
(1996) 07 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7167 of 1996

Ram Rattan Aggarwal and Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 12(2)

Citation : (1996) 114 PLR 769 : (1997) 1 RCR(Civil) 507

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

Bench : Division Bench

Judgement

G.S. Singhvi, J.—This is a petition to quash the show cause notice Annexure P.5 and orders Annexures P.7 and P.8 issued by the respondents under the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as "the Act").

2. In the purported compliance of the order dated 28.4.1995 passed by a Division Bench of this Court in Jainsons Export India Vs. Binatone Electronics Ltd. and others, , respondent No.3 issued notice dated 1.8.1995 u/s 12 of "the Act" and called upon the petitioners to stop further construction of the building at Km. 197 of G.T. Road (N.H. 1) and to appear on 29.8.1995 to show cause why it should not be prosecuted for violating the provisions of "the Act". The petitioner was directed to produce site plan, registration plan, Nagal Jamabandi, Khasra Girdawri and Shajra plan. In response to this notice, the petitioner submitted reply dated 3.9.1995 and denied the allegation that it had erected any new building in the prohibited area of G.T. Road. The petitioner stated that the building had been erected in the year 1962 and, therefore, provisions of "the Act" were not applicable. Notice was also challenged on the ground of vagueness. After about two months, order Annexure P.7 came to be passed by respondent No. 4 directing the petitioner to restore the building/land to its original site or bring it in conformity with the provisions of the "the Act" and the rules framed thereunder within a period of 30 days. Another order to the same

effect came to be passed by respondent No. 5 on 30th December, 1995. Respondent No. 4 gave only 24 hours" time to the petitioner to comply with the directions contained in the order. After about three months of the passing of the last order, the petitioner approached the Naib Tehsildar, Ambala Cantt. for demarcation of his land. On the basis of alleged demarcation done by the Patwari the report Annexure P.11 was got prepared by the petitioner. After getting that report, the petitioner submitted representation dated 3.5.1996, Annexure P.12, to respondent No.4 through his Advocate and prayed for the withdrawal of order dated 27.11.1995. This representation was forwarded by the respondent No. 4 to respondent No. 5 vide Annexure P.13. However, no order has been passed by respondent No.5 on the representation dated 3.5.1996.

3. Petitioner has challenged the impugned notice and orders, inter-alia, on the ground that the building in dispute had been erected prior to coming into force of "the Act" and, therefore, provisions contained in "the Act" cannot be invoked qua that building. In support of its assertion that the building was erected prior to the commencement of "the Act" the petitioner has placed reliance on the sale deed which was registered on 12.7.1962 and on the basis of which Ram Rattan Aggarwal purchased land measuring 6 Kanals 19 Marias from one Lalita Prasad s/o Nabhavan Mall Dass. Reliance has also been placed on the fact that one Gurbachan Singh son of Basant Singh resident of Ambala Cantt. had purchased land known as Bhatta Musalman from the Custodian Department and the petitioner had exchanged land with Gurbachan Singh vide agreement dated 24.8.1963. This agreement, according to the petitioner, was entered into with Gurbachan Singh in order to straighten their plots. Reliance has also been placed on the decree passed by Sub-Judge 1st Class, Ambala in case No. 374/69, Gurbachan Singh v. Ram Rattan Aggarwal, by which suit of the plaintiff for demolition of the structure raised by the defendant, was dismissed. It is said that the judgment and decree passed by the learned Sub-Judge was upheld by the District Judge, Ambala on 4.9.1980 when the appeal filed by Gurbachan Singh was dismissed subject to certain directions. Grievance of the petitioner is that respondent Nos. 3, 4 and 5 have acted arbitrarily and in complete disregard of the principles of natural justice, inasmuch as the notice Annexure P.5 is extremely vague and cryptic and does not give details of the alleged violation of "the Act" by the petitioner and the impugned orders have been passed without considering the detailed reply submitted by the petitioner and without giving opportunity of hearing. Respondents have contested the plea of the petitioner about non-applicability of the provisions of "the Act" by stating that as late as in the year 1966-67 the land in dispute has been shown as Gair Mumkin Bhatta. According to the respondents construction has been raised by the petitioner after coming into force of "the Act" and as there is no sanction by any competent authority, the building of the petitioner will be deemed to have been erected in clear violation of the provisions of "the Act". Respondents have pleaded that after giving due notice to the petitioner the impugned orders have been passed.

4. Although several points have been raised in the writ petition for challenging

the impugned notice and the orders, the main issue which requires adjudication by the Court is whether the impugned notice and orders have been issued in violation of the principles of natural justice and the same are liable to be quashed on that account.

5. Before we consider the above formulated issue, it will be useful to give a brief reference to the background in which proceedings have been initiated by the respondents. The legislature of the State of Punjab enacted "1963 Act" in order to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the State. Section 2 of "the Act" contains definition of various terms and phrases. Section 2(9) defines "road reservation"s. Sections 2(10), 2(12) and 3 of "the Act" which are relevant for the purpose of this decision are quoted below

"2(9). "road reservation, in relation to a scheduled road" means the land, whether metalled or unmetalled, which vests in the Government or the Central Government or a local authority for the purposes of such road and the boundaries of which are demarcated by pillars, posts or wires or in any other manner;

(10) "scheduled road" means a road specified in the Schedule to this Act which is wholly situated within the State of Punjab and where, any road so specified is not so situated, the portion of such road which is situated in the State of Punjab, and includes a "by-pass", but does not include any part of such road or portion, not being a by-pass, which is situated in the limits of a local authority; (Explanation - For the purposes of this clause "local authority" means a cantonment board, municipal committee, notified area committee or an improvement trust.).

(12) "erect or re-erect any building" includes :-

- (a) any material alteration or enlargement, of any building;
- (b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
- (c) the conversion into more than one place for human habitation of a building originally constructed as one such place;
- (d) the conversion of two, or more places of human habitation into a greater number of such places;
- (e) such alterations of a building, as affect an alteration of its drainage or sanitary arrangements, or materially affect its security;
- (f) the addition of any rooms, building, outhouses, or other structures to any building; and
- (g) the construction in a wall adjoining any street or land not belonging to the owner of the wall of a door opening on to such street or land."

"3. Prohibition to erect or re-erect buildings along scheduled roads :-

No person shall erect or re-erect any building or make or extend any excavation or lay out any means of access to a road (within one hundred meters on either side of the road reservation of a bye-pass or within thirty meters on either side of the road reservation of any scheduled road not being a bye-pass.):

Provided that nothing in this section shall apply to-

(a) the repair to a building which was in existence immediately before the commencement of this Act or any erection or re-erection of such a building which does not involve any structural alteration or addition therein; or

(b) the erection or re-erection of a building which was in existence immediately before the commencement of this Act and which involves any structural alteration or addition, with the permission of the Director; or ,

(c) the laying out of any means of access to a road with the permission of the Director, or;

(d) the erection or re-erection of a motor fuel- filling station or a bus-queue-shelter with the permission of the Director."

6. On a careful, comprehensive and conjoint reading of the definitions of "road reservation" "scheduled road" in the context of Section 3, it becomes clear that there is a prohibition against erection and re-erection of any building within 100 meters on either side of road reservation of bye-pass or within 30 meters on either side of the road reservation of the scheduled road which is not a bye-pass. Proviso to Section 3 contains four clauses which contain exception to the substantive part of Section 3 and provide that the bar contained in Section 3 shall not be applicable in the cases enumerated in those clauses.

7. Section 22 of "the Act" enumerates certain exemptions. As per this Section provisions of "the Act" do not apply to the area comprised in the abadi deh of the any village; erection or re- erection of a place of worship or a tomb or cenotaph or a wall enclosing a graveyard, place of worship. cenotaph or samadhi on land which, on the date of publication of the notification u/s 4(1) is occupied by or for the purpose of such worship, tomb, cenotaph, graveyard or samadhi; excavations (including wells) or other operations made in the ordinary course of agriculture; and the construction of an unmetalled road intended to give access to land for agricultural purposes or purposes subservient to agriculture.

8. In *M/s Gurdial Shyam Lal Private Limited v. State of Haryana* (supra), the petitioner had challenged an order passed by the Director, Town & Country Planning, whereby the petitioner was directed to demolish the boundary wall of the factory of the petitioner on Delhi-Mathura Road. One of the arguments advanced before the Court was that similar structures had not been touched by the Director, Town & Country Planning and other authorities and, therefore, order of demolition passed in the case of the petitioner was discriminatory. Even while rejecting this argument, the Court took cognizance of the unauthorised constructions raised on both the sides of the national highways within the

territory of State of Haryana and directed initiation of action for removal of unauthorised construction and encroachments. The following extract of that judgment would give an idea of the actions which were required to be taken by the respondents:-

"Though we are dismissing the writ petition, we cannot altogether ignore the fact that unauthorised constructions have in fact, been raised on both the sides of the National Highways within the territory of the State of Haryana, and the departmental authorities have been rather lukewarm and at times even negligent in enforcing the provisions of the 1963 Act by removing the unauthorised encroachments / constructions on both the sides of the National Highways passing through the territory of the State of Haryana. Rule of law is the corner stone of our constitutional system and unless it is enforced by all the organs of the State, namely, the Legislature, the Judiciary and the Executive, the system cannot work. People's faith and confidence in the constitutional system has to be maintained by all the three organs of the State. If the Legislature and the Executive are bound to implement the various constitutional provisions, the Judiciary is equally under a duty to take note of the constitutional mandates and pass appropriate orders for their enforcement. The goal of social justice and equality, which are two pillars of our constitutional system, have to be kept in mind by the courts while enforcing the provisions of the Constitution and the other legislative enactments. The burden of Courts to enforce the constitutional provisions has increased in the recent times because common man's confidence in the working of the Executive and the Legislature has been considerably eroded. It is, therefore, high time that the Courts do not remain silent spectators of the wanton breach of law and allow a situation to develop where the people think that those who are haves in the society do not bother about law and they can go unpunished even after violating the provisions of law. Encroachments on public lands, unauthorised constructions and violation of various provisions of law which are intended to regulate the construction of buildings and other constructions are being flouted with impunity and, therefore, it is imperative for this Court to issue positive directions to the Executive to give effect to the provisions of various enactments which regulate construction of buildings etc.

In view of the provisions contained in the 1963 Act, respondents are duty-bound to implement the provisions of 1963 Act in their letter and spirit so that the future development on the two sides of the National Highways can be regulated properly. We, therefore, direct that -

- (1) the, respondents should take positive steps to remove all unauthorised constructions/encroachments on the two sides of all the National Highways passing through the State of Haryana, including the Delhi-Mathura road;
- (2) the respondents should give appropriate notices to the affected persons (individuals/firms/companies) who have raised constructions/have made encroachments in violation of the provisions of the 1963 Act, and thereafter pass orders for removing the unauthorised constructions/encroachments;

(3) such steps should be taken by the respondents within a period of six months of the receipt of a certified copy of this order by the Chief Secretary to the Government of Haryana, and the Director, Town & Country Planning, Haryana, Chandigarh, and the District Town Planner (Enforcement), Faridabad; and

(4) a detailed report about the steps taken by the respondents in compliance of this direction must positively be sent to the Court within a period of seven months."

9. In Bhoop Singh Vs. The State of Haryana, , the Court referred to the directions given in M/s Gurdial Shyam Lal Private Ltd. v. State of Haryana (supra) and observed:

"We wish to once again emphasise that all those constructions which have come into existence around the National Highways and which contravene the provisions of the National Highways Act as well as the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (an Act which has been adopted by the State of Haryana) must be removed by the concerned authorities who must also see that in future no such constructions are allowed on both the sides of the National Highways. It should be made clear to all the officials of the Government that any lapse on their part would make them personally responsible for appropriate punitive action."

10. In the purported compliance of the direction given by the High Court, the respondents initiated action against the unauthorised encroachments and constructions and a number of writ petitions came to be filed in this Court challenging those actions. In C.W.P. No. 13984/95, Central Warehousing Corporation v. State of Haryana and Anr., decided on 21.9.1995, a Division Bench of this Court rejected challenge to the validity of Sections 2, 3 and 22 of "the Act".

11. In Rajender Prasad v. State of Haryana challenge to the constitutional validity of "1963 Act" was repelled and it was also held that there was no conflict between the provisions of "1963 Act" and National Highways Act 1956. In C.W.P. No. 618/96, M/s Surya Roshni Ltd. v. State of Haryana and Ors., decided on 22.1.1996, this Court rejected the argument that subsequent inclusion of the area within the limits of Municipal Committee takes away the powers of the authorities constituted under the "1963 Act" to deal with unauthorised construction.

12. In C.W.P. No. 14921/95, Atma Ram and Ors. v. State of Haryana and Ors., decided on October 13, 1995, C.W.P. No. 16374/95. Om Prakash and Ors. v. State of Haryana and Ors., decided on November 16, 1995 along with four other writ petitions, C.W.P. No. 14990/95, M/s Delhi Service Centre and Anr. v. State of Haryana and Anr., decided on 18.10.1995 alongwith two other writ petitions C.W.P. No. 16524/95, M/s Machine Tools (India) Ltd. v. State of Haryana and Ors., decided on November 17,1995 along with two other writ petitions, C.W.P. No. 17810/95, Sunil Sharma v. State of Haryana and Ors., decided on December

7, 1995 along with two other writ petitions, this Court took cognizance of the grievance made by the petitioners that they were not given opportunity of hearing by the authorities concerned and the orders passed for demolition of their constructions were totally bereft of reasons and were, therefore, contrary to the principles of natural justice. In the orders passed on 18.10.1995, 16.11.1995, 17.11.95 and 7.12.1995, this Court quashed the impugned orders passed u/s 12(2) of "the Act" and directed the concerned officers to pass fresh orders after giving opportunity of hearing to the affected persons. At the same time, the Court directed them to pass reasoned orders. In the order dated December 7, 1995, the Court had expressed its unhappiness over the manner in which the officers of the Department had passed orders u/s 12(2) and observed:-

"In C.W.P. No. 6058 of 1994 decided on 28.4.1995, this Court had taken note of the growth of the unauthorised constructions on the National Highways and directed the respondent-State to take action for removal of the encroachments and demolition of unauthorised constructions. However, it was made clear by the Court that the action shall be taken by the competent authorities after giving notices to the affected persons and an opportunity of hearing to them. It appears that the competent authorities did not properly appreciate the scope of hearing which is required to be given to the affected persons before passing the order of demolition and, therefore, while deciding C.W.P. No. 16374 of 1995 (Om Prakash and Ors. v. State of Haryana and Ors.) along with five other writ petitions on 16.11.1995, this Court observed that most of the orders passed by the competent authorities are contrary to the principles of natural justice because they do not contain reasons. Therefore, the High Court accepted C.W.P. No. 16374 of 1995 and other connected writ petitions and directed the concerned officers to pass fresh orders after giving opportunity of hearing to the affected persons. A direction was also given to the learned Deputy Advocate General to instruct the officers to take similar steps in all those cases in which notices have been issued under the 1963 Act so that people may not be forced to come to the Court for similar directions.

It is, indeed, unfortunate that despite the clear mandate given by the Court on 16.11.1995, similar petitions continue to pour in this Court apparently due to the fact that the competent authorities have ignored the direction of the Court. However, we are of the considered opinion that the competent authorities are duty bound to consider the reply/representation made by the persons to whom notices u/s 12 of the 1963 Act have been issued and such authorities are also duty bound to pass reasoned orders after considering the objections, if any, filed by the affected persons.

Therefore, keeping in view the directions in our order dated 16.11.1995 passed in C.W.P. No. 16374 of 1995 and the order dated 17.11.1995 passed in C.W.P. No. 16524 of 1995 [M/s Machine Tools (India) Ltd. v. State of Haryana and Ors.], we dispose of these writ petitions with a direction that if within a period of fifteen days from today the petitioners make representations in writing before the 60n-

cerned Executive Engineers-cum-Director, Country and Town planning, Haryana, the said authorities shall give an opportunity of hearing to the petitioners and pass reasoned orders within one month thereafter by duly considering the objections/points raised by such persons. We also direct that till the passing of the fresh orders, constructions of the petitioners shall not be demolished. We further direct that for a period of seven days of the passing of fresh orders, demolition shall not be carried out by the concerned authorities. "A copy of this order be sent to the Executive Engineer No. 1, Faridabad-cum-Director, Town and Country Planning, Haryana, Executive Engineer, Provincial Division Rewari-cum-Director, Town and Country Planning, Haryana and the Executive Engineer, Provincial Division No. 1, P.W.D. (B. and R.)-cum-Director, Town and Country Planning, Sirsa, for compliance."

13. In addition to the observations made and the directions given in the various orders passed by this Court to which reference has been made hereinabove, we deem it proper to reiterate the well established principles of law that every quasi-judicial authority must give reasons in support of its order in case such order adversely affects the rights or interest of a person. The requirement of passing; speaking order by quasi-judicial authorities has been recognised as a necessary concomitant of the requirement to comply with the rules of natural justice. The reasons are links between the maker of the order or the author of the decision and the order itself. They indicate the process of application of mind by the competent authority to the subject matter which is under consideration before it and also provides an opportunity to the Court to find out whether any extraneous or irrelevant factor has been taken into consideration for arriving at a particular conclusion. In *S.N. Mukherjee v. Union of India* 1990 (4) S.C.C. 584, a Constitution Bench of the Supreme Court considered the issue at length and after making reference to the Indian, American, English and Australian law on the subject, the apex Court has held that except in cases of express exclusion by statute or in cases where such exclusion can be inferred from the nature of power exercised by the quasi-judicial authority, every quasi-judicial authority must act in consonance of the principles of natural justice and must give reasons in support of its orders. Requirement of recording of reasons even in the absence of statutory provision has been held to be implied in *Bharat Raja Vs. The Union of India (UOI) and Others*, . In *Travancore Rayon Limited v. Union of India* AIR 1971 S.C. 871 and *M/s Mahabir Prasad v. State of U.P.* AIR 1970 S.C. 1031, the Supreme Court has held that the reasons should not only be recorded but must be communicated to the affected person.

14. In the light of the legal principles discussed above, the impugned notice and the orders require a close scrutiny. Notice Annexure-P.5 shows that respondent No. 2 called upon the petitioner to stop further construction by alleging that the petitioner has erected or re-erected a building at Km. 197 of G.T. Road and laid out means of access to G.T. Road Km. 197 in contravention of Section 3 of "1963 Act". The petitioner was asked to stop further construction and to appear before the concerned officer on 29.8.1995 along with records. The petitioner responded

by a detailed reply (Annexure - P. 6). Thereafter, respondent Nos. 4 and 5 passed order Annexures-P.7 and P.8. These orders show nothing except bald reproduction of the allegation which was mentioned in the show cause notice. After repeating the allegation, respondent No. 4 passed the following order:-

"And whereas you have failed to show cause to the satisfaction of the undersigned against the proposed order for the reason mentioned below:

That your construction/structure is in violation of Act. It is within 30 m. of P.W.D. land boundary and outside the Municipal Limit.

Now, therefore, you are hereby required to:

(i) restore the building -

(ii) restore the land at the abovesaid location, to its original state or to bring it in conformity with the provisions of the Act or the Rules framed thereunder within a period of 30 days from the date of this order."

15. Respondent No. 5 also passed the following order:-

"And whereas the undersigned is satisfied that instead of restoring the land/building to its original state you are:-

(i) erecting or re-erecting of the building,

(ii) making or extending of the excavation.

(iii) laying out of the means of access to the road location as above.

You have continued with the contravention.

Now, therefore, you are served with 24 hours notice to carry out the order mentioned above failing which the undersigned may, without any further notice, take such measures as may appear necessary to give effect to the order and the cost of such measures shall, if not paid on demand being to make you, be recoverable from you as arrears of land revenue."

16. In our opinion, both these orders are singularly laconic. Neither of them show consideration of reply filed by the petitioner. None of the respondents has found that the objections raised by the petitioner to the notice are unfounded or untenable. There is also no indication as to what is the nature of the violation committed by the petitioner and to what extent the construction made by the petitioner encroaches upon the P.W.D. land. We have, therefore, no hesitation to hold that the impugned orders are non-speaking and are, therefore, contrary to the principles of natural justice.

17. For the aforementioned reasons, we quash orders Annexures-P. 7 and P 8. The petitioner is directed to appear before the concerned Executive Engineer on 5.8.1996 at 10.30 A.M. The concerned Executive Engineer should give an opportunity of personal hearing and take into consideration the record which the

petitioner may produce and pass detailed speaking order giving reasons in support of his conclusions. It is also made clear that if the Executive Engineer comes to the conclusion that the petitioner has erected/reerected the building in violation of the provisions of the Act, demolition shall not be carried out for a period of seven days.

18. Before parting with the case, we consider it absolutely necessary to remove the misconceived notion entertained by certain officers of the Government that in order to make a show of compliance of the directions given by the Court on 28.4.1995, they are not required to act fairly and reasonably. No doubt, the concerned authorities have to take action for compliance of the directions given on 28.4.1995 but at the same time they must not act arbitrarily and in complete disregard of the principles of natural justice. It is the duty of the officers concerned to give proper notice to the affected person, give him opportunity of hearing and then pass a reasoned order. If the person concerned raises a plea that building had been erected/reerected prior to the commencement of "1963 Act, then" he/she/it should be called upon to produce evidence to substantiate such assertion. The ultimate order must indicate the nature and extent of the violation of the provisions of "1963 Act". We hope that the practice of issuing notices on the printed proforma, which is by and large without application of mind, will be abandoned and proper notices will be issued and detailed reasons would be given by the concerned officer in each case while passing an order for removal of constitution. We have considered it necessary to make these observations so that people who have raised genuine and bona fide constructions without violating the provisions of law. are not put to harassment.