

(1978) 02 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1704 of 1977

Prem Singh

APPELLANT

Vs

The Union Territory of Chandigarh and others

RESPONDENT

Date of Decision : 10-02-1978

Acts Referred:

Punjab Municipal Act, 1911 — Section 241

Citation : (1978) 2 ILR (P&H) 377 : (1978) 80 PLR 568

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : S.H. Toor, for the Appellant; R.K. Chhibbar (Govt. Pleader Union Territory, Chandigarh), for the Respondent

Final Decision : Dismissed

Judgement

S.P. Goyal, J.—The petitioner Prem Singh, a resident of Mani Majra (Union Territory of Chandigarh), was elected Sarpanch of Gram Panchayat of the village on August 19, 1973. The whole of the area of Gram Sabha Mani Majra was, however, declared a notified area u/s 241 of the Punjab Municipal Act, on April 12, 1976, with the result that the said Sabha and Gram Panchayat ceased to exist from the said date. For the administration of the notified area a Committee consisting of eight members was constituted vide notification Annexure P-1, dated April 12, 1976, issued under clause (d) of sub-section (1) of Section 242, of the Punjab Municipal Act, (hereinafter referred to as "the Act") and the petitioner was appointed as one of its members. The term of the office of the President and Members of the Notified Area Committee, as entered in the said notification, was three years. The notification constituting the Committee was later on superseded and a new Committee consisting of nine members was constituted vide notification dated June 4, 1977, Annexure "P-3", which did not include the name of the petitioner. The petitioner, therefore, filed the present petition under Articles 226 and 227 of the Constitution of India for quashing the impugned notification Annexure "P-3", mainly on the ground that the impugned

notification has the effect of removing him from the membership of the Notified Atea Committee ; that the notification has been issued mala fide because of his opposition to the official resolution Annexure "P-2", dated May 24, 1977, that the notification was bad as it contained no reason for the removal of the petitioner from the membership of the Committee & that the petitioner could not be removed from the said office without affording him an opportunity to show cause against the removal.

2. The petition has been opposed by the respondents, who denied the allegation of mala fide and averred that the petitioner had no right to challenge the impugned notification Annexure "P 3" and that the Government has the absolute right to cancel or modify any notification u/s 241 or order u/s 242 of the Act at any time.

3. Apart from the challenge on the ground of mala fide, the remaining three grounds are based on the assumption that he impugned order is infact an order of removal of the petitioner from the office rather than an order of reconstitution of the notified Area Committee. The assumption, however, is without any basis. By the impugned notification the committee has been reconstituted and even though as a consequence there of the petitioner has ceased to be a member of the said committee, but for that reason, it cannot be said that the impugned notification amounts to an order of removal of the petitioner from the membership of the Committee. The power of the Government u/s 244 of the Act, to cancel or modify any order u/s 242 of the Act, or the vires of section 244 have not been challenged in this petition and the Government by virtue of the provisions of the said Section has the absolute right to cancel or modify the notification constituting a Notified Area Committee without assigning any reason. There is no requirement under the said Section for the issuance of any notice to any member of the Committee or to give reasons for modifying the notification so as to supersede the existing Committee and to constitute afresh Committee. The decision of this Court given in Municipal Committee and others v. State of Punjab 1966 C.L.J. 290, which is based on the provisions of Section 238 (1) of the Act would obviously have no application to the present case, because under that Section before superseding the Municipal Committee, the State Government has to form an opinion that the Committee is not competent to perform or persistently makes defaults in the performance of its duties imposed on it by or under the Act or any other law or exceeds or abuses it power. The power of the State Government is, thus, controlled by the provisions of the said Section itself and is not an absolute power to supersede the Municipal Committee. The power u/s 244 of the Act being absolute and its vires having not been challenged, none of the grounds urged by the petitioner has any legs to stand.

3. As regards the mala fide nature of the impugned notification, the allegation made in the petition is that the same has been issued to secure the removal of the petitioner from the membership of the committee, because of his opposition to the resolution Annexure "P-2", dated May 24, 1977. The allegation of the

petitioner is, however, wholly misconceived. The decision to reconstitute the Committee had been finalised in the month of April, 1977 long before the passing of the said resolution. Moreover, none of the member of the Committee, including the official members, was at any time consulted in the matter or had any say in the matter. From the personal of the record it is evident that the move to constitute the Committee was initiated at the instance of the Chief Commissioner, Union Territory, Chandigarh. When the matter was referred to him for the removal of Shrimati Shakuntla Devi from the membership of the Committee as she has ceased to be a resident in the Notified Area. Though the petitioner has been accused of certain acts of omission and commission as a member of the Committee, which were derogatory to the interest of the Committee yet none of them formed the reason for the reconstitution of the Notified Area Committee. Consequently the allegation of the petitioner that the impugned notification has been issued mala fide because of the alleged misconduct of the petitioner is without any substance and has to be ruled out.

4. In view of the above discussion, I find no merit in this petition and the same is hereby dismissed but without any order as to costs.