
(2003) 04 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5737 of 2003

Tej Pal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 134 PLR 405 : (2003) 3 RCR(Civil) 130

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Rakesh Nagpal, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner has challenged the action taken by the respondents seeking to demolish the premises of the petitioner pursuant to the orders passed by the Competent Authority and the Tribunal established under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (hereinafter referred to as the Act). On 4.10.1995, the petitioner was given a show cause notice to appear before Respondent No.3 to show cause as to why he should not be ordered to restore land at Km. 116.500 of G.T. Road (National Highway No. 1) to the original state or to bring it in conformity with the provision of the Act or the Rules framed thereunder within a period of 30 days from the date of the issue of that order.

2. The petitioner appeared before the respondents and stated that the land does not fall within 30 metres from the berm of the road. The petitioner also sent a written reply to the show cause notice, copy of which has not been attached with the writ petition as according to the petitioner no copy of the reply was retained. On 16.5.1996, an order was passed by respondent No. 3 calling upon the petitioner to demolish the building and to restore the land to its original state. The petitioner failed to carry out the directions which led to passing of another order on 19.6.1996. The petitioner still did not comply with the direction issued.

Aggrieved against the order dated 19.6.1996, the petitioner filed Civil Writ Petition No. 13614 of 1996. That writ petition was disposed of by the Division Bench in view of judgment in United Rice Land's case on 19.11.1997. When the Tribunal was constituted the petitioner filed Appeal No. 103 of 2000, The respondents filed a reply to the appeal on 28.3.2001. The appeal filed by the petitioner has been dismissed. The petitioner did not care to challenge the aforesaid order of the Tribunal. Now respondent No. 5 has again issued a notice to the petitioner dated 21.3.2003 directing him to restore the land to its original state.

3. Learned counsel for the petitioner vehemently argued that all the orders mentioned above have been passed arbitrarily as the building constructed by the petitioner does not fall within 30 metres from the berm of the road: He seeks to rely on the plan of the area in which his shop is situated, photocopy of which is attached as Annexure P.9. He further submits that it has been wrongly stated in Annexure P.8 that the land of the petitioner falls within 30 metres of the road reservation.

4. After hearing the learned counsel for the petitioner at some length we do not find any merit in the submissions made. A perusal of Annexure P.6 shows that the Tribunal constituted under the Act had disposed of six appeals by a common order. The appeal tiled by the petitioner figures at Sr. No. 6. The Tribunal notices the submissions made by the appellant that the building in dispute does not fall within the 30 metres of the road reservation for the reason that the distance of 30 metres is to be measured from the edge of a metalled surface road or in any case from the edge or a an unmetalled surface of the road. The Tribunal has also noticed that the petitioner had also filed writ petition which was disposed of on the basis of the judgment in the United Rice Land's case (supra). Therefore, the Tribunal has passed an elaborate speaking order. The respondents had controverted the plea taken by the petitioner before the Tribunal and submitted that the limit of 30 metres is to be measured from the road surface as envisaged by the provisions of the Act. The building of the appellant is within 30 metres of the road reservation. Therefore, the structure was liable to be removed. The Tribunal has also noticed the submissions of the appellant (petitioner herein) that as per notification dated 17.3.1976 pertaining to publication of the draft development plan it had been specifically mentioned that along the G.T. Road 30 metres wide green belt has been left in order to restrict undue development in consonance with Section 3 of the Act. The appellant's shop is after this green belt. This plea was also controverted by the respondents. It was stated that when the petitioner appeared before respondent No. 3 on 25.8.1995 he failed to produce any satisfactory record/evidence to prove his contention. The Tribunal examined the entire matter on the basis of the directions issued by this Court. It has been held that the functionaries of the Department visited the spot in the year 1995. It was found, as a matter of fact, that the petitioner had erected a shop at RD No. 116.500 of G.T. Road (National Highway No. 1.). The appellant was directed to bring on record site plan, copy of jamabandi, copy of khasra

girdawari and sijra plan in support of its case. Although the petitioner appeared before the authorities but he did not adduce any satisfactory evidence. After examining the provisions of the Act, the Tribunal has come to the conclusion that the distance of the offending structure has to be measured keeping in view the road reservation of the Scheduled road. Road reservation in relation to a scheduled road means land metalled or unmetalled which vests in the Government or Central Government or a Local Authority.

5. Referring to the plan which is attached to the petition as Annexure P.9, it is held that this plan clearly depicts the shop and its exact location vis-a-vis National Highway. It is further held that the limit of 30 metres has to be measured from the PWD land boundary as the same being part of road reservation of the scheduled road on either side. The petitioner has raised constriction at a distance of 4 metres from the road reservation whereas as per Section 2(9) and 3 of the Act no construction is to be raised within 30 metres from the road reservation or, either side of the scheduled road. The Tribunal has recorded that this factual aspect is not disputed by the appellant (petitioner herein). The only argument advanced was that such a distance is to be measured from the centre of the scheduled road or from the berm of the road, The findings of fact recorded by the Tribunal can not be styled either arbitrary, perverse or based on no evidence. This Court does not act as a Court of Appeal over the findings of fact recorded by a Qashi Judicial Tribunal whilst exercising the extraordinary discretionary jurisdiction under Articles 226 and 227 of the Constitution of India. In our opinion, the orders passed by the Authorities do not suffer from any error apparent on the face of the record.

6. Keeping in view the detailed reasons given by the Tribunal, we find no scope for interference with the impugned order in exercise of our discretionary jurisdiction under Articles 226/227 of the Constitution of India. Dismissed. No costs.

Sd/- Hemant Gupta, J.