

Before S.S. Nijjar, J.

RADHEY KRISHAN JALAN (DEAD)
THROUGH L.Rs.—*Petitioners*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 5428 of 1986

2nd February, 2005

Constitution of India, 1950—Art. 226—Haryana Municipal Act, 1973—Ss. 201 to 206—Sanction of plan by respondents in favour of petitioner—Petitioner completing construction according to plan—Respondents revoking the sanction granted to petitioner—Challenge thereto—Provisions of the 1973 Act 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—Lapses committed by the petitioner had been compounded by the respondents—Order of revocation could not be passed—Petition allowed.

Held, that 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. The provisions of the Act 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 sanctioned plan, but not strictly in conformity with the plan. 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.

(Para 4)

Vinod Sharma Advocate, *for the petitioner.*

Ms. Palika Monga, AAG, Haryana, *for respondents No. 1 & 2*

J.P. Sharma, Advocate *for*

Mohan Jain, Advocate, *for respondent No. 3.*

JUDGMENT**S.S. NIJJAR, J.**

(1) 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 1st April, 1972. Copy of the order sanctioning the plan is attached as Annexure P-1 to the writ petition. Thereafter the petitioner has constructed shops pursuant to the sanction. He has also planted fruit bearing trees on rest of the land and installed three wooden stalls on the land. It appears that a notification for acquisition of the land was issued under Section 4 of the Land Acquisition Act which was successfully challenged in CWP No. 6497 of 1975. By order dated 26th November, 1979, the notification under Section 4 and other proceedings were quashed. Thereafter the State of Haryana issued another Notification on 10th June, 1980. The petitioner filed objections under Section 5-A of the Land Acquisition Act. The objections seem 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 under Section 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 31st March, 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 7th July, 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 20th March, 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 29th August, 1986 (Annexure P-13) :—

“No. 85/M.E./M.G.B. Dated 29th August, 1986

Sub : Rejection of sanction in respect of file No. 15 dated 16th April, 1980.

Memo

You are hereby informed that your map file No. 15 dated 16th April, 1980 which was sanctioned on 31st March, 1986 has been revoked on 29th August, 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 respondents no. 1 and 2. However, reply has been filed on behalf of respondents no. 3 who at the relevant time was the Administrator of the respondents 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 under Section 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 versus Municipal Committee, Patiala (1)**. Apart 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 under Section 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. Under Section 206 of the Act, the Committee even has power to direct the modification of a sanctioned plan before the completion of the construction. Under Section 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 29th August, 1986 (Annexure P-13) is quashed. No costs.