

(1980) 02 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 415 of 1977

Sada Singh

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 18-02-1980

Acts Referred:

Constitution of India, 1950 — Article 19, 20, 20(1)
Punjab New Capital (Periphery) Control Act, 1952 — Section 12(1), 12(2), 5, 6, 6(6)

Citation : AIR 1980 P&H 222

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Judgement

1. This order will dispose of 27 Civil Writs Nos. 415, 498, 775, 785, 1478, 1479, 1489, 1492, 1513, 1533, 1534, 1548, 1581, 1606, 1661, 1884, 1817, 2164 of 1977; 2658 of 1978; 267, 585, 812, 3698, 3920, 4048, 4332 and 4575 of 1979 as common questions are involved therein.

2. The petitioners in all the writs are residents of Mohali and Madanpur which fell in the controlled area under the Punjab New Capital (Periphery) Control Act 1952, (hereinafter the Act). They made constructions in the controlled area without obtaining permission of the Deputy Commissioner u/s 5 of the Act. Notices were thereupon issued to them under S. 12(2) of the Act to show cause why the unauthorised constructions made by them should not be demolished. The petitioners raised objections. The Deputy Commissioner, vide order dated December 3/6 1976, overruled the same and directed the demolition of the unauthorised constructions. The petitioners have filed the writs challenging this order of the Dy. Commissioner. In Civil Writ Petitions Nos. 1489 and 1684 of 1977, the petitioners did apply to the Deputy Commissioner on August 9, 1971, to raise constructions but the permission was refused on October 19, 1971. In Civil Writ Petitions Nos. 415 and 1606 of 1977 the petitioners applied for such permission on September 24, 1968, but no order was passed within a period of three months and their applications were returned on January 6, 1969 and January 7, 1969 respectively.

3. Section 12(2) of the Act before in amendment in 1976 was challenged in *Nand Lal v. The Estate Officer* (1966) 68 Pun LR 947, and it was struck down as ultra vires on the ground that it vested an unregulated power in the Dy. Commissioner to make an order of demolition and was violative of Article 19 of the Constitution. Section 12(2) was thereafter amended by Punjab Act No. 23 of 1976 and the amended sub-section reads:

"Without prejudice to the provisions of sub-section (1), if the Deputy Commissioner, after making such enquiry as he considers necessary and after affording an opportunity of being heard to the person concerned, is satisfied that such person has committed a breach of the provisions of the said sub-section, he may pass an order requiring that person to restore to its original state or to bring into conformity with the condition which have been violated, as the case may be, any building or land in respect of which a contravention which as is described in the said sub-section has been committed, and if such person fails to do so within six weeks of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrear of land revenue,"

4. The learned counsel for the petitioners have argued that in view of the fact that Section 12(2) of the Act before amendment was struck down as ultra vires the Constitution, it shall be taken that Section 12(2), as enacted by Punjab Act No. 23 of 1976, came into existence after the alleged contravention of Section 5 had taken place. As Section 12(2) of the Act, under which the unauthorised construction is sought to be demolished, was not in existence when it was made, no action can be taken thereunder against the petitioners. I see no force in this contention. Section 5 of the Act reads:--

"Except as provided hereinafter, 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, in the controlled area save in accordance with the plans, and restrictions and with the previous permission of the Deputy Commissioner in writing."

5. The petitioners in all the writ petitions excepting Civil Writ Petitions Nos. 415, 1606, 1489 and 1684 of 1977 did not apply nor obtain the permission of the Deputy Commissioner for making constructions. In Civil Writ Petitions Nos. 1489 and 1684 of 1977, the petitioners applied for permission on August 9, 1971, and it was refused on October 19, 1971. In Civil Writ Petitions Nos. 415 and 1608 of 1977 the petitioners applied for permission on September 24, 1968, but the matter was not decided by the Deputy Commissioner within a period of three months. In these two writ petitions the claim of the petitioners is that the permission shall be taken to have been accorded in terms of Section 6(6) of the Act. This point will be discussed later. The fact, however, remains that in all the writ petitions; excepting Nos. 415 and 1606 of 1977, the petitioners had either applied and obtained permission from the Deputy Commissioner under Sec. 6 of the Act or it was applied for but was declined within a period of three months. The fact that when the unauthorised construction was made, Section

12(2) of the Act was not in existence would not render the construction authorised in terms of Section 5 of the Act. The construction made without permission of the Deputy Commissioner u/s 6 of the Act would remain illegal and unauthorised: irrespective of the fact whether Section 12(2) of the Act was in existence at the time it was made or not.

6. It has been argued that Section 12 deals with offences and penalties and the action under sub-section (2). thereof is penal in character. This sub-section was enacted in 1976. The penalty of demolition provided therein cannot be imposed with respect to the unauthorised constructions made before its enactment. The argument proceeds that to do it otherwise would be violative of Art 20 of the Constitution. I am not impressed, Clause (1) of Article 20 of the Constitution reads:--

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

7. Section 12(2) does not envisage conviction of an offence resulting in the award of punishment. The conviction and the penalty (punishment) in terms of clause (1) of Article 20 of the Constitution are provided u/s 12(1), Section 12(2) provides for an action for undoing the illegality committed by those who raised construction violative of Section 5 and without permission u/s 6. This action is neither a trial nor conviction nor punishment Section 12(2) is not violative of Article 20(1) of the Constitution The action thereunder can therefore; be taken even with respect to unauthorised constructions violative of Section 5 of the Act that took place before its enactment in 1976.

8. It has been further argued that before the enactment of Section 12(2) in 1976, the unauthorised constructions violative of Section 5 of the Act could not be demolished. The petitioners who made such constructions before the enactment of Section 12(2) thus acquired a right that the same will not be demolished Section 12(2) has not been given retrospective effect. It shall operate only prospectively. No action can therefore be taken against such petitioners u/s 12(2) who made unauthorised constructions before its enactment in 1976. I do not agree, The petitioners by making unauthorised constructions in violation of Section 5 of the Act cannot be taken to have acquired a right to retain them. The petitioners cannot claim permanency of illegally committed by way of a vested right. The purport of S. 12(2) is to undo the illegality committed by the petitioners. The illegality committed by the petitioners continues even after the enactment of Section 12(2) in 1976. The petitioners, therefore, cannot avoid action against them u/s 12(2) of the Act on the ground that they made unauthorised constructions. before its enactment in 1976.

9. The. unauthorised. construction made in contravention of Section 5 of the Act could however, be demolished u/s 12(2) after its enactment in 1976. It is not

disputed that the action u/s 12(2) was initiated against the petitioner after its enactment.

10. Section 6 of the Act prescribes the procedure for applying for permission to raise construction in the controlled area, Sub-sections (1) and (6) read:--

"(1) Every person desiring to obtain the permission referred to in Section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation of means of access to which the application relates as may be prescribed.

.....

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in the plans u/s 4 be deemed to have been given without the imposition of any Conditions."

11. As stated earlier, in Civil Writ Petitions Nos. 415 and 1606 of 1977 the petitioners had applied to the Deputy Commissioner for permission to raise construction on September 24, 1968: No order was passed thereon for 3 months. In fact, their applications were returned to them on January 6, 1969 and Jan. 7, 1969 respectively. The contention of the learned counsel for the petitioners is that by virtue of the provisions contained in Section 6(6) the petitioners shall be deemed to have raised construction with permission and their construction cannot be termed as unauthorised or demolished u/s 12(2) of the Act. I see no force in this contention. u/s 5, it is specifically provided that the construction must be (a) in accordance with the plans and restrictions and (b) with the previous permission of the Deputy Commissioner in writing. As the Deputy Commissioner failed to pass an order within a period of three months in these two cases, his permission shall be presumed. This presumed permission shall be of no avail if the proposed construction is not in accordance with the plans and the restrictions. It is again provided in Section 6(6) that the presumed permission of the Deputy Commissioner shall be without prejudice to the restrictions signified in the plans u/s 4. Section 4 of the Act reads:--

"4(1) The Deputy Commissioner shall within three months of the declaration under sub-section (1) of Section 3 deposit at his office and at such other places as he considers necessary, plans showing the area declared to be a "controlled area" for the purpose of this Act, signifying therein the nature of the restrictions applicable to the controlled area.

(2) The plans so deposited shall be in the form prescribed and shall be available for inspection by the public free of charge at all reasonable times".

12. It is thus clear that if the proposed construction is not in accordance with the plans and restrictions, the same shall continue to be unauthorised in spite of the presumed permission of the Deputy Commissioner u/s 6(6) of the Act.

13. The Director, Housing and Urban Development, Punjab, in his written statement on behalf of the respondents, has averred that the construction made by the petitioners in Civil Writ Petns., Nos. 415 and 1606 of 1977 is not at all in accordance with the plans submitted by them along with their applications for permission. They applied for permission to construct residential houses whereas they have constructed shops. The construction made by them is within 300 feet of the P.W. D. boundary of Chandigarh-Kharar road which is a contravention of the restrictions imposed u/s 4(1) of the Act, The petitioners have filed no rejoinder to the contrary. In view of the fact that the construction made by the petitioners is not at all in accordance with the plans which they had submitted, the petitioners cannot take advantage of the presumed permission u/s 6(6) of the Act with respect to the disputed construction. This apart, the construction shall again be taken as unauthorised because it violates the restrictions imposed u/s 4(1) of the Act inasmuch as they fall within 300 feet of the P.W. D. boundary of Chandigarh-Kharar road.

14. The learned counsel for the petitioners in Civil Writ Petitions Nos. 415 and 1606 of 1977 has argued that it is not proved that the plans showing the area declared to be the "controlled area" and signifying the nature of restrictions applicable thereto were deposited by the Deputy Commissioner at his office within three months of the declaration under sub-section (1) of Section 3. The argument proceeds that as compliance of Section 4(1) of the Act was not made by the Deputy Commissioner within a period of three months of the declaration u/s 3(1), the construction made by the petitioners cannot be taken as violative of the restrictions u/s 4(1). In my opinion, there is no substance in this contention. In *Shiromani Gurdwara Parbandhak Committee, Amritsar v. Union Territory of Chandigarh* (1975) 77 Pun LR 354, it was held that Section 4(1) of the Act provides for something which is to be done after the notification u/s 3(1) of the Act is issued. Even if the provisions of Section 4(1) were not complied with, the notification issued u/s 3(1) does not become invalid or unenforceable. Firstly, it has been averred on behalf of the respondents that the restriction which has been contravened by the petitioner was imposed u/s 4(1) of the Act. It has not been controverted. Secondly, even it is assumed for the sake of argument that the plans signifying the nature of the restrictions applicable to the controlled area were not deposited at the Deputy Commissioner's office within a period of three months of the notification u/s 3(1), the fact remains that such plans were available in the office of the Deputy Commissioner long before the petitioners applied for permission in September, 1968. It is not the case of the petitioners that they approached the office of the Deputy Commissioner to check up the plans and they were not made available. Under these circumstances, the petitioners cannot justifiably ignore the restrictions prohibiting the construction of a building within 300 feet of the P.W. D. boundary of Chandigarh-Kharar road. The case of the petitioners in Civil Writ Petitions No. 415 and 1606 of 1977 is, therefore, at par with that of the petitioners in the remaining writs.

15. Section 15(a) of the Act reads:--

"Nothing in this Act shall apply to:--

(a) any building for residential purposes or for purposes subservient to agriculture in the abadi area of any village as defined in the revenue records."

16. The abadi deh number in Mohali is 43 and in Madanpur is 319. According to the respondents, the petitioners have made constructions outside the abadi deh number. This averment has neither been controverted nor disputed during arguments. The learned counsel for the petitioners has argued that in consolidation proceedings in 1954, some area outside abadi deh number of Mohali was kept reserve for allotment of baras (vacant sites) by way of extension of the abadi. The revenue authorities, however, did not make entry to that effect in the revenue records. The petitioners in Mohali have made constructions over the area which was reserved for extension of abadi and as such are exempt from the operation of the Act. I see no force in this contention. The unauthorised constructions in village Mohali are admittedly not in the abadi deh number (43). The area of abadi deh number is included in Lal Iakir. The abadi deh khasra number is constituted at the time of settlement and it comprises one number only. The ownership of abadi deh is joint of all the residents of the village including the owners of agricultural land. The ownership in abadi deh is determined by virtue of possession. The land outside the limits of abadi deh number is given different khasra numbers and is owned by individual landowner. The khasra numbers outside the abadi deh limits and owned by different persons individually cannot be taken as abadi deh or abadi area. This apart, the revenue records do not support the contention of the learned counsel for the petitioners, who have made unauthorised constructions in Mohali. The resolution alleged to have been passed in 1954, during Consolidation reserving some area outside abadi deh limits in Mohali for allotment as baras was not implemented. In the revenue records prepared thereafter till today, the implementation of any such resolution has not been reflected. It is further incorrect that any reservation of area outside the abadi deh limits for allotment of baras would extend the "abadi deh or an abadi area". The petitioners of Mohali, therefore, cannot justifiably claim advantage u/s 15(a). The disputed constructions made by the petitioners of Mohali have rightly been treated as illegal and unauthorised.

17. The learned counsel for the petitioners in Civil Writ Petitions Nos. 415 and 1606 of 1977, has contended that the Deputy Commissioner initiated proceedings against the petitioners in 1968/1969, u/s 12(2) of the Act and when apprised that their applications for permission to raise construction had remained pending without any order for more than three months resulting in the presumed permission in their favour consigned the papers, vide order dated February 12, 1969. Under these circumstances, the Deputy Commissioner is debarred from taking action against them u/s 12(2). Reliance has been placed on *State of Punjab v. Sada Ram* 1963 CriLJ 550. I do not agree. In *Sada Ram's* case (supra), the persons who had made unauthorised constructions were tried and convicted by a competent Magistrate u/s 12(1). On appeal, the learned Sessions

Judge set aside their conviction holding that there was no evidence showing that the Deputy Commissioner had made any declaration under sub-section (1) of Section 3 of the Act and further there was nothing to show that any restrictions had been imposed in the area in question on the construction or erection of any buildings. The conviction was consequently set aside. It was under these circumstances that the High Court held that even if Section 12(2) is independent of sub-section (1) it is not possible to see how the Deputy Commissioner can ignore any decision given by a competent Court in proceedings initiated by the Deputy Commissioner himself for the punishment of offence under sub-section (1). If it has been found, as was found by the learned Sessions Judge, that no breach of the provisions of sub-section (1) had been committed then the Deputy Commissioner could not go behind or reopen that decision. The ratio of this authority cannot be applied to the facts of the instant cases because the petitioners were not tried u/s 12(1) by a Magistrate. The Deputy Commissioner issued notices to the petitioners to show cause why they be not prosecuted. They submitted their replies to the notices and then the papers were consigned. The argument of the learned counsel for the petitioners is that the Deputy Commissioner was competent to try the petitioners under S. 12(1) and his order dated Feb. 12, 1969; consigning the papers amounts to their acquittal. I do not agree. u/s 13 of the Act it is provided that no Court inferior to that of a (Judicial); Magistrate of the 1st Class shall be competent to try an offence punishable under this Act. The Deputy Commissioner who ordered that the papers be consigned was not a (judicial) Magistrate. This apart, the petitioners would have been convicted or acquitted by the (Judicial) Magistrate if they had been tried by the latter. The (Judicial) Magistrate after having commenced the trial of the petitioners could not end it by ordering the consignment of papers. It is, therefore, evident that the Deputy Commissioner. Who was not competent to try the petitioners u/s 12(1) neither tried nor acquitted the petitioners thereunder. The order of the Deputy Commissioner dated February 12, 1969, ordering the consignment of papers was an administrative order. This administrative order cannot be equated with a decision by a competent Court in proceedings initiated u/s 12(1) with the result that it will not debar the Deputy Commissioner to proceed against the petitioners u/s 12(2).

18. The learned counsel for the petitioners have argued that the Act ceased to be a good law after the reorganisation of the erstwhile State of Punjab with effect from November 1, 1966, and so such no action can be taken against the petitioners u/s 12(2) thereof I do not agree. The Act came into force in 1953. The erstwhile State of Punjab was reorganised with effect from November 1, 1966. The Act was in force when the erstwhile State of Punjab was reorganised, u/s 88 of the Punjab Reorganisation Act, 1966, the Act continues to remain in force after November 1, 1966.

19. Another point argued by the learned counsel for the petitioners is that the Act was adapted in 1968 by the State of Punjab u/s 89 of the Punjab Reorganisation Act. The effect of the adaptation is that the old Act stood

abrogated and a new one came into force. In the absence of a fresh notifications u/s 3(1) under the new Act, no action can be taken against the petitioners u/s 12(2). This contention has no force as the adaptation of the Act u/s 89 did not abrogate the old Act. The Act had been given continuity after November 1, 1966, by Section 88 of the Reorganisation Act and its adaptation u/s 89 did not affect its validity.

20. The learned counsel for the petitioner in Civil Writ Petition No, 415 of 1977, has argued that the Deputy Commissioner did not pass a speaking order u/s 12(2) and it is liable to be quashed on this ground. The argument proceeds that the Deputy Commissioner had passed the order in the form of a letter dated January 5, 1977, addressed to the petitioner wherein it was mentioned that the latter had violated Section 5 of the Act and he should demolish the construction within six weeks. The detailed order of the Deputy Commissioner dated December 3, 1976, placed on the file was passed after the petitioner had filed the writ petition. I do not agree. It is clear that the intimation of the order passed by the Deputy Commissioner was sent to the petitioner, vide letter Annexure P. 5. This letter does not prove that the Deputy Commissioner had not passed a detailed order dated August 3, 1976, a copy of which has been placed on the file. The Director Housing and Urban Development in his written statement has averred that a detailed order was passed on the file and there is no justification to doubt its veracity.

21. It has been argued that after the reorganisation of 1966, the State of Punjab cannot legislate with respect to the periphery of Chandigarh because the latter has been constituted a Union Territory and has ceased to be a part of Punjab. I do not agree. The State of Punjab can legislate with respect to the land within its territory and the Act has application in relation thereto.

22. Another point argued by the learned counsel for the petitioners is that the land over which the petitioners have made constructions is being acquired by the State for Urban Estate of Mohali. As the petitioners have made constructions the State shall have to pay compensation to the petitioners for the same for its acquisition. The action u/s 12(2) of the Act has been initiated against the petitioners to avoid the payment of such compensation. It is liable to be quashed being mala fide. I do not agree. The petitioners have made unauthorised constructions in violation of the provisions of Section 5 of the Act. The Deputy Commissioner is competent to demolish the same by following the procedure prescribed in Section 12(2). The action initiated against the petitioners u/s 12(2) cannot be stamped mala fide merely because the State will not have to pay compensation for, unauthorised construction for acquisition.

23. It has been argued that the Act is vague inasmuch as it purports to apply within 10 miles of the boundary of Chandigarh irrespective whether the area falls within the territorial limits of Punjab or not. This contention also has no force. It is understood that the Act shall have application in relation to the land which falls within the territorial limits of Punjab and not to the land which falls outside it.

24. In the result, all the writs fail and are dismissed. No order as to costs.

25. Petitions dismissed.