of Sub-section (1) of Section 205 imposes a duty on the Municipal Committee or the Executive Officer, as the case may be, to refuse to sanction the erection or re-erection of any building if it is contrary to any bye-law or any scheme sanctioned under Sub-section (3) or (4) of Section 203 of the Act. Sub-section (2) of Section 205 envisages refusal by the Committee to sanction the erection or re-erection of a building if it is likely to interfere with the enforcement of a proposed scheme. Sub-section (5) of Section 205 which begins with a non-obstante clause provides that if the Committee or the Executive Officer neglects or omits to pass order of sanction or refusing to

sanction erection or re-erection of a building within 60 days of the receipt of a valid notice from a person who intends to erect or re-erect a building then the sanction will be deemed to have been granted. However, this rule of deemed sanction cannot be invoked If such sanction may result in violation of any bye-law, or any building or town planning scheme sanctioned u/s 203.

8. Having analysed the relevant statutory provisions, we may revert back to the facts of this case. A critical scrutiny of the record of this case shows that soon after the receipt of plan submitted by respondent No. 3 for proposed erection of building, the petitioner raised objections by pointing out that the same was not in consonance with the Town Planning Scheme No. 1 (Part II) and further that the required documents had not been submitted. Vide letter dated 8-11-1994, respondent No. 3 was called upon to remove the objections/defects. This was reiterated in the communications dated 16-2-1995, 29-3-1995, 23-8-1995 and 15-12-1995. Instead of doing that he filed petition before respondent No. 2, who directed the petitioner to pass the building plan No. 124/1994-95. The reason which prompted respondent No. 2 to pass order dated 23-1-1996 was that in the case of similarly situated person, namely, Ashok Kumar, the petitioner had sanctioned the building plan. Respondent No. 1 also dismissed the petitioner's appeal mainly on the ground that in a similar case building plan had already been sanctioned by the Municipal Committee.

9. In our opinion, the reason assigned by respondent Nos. 1 and 2 for directing the petitioner to sanction the building plan of respondent No. 3 is wholly irrelevant and extraneous to the scope of Section 205 of the Act and, therefore, the impugned orders are liable to be quashed. We are further of the opinion that the direction given by respondent Nos. 1 and 2 is ultra vires to Sub-sections (1) and (5) of Section 205 of the Act and, therefore, a writ in the nature of certiorari deserves to be issued to nullify the same. Unfortunately, the official respondents adverted to the provisions of Section 205 which clearly prohibits sanction of a building plan if it is contrary to the bye-laws or the sanctioned Town Planning Scheme. Neither of them decided the plea of the petitioner that the proposed construction was contrary to the Town Planning Scheme No. 1 (Part-II) which had been sanctioned by the government in 1977. We, therefore, hold that the impugned orders are illegal and ultra vires to Section 205 of the Act.

10. We are also convinced that the sanction of building plan submitted by Ashok Kumar, which, according to the petitioner, was contrary to Section 205 of the Act could not have been relied upon by respondent Nos. 1 and 2 to direct that the building plan of respondent No. 3 be sanctioned. It is a settled proposition of law that illegality committed by a public authority in one case cannot be made basis for compelling it to commit similar illegality in another case. The doctrine of equality embodied in Article 14 of the Constitution enjoins upon the State to accord similar treatment to similarly situated persons but it cannot be read as conferring a right upon a person to seek enforcement of negative equality. In other words, the principle of equality cannot be stretched and misused for issuing

direction to the public authorities to take action in contravention of the statutory provisions simply because in a particular case some action has been taken in violation of law. Therefore, the direction given by respondent Nos. 1 and 2 to the petitioner to sanction the building plan of respondent No. 3 ignoring the fact that sanction given in the case of Ashok Kumar was contrary to Section 205(1) cannot be sustained.

11. Before leaving this aspect of the case, we deem it necessary to mention that the Deputy Commissioner, Kurukshetra, in exercise of the power vested in him u/s 240 of the Act, rescinded resolution No. 10 dated 16-9-1997 passed, by the petitioner for sanction of the building plan of Ashok Kumar and this was conveyed to him vide Annexure-P.9 dated 15-6-1998. On his part, respondent No. 3 had given an undertaking that he would demolish the construction if sanction issued in favour of Ashok Kumar is rescinded. Therefore, on this additional ground, the directions issued by respondent Nos. 1 and 2 cannot be sustained.

12. The argument of Shri V. B. Aggarwal that the Town Planning Scheme No. 1 (Part-II) sanctioned by the State Government should be treated as nullity and ignored in view of the decision of the Supreme Court in *Yogendra Pal and others v. Municipality, Bhatinda and others* (supra) merits summary rejection because the judgment relied upon by him does not have the effect of vitiating the Town Planning Scheme which stood sanctioned prior to 15-7-1994 because in paragraph 13 of the Judgment, their Lordships of the Supreme Court made it clear that Section 203(1) of the Act would be void from the date of decision.

13. For the reasons mentioned above, the writ petition is allowed. The orders Annexures-P. 3 and P. 5 are declared illegal and quashed with a direction that the petitioner shall decide the application of respondent No. 3 for sanction of the building plan afresh within a period of two months from the date of receipt of copy of this order. Respondent No. 3 shall be free to produce additional documents in support of his application.

14. Copy of this order be given dasti on payment of the fee prescribed for urgent applications.