
(2005) 02 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5428 of 1986

Shri Radhey Krishan Jalan	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Haryana Municipal Act, 1973 — Section 201, 202(1), 203(3), 203(4), 205
Land Acquisition Act, 1894 — Section 4, 5A

Citation : AIR 2005 P&H 249 : (2005) 140 PLR 518 : (2005) 2 RCR(Civil) 673

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Vinod Sharma, for the Appellant; Palika Monga, Assistant A.G. for Respondent No. 1, J.P. Sharma and Mohan Jain, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner is owner of land measuring 19 Kanals and 18 Marlas in Khasra No. 722, situated in Bhiwani Lohar, Hadbast No. 22, Opposite Bus Stand. He submitted a plan for construction of shops on the land owned by him to the Municipal Committee, Bhiwani-respondent No. 2. The plan was sanctioned on 1.4.1972. Copy of the order sanctioning the plan is attached as Annexure P-1 to the writ petition. Thereafter the petitioner has constructed shop pursuant to the sanction. He has also planted fruit bearing trees on the rest of the land and installed three wooden stalls on the land. It appears that a notification for acquisition of the land was issued u/s 4 of the Land Acquisition Act which was successfully challenged in C.W.P. No. 6497 of 1975. By order dated 26.11.1979, the notification u/s 4 and other proceedings were quashed. Thereafter the State of Haryana issued another Notification on 10.6.1980. The petitioner filed objections u/s 5-A of the Land Acquisition Act. The objections seems to have been accepted as no further action was taken by the State of Haryana, on the basis of the Notification which was permitted to lapse. It was only then that the petitioner made an application u/s 201 of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act") for permission to make

construction on the land. But the petitioner did not hear anything from the Municipal Committee. After waiting for some time, the petitioner started construction on the land. The petitioner was served with the Notice under Sections 208-209 of the Act for removing the construction made on the spot. The petitioner submitted a reply to the notice. In order to avoid any further complication, the petitioner offered to settle the dispute by way of compromise. The compromise was accepted on 31.3.1986. An inspection was made by the Staff on the spot. The Building Inspector in his report recommended that the plan submitted by the petitioner be sanctioned. In spite of the recommendations in favour of the petitioner, the application was rejected by respondent No. 2 on 7.7.1980. In the meantime, the petitioner had got the land partitioned with his son and wife through Court. A decree to this effect was passed by Senior Sub Judge, Bhiwani on 20.3.1986. The plan submitted by the petitioner was also sanctioned by letter (Annexure P-9). This sanctioned plan was revoked by passing the following order dated 29.8.1986 (Annexure P-13):-

"No. 85/M.EW./M.G.B Dated 29.8.1986

Sub: Rejection of sanction in respect of file No. 15 dated 16.4.1980.

Memo

You are hereby informed that your map file No. 15 dated 16.4.1980 which was sanctioned on 31.3.1986 has been revoked on 29.8.1986 and, therefore, you should not make any construction at site. That take notice.

Sd/- Administrator Municipal Committee, Bhiwani."

2. No reply has been filed by respondent No. 1 and 2. However, reply has been filed on behalf of respondent No. 3 who at the relevant time was the Administrator of the respondent No. 2-Municipal Committee. However, Mr. Vinod Sharma, learned counsel for the petitioner states that the petitioner does not wish to press the allegations of mala fide which had been made against respondent No. 3 in the writ petition.

3. Learned counsel for the petitioner submits that the order (Annexure P-13) is without jurisdiction in as much as there is no power vested in the Municipal Committee to revoke any sanction granted to a person u/s 201 of the Act. In support of the aforesaid submission, the learned counsel relies on a judgment of this Court in the case of Rajinder Garg v. Municipal Committee, Patiala (1989) 95 P.L.R. 415. A part from this, it is submitted that the impugned order causes civil consequences and it could not have been passed without complying with rules of natural justice. He also submits that respondent No. 2 having compounded the lapse on the part of the petitioner under Sections 208 and 209 of the Act and having received the fine, had no right thereafter to revoke the order sanctioning the plan.

4. I have considered the submissions made by the learned counsel for the parties. Undoubtedly, the plan had been sanctioned by the respondents under

the relevant provisions of the Act. The petitioner has completed the construction during the pendency of the writ petition. No reason has been specified by the respondents in support of the order revoking the sanction earlier granted. Section 201 of the Act clearly provides that no person shall erect or re-erect or commence to erect any building without sanction of the Committee. The Municipal Committee has the power u/s 205 to refuse sanction of the erection or re-erection of any building in contravention of any bye-law 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. u/s 206 of the Act, the Committee even has power to direct the modification of a sanctioned plan before the completion of the construction. u/s 208 of the Act it is provided that should a building be begun, erected or re-erected in contravention of the aforesaid provisions, the Committee may by notice delivered to the owner within six months from the completion of the building, require the building to be altered or demolished. It is further provided that the Committee may, instead of requiring the alteration or demolition of any such building, accept by way of composition a sum of not less than (Five per centum) and more than (fifteen per centum) of the value of such building to be determined in accordance with the rules. The aforesaid provisions clearly provide that the Committee has the power to compound any lapses committed by any individual who has constructed a building on the basis of a sanctioned plan, but not strictly in conformity with the plan. As noticed earlier, the lapses committed by the petitioner had been compounded by the respondents. The plan submitted by the petitioner had also been sanctioned. Therefore, the order of revocation could not have been passed.

5. In view of the above, the writ petition is allowed. The order dated 29.8.1986 (Annexure P-13) is quashed. No costs.