

(1995) 10 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14758 of 1995

Rajender Prashad and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Constitution of India, 1950 — Article 245
National Highways Act, 1956 — Section 3
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 10, 12, 12(2), 16, 2

Citation : AIR 1996 P&H 102 : (1996) 112 PLR 56

Hon'ble Judges : T.H.B. Chalapathi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : S.C. Mohunta, Ashutosh Mohunta and Navin Mahajan, for the Appellant;

Judgement

G.S. Singhvi, J.—This petition has been filed for issue of a writ of certiorari to quash the notices Annexures P2 to P10 and for restraining the respondents Nos-1 and 2 from demolishing the buildings of the petitioners.

2. The petitioners say that they were allotted plots of land by the Adampur Maharaja Uggarsain Co-operative House Building Society Limited, Agroha (for short, the society). These plots are situated near the Hisar-Sirsa Road, National Highway No. [0 in village Agroha and they have raised construction over these plots. They are now being threatened with the demolition of the construction on the ground of violation of Section 3 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (for short, "Act of 1963").

3. Notices served upon the petitioners u/s 12(2) of the Act of the 1963 show that the petitioners have been charged with the allegation of having raised construction in violation of the restrictions imposed by Section 3 of the Act of 1963. Each of the petitioners was called upon to show cause as to why the

construction raised by them in violation of the provisions of the Act be not demolished.

4. In support of the writ petition, Shri S.C. Mohunta, Senior Advocate, argued that the Act of 1963 is ultra vires to the Constitution because the Parliament has got exclusive jurisdiction to legislate in regard to highways declared by or under the law made by the Parliament under item No. 23 of List 1 of the Seventh Schedule. Shri Mohunta argued that the provisions contained in the National Highways Act, 1956 (for short, the Act of 1956) are exhaustive. According to the learned counsel, the State Legislature did not have jurisdiction to enact the Act of 1963 because it impinges on the powers of the Parliament to enact law in respect of Highways declared by or under the law made by the Parliament to be National Highways. Learned counsel invited our attention to the provisions of the Act of 1956 and argued that the provisions contained in the Act of 1963 are in direct conflict with the law enacted by the Parliament and, therefore, the Act of 1963 is liable to be struck down. Another argument of the learned counsel is that since after the creation of the State of Haryana, a lot of developments has taken place in village Agroha and the boundaries of Abadi Deh of the village got automatically extended and, therefore, the constructions raised within the Abadi Deh of village is outside the purview of the Act of 1963. Further argument advanced by the learned counsel is that a large number of constructions have been raised all along the National Highways in the State, including the National Highway No. 10, which passes through Sirsa, Fatchabad, Hisar, Hansi, Rohtak, Bahadurgarh and Delhi and the Government agencies have permitted construction on the area adjoining the National Highways and Scheduled Roads and, therefore, there can be no question for demolition of the construction of the petitioners. The last argument advanced by the learned counsel is that the petitioners were not given reasonable opportunity to submit their cases before respondent No. 2 and if they had been given sufficient opportunity, the petitioners would have established that their cases are not covered by the provisions of the Act of 1963.

5. The Act of 1956 has been enacted with an object to confer powers on the "Central Government with respect to the development and maintenance of the Highways which are declared to be National Highways. Section 2(1) of the Act of 1956 contains a declaration that each of the Highways specified in the Schedule except such parts thereof as are situated within any municipal area is declared to be a National Highway. Section 2(2) empowers the Central Government to issue a notification in the official Gazette declaring any other Highway to be the National Highway. Similarly, u/s 2(3) the Central Government is empowered to de-notify a Highway from the Schedule and with effect from the date of publication of a notification to that effect such Highway ceases to be a National Highway. The phrase "municipal area" has been defined in Section 3. By virtue of Section 4, National Highways vest in the Union, Section 5 makes it obligatory for the Central Government to develop and maintain all National Highways. However, the Central Government can delegate this function to the State

Government. Section 6 empowers the Central Government to direct any State Government as to the carrying out of the orders made by it under the provisions of the Act or any rule or notification. Section 7 empowers the Central Government to levy fees. Section 8 provides for agreement with the State Government or the municipalities.

6. Sections 2, 3, 4 and 8 of the Act of 1956 are reproduced below: --

"2. Declaration of certain highways to be national highways:--

(1) Each of the highways specified in the Schedule except such parts thereof as are situated within any municipal area is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a, national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway,

"3. Definitions.

In this Act, "Municipal area" means any municipal area with a population of twenty thousand or more the control or management of which is entrusted to a municipal committee, a town area committee, a town committee or any other authority.

4. National highways to vest in the Union :--

All national highways shall vest in the Union, and for the purposes of this Act "highways" include:--

(i) all lands appurtenant thereto, whether demarcated or not;

(ii) all bridges, culverts, tunnels, causways, carriageways and other structures constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and mile stones of such highways or any land appurtenant to such highways.

5 to 7 xxx xxx xxx xxx

8. Agreements with State Government or municipalities:--

Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with the Government of any State or with any authority entrusted with the control or management of any municipal area in relation to the development or maintenance of the whole or any part of a national highway situated within the State or, as the case may be, in relation to the development or maintenance of any such part of a highway situated within a municipal area as

is referred to in sub-section (1) of Section 2 and any such agreement may provide for the sharing of expenditure by the respective parties thereto."

7. The Act of 1963 has been enacted by the Legislature of the State of Punjab to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the State of Punjab. This Act received the assent of the President of India on the 22nd November, 1963. After the creation of the State of Haryana, with effect from 1-11-1966, the Act has been made applicable to the State of Haryana. Section 2 of the Act contains definitions of various terms and phrases used in the Act. Section 4 of the Act of 1963 speaks of declaration of controlled area and Section 5 relates to the publication of plans etc. showing the controlled area and nature of restrictions etc. Section 6 restricts the erection or re-erection of buildings etc. in controlled areas except in accordance with the plans and the restrictions and conditions referred to in Section 5. Previous sanction of the Director is also necessary for erection/reerectionn of the buildings. Section 7 contains prohibition on the use of land in the controlled areas. Section 8 contains provisions regarding application for permission and the grant or refusal thereof. Section 9 empowers the Director to authorise any person to enter into or upon any land or building with or without assistants for the purpose of inquiry, inspection, meansure-ment or survey or taking levels. Section 10 provides for appeals against the order passed u/s 8(2) of the Act. Sections 12 to 16 deal with the offences and penalties. Section 22 speaks of exemptions. In exercise of the powers vested in it u/s 25, the Government has framed the Punjab Scheduled Roads and controlled Areas Restriction Unregulated Development Rules, 1965. These Rules contain detailed provisions for carrying out the purpose of the Act. Part VII contains Rules 38 to 125 regarding construction of buildings etc.

8. From what we have noted above, it is clear that all National Highways which include all land appurtenant thereto, bridges, culverts tunnels, causeways, carriageways and other structures constructed on or across such Highways or all fences, trees, posts and boundary, furlong and mile stones of such Highways or any land appurtenant to such Highways vest in the Union and it is the responsibility of the Central Government to develop and maintain the National Highways. However, that part of the Highways specified in the Schedule which falls within the municipal area is excluded from the purview of the Act of 1956. By an agreement with the Government of any State or the municipality, the Central Government can entrust control or management of any municipal area in relation to the development or maintenance of the whole or any part of a National Highway situated within the State or the municipal area to the State Government or the Municipality concerned. The Act of 1956 does not, in any manner, deal with erection/re-erection of buildings etc. on the two sides of the National Highway nor does it provide for restrictions on the construction of building etc. on the two sides of the National Highways. It does not even regulate the construction of the buildings etc. or the use of lands on both sides of the National Highways.

9. Entry No. 23 of List-I of Seventh Schedule and Entry No. 35 of List II of Seventh Schedule reads as under:--

"List-I.

Entry 23. Highways declared by or under law made by the Parliament to be national highways.

List-II.

Entry 35. Works, lands and buildings vested in or in the possession of the State."

10. The two above-quoted Entries from List I and List II of the Seventh Schedule of the Constitution show that while the Parliament has the exclusive right to legislature in respect of the Highways declared by or under law made by the Parliament to be National Highways, the State is empowered to make legislation, in respect of works, lands and buildings vested in or in the possession of the State. There is no conflict or overlapping of the powers vested in the two Legislatures. In fact the two Entries are independent of each other and, therefore, it is not possible to accept the argument of Shri Mohunta that the provisions of 1963 Act are ultra vires to the Provisions of the Constitution of India. We may also refer to Entry No. 13 of List II of Seventh Schedule. This Entry relates to communications, that is to say, roads, bridges, ferries and other means of communication. However, it is subject to the Entries contained in List I. Similarly, power of the State Legislature to legislate in respect of municipal tramways, ropeways, inland waterways and traffic thereon is subject to the provisions of List I and List II with regard to such waterways, vehicles other than mechanically propelled vehicles. Perusal of Entry 13 of List II clearly shows that power of the State Legislature in regard to the communication is subject to the Entries 22, 23, 24, 25, 30 and 31 of List I and Entries 32 and 35 of List II of the Seventh Schedule. If at all the Constitution framers intended that the Entry 23 should cover erection of buildings and constructions on the land falling on two sides of the Highways which are declared to be the National Highways, Entry 23 of List I of the Seventh Schedule would have been differently worded. Therefore, we are of the opinion that the Act of 1963 which has been enacted to control and regulate the development on (the two sides of the Scheduled Roads and which may include National Highways, is within the competence of the State Legislature. In this connection, we may refer to the decision of the Supreme Court in International Tourist Corporation and Others Vs. State of Haryana and Others, . That was a case involving challenge to the validity of the Haryana Passengers and Goods Taxation Act, 1952, and U.P. Motor Vehicles Taxation Act, 1935. Argument raised before the Supreme Court was that in view of the Entries 23, 24, 30 and 31 of List I, the Haryana Legislature did not have jurisdiction to legislate on the issue of passengers and goods. While repelling the contention, their Lordships of the Supreme Court held :--

"Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislative must

be clearly established, 97 of List I in the seventh Schedule itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List I.II and in the case of a tax if it is not mentioned. In either of those lists. Where the competing entries are an entry in List II and Entry 97 of List I, the entry in the State list must be given a broad and plentiful interpretation. Entry 56 of List II refers to taxes and goods on passengers carried by road or on inland waterways. It does not except National Highways and National Waterways, so declared by law made pursuant to Entry 23 and Entry 24 of List I. The omission of reference to National Highways in Entry 30 and Entry 89 indicates that the subject "passengers and goods" carried on National Highways is reserved for inclusion in the State List, Taxes on passengers and goods carried on National Highways also fall directly and squarely within and are included in Entry 56 of List II. The Haryana Passengers and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by Entry 56 of List II."

11. That apart, we find total absence of any plea by the petitioners that the National Highway No. 10 on which they have constructed the shops, does not fall within the municipal area. Therefore, the very applicability of the provisions of the Act of 1956 has not been established by the petitioners.

12. Argument of the learned counsel that abadi Deh of the village should be deemed to have been extended is not based on any material record placed on the record of this writ petition. Therefore, it is not possible to accept the argument of the learned counsel that the land on which the petitioners have raised construction stands excluded from the purview of the Act of 1963.

13. Another argument of the learned counsel, namely, that a large number of constructions have been permitted on the lands adjoining the National Highway and, therefore, the same cannot now be demolished, is based on a misconceived assumption that the permission for construction granted by (he authority other than specified in the Act of 1963 is sufficient to validate the construction. The Act of 1963 and the Rules framed thereunder contain detailed procedure which is required to be followed for grant of permission and unless an express permission is given by the competent authority in accordance with the provisions of the Act, no construction can be made by an individual or a juristic person. Therefore, we cannot accept the submission of Shri Mohunta that even if the construction is made without prior permission by a competent authority specified in the Act of 1963, the constructions raised by the petitioners should be treated as legal.

14. Argument of the learned counsel regarding applicability of Section 22 of the Act of 1963 is based on an assumption that cases of the petitioners fulfil one of the conditions enumerated in Section 22 of the Act. However, we find that no material has been placed before the Court to show that the petitioners are entitled to the benefit of exemption clause.

15. However, there appears to be some substance in the argument of the learned counsel for the petitioners that petitioners should be given one more opportunity

to satisfy respondent No. 2 that their properties are not covered by the provisions of the Act of 1963. Though the respondents did give notices to the petitioners u/s 12(2) of the Act before taking action adversely affecting the rights of the petitioners and the petitioners are to blame themselves for their failure to file representation before respondent No. 2, we deem it proper to give one more opportunity to the petitioners to file written representation before the respondent No. 2 in order to convince him that the provisions of the Act of 1963 are not applicable to their cases.

16. In the result, the writ petition is dismissed subject to the condition that if within ten days the petitioners make representation before the respondent No. 2, the same would be considered and decided by him within fifteen days by passing a speaking order and till then the orders passed by the respondent No. 2 for demolition of the constructions of the petitioners shall not be given effect to.

17. Petition dismissed.