

(2004) 08 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1669 of 2002

State of Haryana and Others

APPELLANT

Vs

Lt. Gen. K.L.K. Singh

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Punjab New Capital (Periphery) Control Act, 1952 — Section 13, 2(3), 6(6)

Citation : AIR 2005 P&H 76 : (2005) 139 PLR 45 : (2005) 1 RCR(Civil) 52

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Sultan Singh, for the Appellant; R.N. Raina, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Jain, J.—This Regular. Second Appeal has been filed by the defendants State of Haryana and others, against the judgment and decree dated 29.11.2001 passed by the Additional District Judge, Panchkula, whereby the appeal filed by the plaintiff was accepted, the judgment and decree dated 3.11.1999 passed by the trial Court were set aside and the suit of the plaintiff was decreed.

2. Lt. Gen. K.L.K.Singh (Retired) (plaintiff) had filed suit for permanent injunction against the defendant appellants, alleging therein that he and his wife had owned 2 bigha 15 biswa of land in village Naggal Mogi Nand and that after retirement from Army, he wanted to construct a residential house and therein in order to look after the farm effectively. It was alleged that in this regard, the plaintiff moved an application of the Deputy Commissioner, Ambala on 26.4.1990 for grant of permission to construct the said residential house, as required under the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the Act). It was alleged that thereafter, another application in this regard was also submitted by the plaintiff and his wife jointly to defendant No. 1 i.e. Director, Town and Country Planning, Haryana, under certificate of posting on 18.5.1990 alongwith relevant documents. It was alleged that neither the plaintiff nor his wife received any communication either from the

Deputy Commissioner, Ambala or defendant No. 1 i.e. Director Town and Country Planning, Haryana. It was further alleged that the plaintiff started raising the construction of the house in question in the last week of August, 1990 under the bona fide belief that in view of the provisions of Section 6(6) of the Act, the sanction was deemed to have been granted to him and his wife for construction of the said house without imposition of any condition. It was alleged that the plaintiff was surprised when he received show cause notice dated 5.11.1990 from defendant No. 2 i.e. District Town planner, requiring the plaintiff to stop further construction and to appear in his office and to show cause as to why he should not be ordered to restore or to bring it in conformity with the provisions of the Act. It was alleged that the plaintiff gave detailed written reply dated 10.12.1990 explaining the whole background pointing out that the show cause notice was contrary to law and facts and deserved to be withdrawn. It was alleged that the plaintiff did not receive any information from the defendants with regard to his reply to the notice nor he was afforded any opportunity to substantiate his reply. On the contrary, he received Memo dated 10.12.1990 issued by defendant No. 2. It was further alleged that the defendants also pasted memo dated 19.12.1990 on the building in question requiring the plaintiff to restore the building to its original position etc. within 24 hours. It was alleged that in fact, the building in question was constructed by the plaintiff and his wife validly and legally in accordance with the building plans submitted along with the application upon which no order in writing was passed by the Deputy Commission and after expiry of three months, the permission was deemed to have been given without imposing any condition etc. and therefore, the said permission could not be legally withdrawn as the construction had already completed. It was alleged that the various show cause notices and the orders passed by the defendants were illegal and void and not binding on the rights of the plaintiff.

3. The suit was contested by the defendants by filing written statement. Various preliminary objections were raised. On merits, it was alleged that the land of the plaintiff fell within the Chandigarh periphery which had been declared as a controlled area u/s 3 of the Act. It was denied that any application was received by the Director, Town and Country Planning, Haryana on 18.5.1990 as alleged by the plaintiff. It was further alleged that as per the field staff of the defendants, the plaintiff was found to have started raising construction of two rooms. It was alleged that thereupon the requisite notice was issued to the plaintiff. It was further alleged that in the meanwhile, the plaintiff started further construction, whereupon another show cause notice was issued to the plaintiff and the plaintiff was given opportunity to personal hearing to appeal before the District Town Planner on 26.11.1990 but he did not appear and sought adjournment and again the plaintiff did not appear and thereupon necessary orders were passed requiring the plaintiff to restore the buildings to its original position.

4. After hearing both sides and perusing the record, the learned Trial Court dismissed the suit of the plaintiff. However, the appeal filed by the plaintiff was accepted by the learned Additional District Judge, the judgment and decree

passed by the Trial Court were set aside and the suit of the plaintiff was decreed and the defendants were restrained from demolishing the building of the plaintiff, in any manner whatsoever, while granting this relief, it was found by the learned Additional District Judge that the plaintiff had raised the construction after he had moved the application to the Deputy Commissioner and had waited for three months for him to pass any order on the said application but the Deputy Commissioner having failed to pass any order therein, it was a deemed sanction for raising the construction. It was found that under the provisions of the Act, the Deputy Commissioner was the competent authority to grant permission. Aggrieved against the judgment and decree passed by the learned Additional District Judge, the defendants filed the present Regular Second Appeal in this Court.

5. Notice of motion was issued and the Trial Court record was ordered to be requisitioned.

6. I have heard the learned counsel for the parties and have gone through the record carefully.

7. The learned counsel appearing for the defendant appellants submitted before me that the plaintiff had raised the construction of the house in question without seeking the sanction as required under the Act and as such the defendants had a right to seek its demolition. On the other hand, the learned counsel for the plaintiff respondent submitted before me that under the provisions of the Act, the Deputy Commissioner was competent authority to grant sanction and necessary application was submitted to the Deputy Commissioner with the relevant record seeking permission to raise the construction of the house and since no orders were passed thereon, it was deemed to have been sanctioned under the provisions of the Act. 8. u/s 6(1) of the Act, it has been provided that every person desiring to obtain the permission required u/s 5 of the Act shall make an application in writing to the Deputy Commissioner. u/s 6(2) of the Act, it is provided that on receipt of such application, the Deputy Commissioner after making such inquiry as he considers necessary shall, by order in writing either grant the permission subject to such conditions, if any, as maybe specified in order or refuse to grant such permission. u/s 6(6) of the Act, it is provided that if at the expiration of a period of three months after an application under sub-section (1) had been made to the Deputy Commissioner, no order in writing had 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. u/s 2(3) of the Act "Deputy Commissioner" has been defined to mean the Deputy Commissioner of the District and includes any person for the time being appointed by the State Government by notification in the official Gazettee to perform all or any of the functions of the Deputy Commissioner under this Act.

8. Vide notification dated 3.6.1972 copy Exhibit PW1G, in partial modification of the earliest notification dated 10.4.1967, the Director, Town and Country

Planning, Haryana was appointed to perform all the functions of the Deputy Commissioner, exercisable under the said Act, except the functions u/s 12 of the Act. Subsequently, vide notification dated 21.8.1978, copy Exhibit PW 1/H, in supersession of the notification dated 3.6.1972, the District Town Planner, Panchkula was appointed to perform the functions of the Deputy Commissioner exercisable u/s 13 of the said Act. As per the notification dated 10.4.1967, referred to in the notification dated 3.6.1972, the Director, Town and Country Planning, Haryana was appointed to exercise and perform all the powers and functions of Deputy Commissioner, exercisable under the said. Act. Copy of this notification dated 10.4.1967 was produced before me by the learned counsel appearing for the defendant-appellants during the course of arguments. From a perusal of the above, it would be clear that so far as the Deputy Commissioner of the District is concerned, he shall be the Deputy Commissioner as defined u/s 2(3) of the Act, inasmuch as it is provided that "Deputy Commissioner" shall mean the Deputy Commissioner of the District and shall include any person for the time being appointed by the State Government by notification in the official Gazette, to perform all or any of the functions of the Deputy Commissioner under the said Act. Nothing has come on the record to show that by virtue of any notification of amendment in the Act, Deputy Commissioner of the District had been excluded from exercising the functions of "Deputy Commissioner" under the Act. Even if some other officer/officers had been appointed to act as "Deputy Commissioner" under the Act, yet this would not mean that the Deputy Commissioner of the District had been excluded from performing the functions of "Deputy Commissioner" under the Act. In the present case, it is the admitted case of the parties that the plaintiff had filed application dated 26.4.1990 to the Deputy Commissioner, Ambala for grant of permission to construct a residential house on the land in dispute. It is also the admitted case of the parties that in spite of the expiry of three month's period, no orders were passed on the said application either granting permission or refusing to grant permission. Under these circumstances, under the provisions of Section 6(6) of the Act, the permission shall be deemed to have been granted by the Deputy Commissioner. In my opinion, the learned Additional District Judge was perfectly justified in holding that in the present case, permission shall be deemed to have been granted u/s 6(6) of the Act and no fault could be found with this finding of the learned Additional District Judge in this regard, especially when it was not disputed on behalf of the defendants that application dated 26.4.1990 was received by the Deputy Commissioner, Ambala from the plaintiff. The contention of the learned counsel for the defendant-appellants that the Deputy Commissioner, Ambala was not competent to exercise the functions of the "Deputy Commissioner" under the Act, in my opinion, is wholly fallacious, inasmuch as the Deputy Commissioner of the District, in any case, has been included in the definition of "Deputy Commissioner" under the Act and it has been provided that any other person could also be authorised to act as "Deputy Commissioner" under the Act. Furthermore, as referred to above, nothing has come on the record to show that by virtue of any notification or rule or by way of

any amendment to the Act, the Deputy Commissioner of the District had been excluded to perform the functions of the "Deputy Commissioner" under the Act.

9. In view of the above, in my opinion, the learned Additional District Judge was perfectly justified in decreeing the suit of the plaintiff and no fault could be found within the same. I am further on the opinion that no question of law much less substantial question of law arises for determination in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.