

(2009) 02 P&H CK 0036

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. 18596 of 2008

Prem Sagar

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Feb. 13, 2009

Citation: (2009) 2 ILR (P&H) 439 : (2009) 2 RCR(Civil) 732

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Balram Gupta and APS Shergill, for the Appellant; G.S. Attariwala, Addl. AG, D.S. Patwalia, Alok Jagga and J.S. Bhandal, for the Respondent

Final Decision: Dismissed

Judgement

Surya Kant, J.

The Petitioner seeks quashing of the orders dated 11th April, 2008 and 15th October, 2008 [Annexures P-14 and P-21] whereby the consent/No Objection Certificate previously granted to him for the installation of a Rice Mill, has been cancelled/withdrawn on the ground that the proposed site of the Rice Mill is barely 7.5 meters from the area of Bir Bhadson, a notified Wild Life Sanctuary.

2. The Petitioner is stated to have purchased the land measuring 8 Bighas in village Chaswal, Tehsil Nabha, District Patiala for setting up a Rice Mill. The District Town Planner, Patiala, granted No Objection Certificate to the Petitioner for the aforesaid purpose certifying that the site was at a distance of 13 Kilometers from the Master Plan and Municipal Area of Nabha. The Petitioner also applied to the Punjab Pollution Control Board for the No Objection Certificate and the same was granted,--vide memo dated 22nd March, 2007 [Annexure P-3], on the basis of a report given by the Naib Tehsildar, Bhadson that there was no "Wild Life Sanctuary" or "Zoo" within the radius of 500 meters from the site. The Petitioner thereafter is stated to have constructed the building and installed the machines to set up the Rice Mill after obtaining loan etc. from the Punjab & Sind Bank. The Petitioner then

applied to the Respondent Board to grant consent and the clearance certificate. It is averred that while the matter regarding grant of consent etc. was pending consideration, Respondent No. 7 started making complaints to different authorities, inter alia, alleging that the site of the Rice Mill being set up by the Petitioner was adjacement to Wild Life Sanctuary of Bir Bhadson and the distance between the Petitioner's site and the Wild Life Sanctuary, as was reported by the Naib Tehsildar, Bhadson to the Board, was false and against the record.

3. The 7th Respondent then filed a Public Interest Litigation bearing CWP No. 12629 of 2007 before this Court, with the same plea that the "No Objection Certificate" granted by the Board to the Petitioner's Rice Mill was illegal.

4. It may be notified here that the Government of Punjab, Department of Science, Technology and Environment has laid down the Siting Parameters,--vide order dated 11th September, 2006 [Annexure P-12] to set up Rice Shellers and Sail Plants and clause [iv] thereof reads as under:

(iv] 500 meters away from the village Lal Dora/Phirni, Wild Life Sanctuary, Zone residential area, educational institution, historical, religious places and protected monuments.

When the aforestated PIL came up for hearing before a Division Bench of this Court, the present Petitioner, who was Respondent No. 6 therein, took up the stand that Bir Bhadson was not a Wild Life Sanctuary. The State Counsel was accordingly directed to place on record the material including notification, if any, issued by the authorities notifying Bir Bhadson as a Wild Life Sanctuary. The State Counsel then produced Notification No. F-I 50/50, dated 28th February, 1952 [Annexure P-I 3] whereby Bhadson was declared as a "Wild Life Sanctuary". In view of the stand taken by the Board against the present Petitioner, the PIL was disposed of as having become infructuous, though with liberty to him to avail the remedy that may be available to seek redress against refusal of No Objection Certificate to him.

5. Meanwhile, the Board issued a Show Cause Notice to the Petitioner as to why the NOC granted earlier be not revoked. It was mentioned in the Show Cause Notice that the distance between the Wild Life Sanctuary and the Petitioner's site was got re-measured from the Revenue Authorities and, the Tehsildar, Nabha,--vide his Memo, dated 18th July, 2008 has confirmed that the site of the Rice Sheller is at a distance of 5 Karams, i.e., 7.5 meters from the Bir Bhadson. The Wild Life Department also,--vide their letter dated 28th August, 2007 recommended to re-examine the NOC granted to the Petitioner.

It further appears that the Petitioner could not dispute the aforesaid stated facts mentioned in the Show Cause Notice. Rather,--vide his letter dated 30th August, 2007, he pleaded for relaxing the Siting Criteria laid down by the Government for Rice Mill in respect of Wild Life Sanctuary. The Petitioner's request to relax the Siting Parameters having been declined by the State Government vide order, dated 11th

April, 2008 [Annexure P-14] that the Board also revoked the NOC vide its impugned order, dated 15th October, 2008 [Annexure P-21].

6. Aggrieved, the Petitioner seeks quashing of both the aforementioned orders.

7. Notice of motion was issued and in response thereto, counter-affidavits have been filed. Learned Counsel for the parties have been heard at some length and record perused. On the asking of the court, learned Additional Advocate General, Punjab has placed on record another attested copy of notification dated 28th February, 1952 whereby Bhadson was declared as Wild Life Sanctuary. The same is taken on record as "Mark A".

8. It is argued on behalf of the Petitioner that since the Revenue Authorities had initially certified that the Petitioner's site was away from the Wild Life Sanctuary and did not violate the prescribed Siting Parameters, it is too late for the Respondents to turn around and take a contrary plea. It is also urged that on the promise made by the Respondents, the Petitioner has made huge investments and has taken loans from the Bank, therefore, the Respondents are estopped by their act and conduct from raising the above mentioned objection. Learned Counsel also contended that the so-called "Wild Life Sanctuary" is in papers only and at the spot there exists neither any forest nor the "Wild Life Sanctuary" and the same is only a "wooded area".

9. Per contra, learned State Counsel urges that the Wild Life Sanctuary is very much in existence and is spread-over an area of more than 1000 hectares and is one of the largest Wild Life Sanctuary in Patiala District. On the instructions of Nirlep Singh, Block Forest Officer, Incharge Bir Bhadson Sanctuary, learned State Counsel refutes the allegation of the Petitioner that there are no wild habitats in the Sanctuary. He urges that estoppel can not be pleaded against law. The Petitioner, argues the learned State Counsel, appears to have procured a report in connivance with the Revenue Officials in which the distance between the Site of his proposed Rice Mill and the Wild Life Sanctuary was incorrectly mentioned, therefore, he can not take advantage of his own wrongs.

10. Having heard learned Counsel for the parties, I do not find any merit in this writ petition. There can possibly be no quarrel that Bir Bhadson is a notified "Wild Life Sanctuary". Even if on account of poor maintenance, proper care or paucity of funds, the flora and fauna is disappearing, it is no ground to thrive upon the criminal negligence of a generation who is bound to be answerless before its posterity. Punjab is one of the worst hit States in terms of the depleting Forest Areas. Very soon, it will be too late for the Punjab State to escape from the environmental disasters if the left-out natural resources are also not given utmost care and due protection. The Government of Punjab, therefore, owes a duty towards future generations to protect, promote and preserve the "forest areas" or "Wild Life Sanctuary" if at all any one left with. The Petitioner or for that matter no one can be

permitted to take advantage of the fact that the trees have been uprooted or the hungry animals are dying. The contention raised on behalf of the Respondents that the Petitioner can not take undue advantage of the factually incorrect report given by the Naib Tehsildar, Bhadson which led to issuance of NOC by the Board, merits acceptance. In fact, during the course of hearing, it could not be disputed by the Petitioner that the distance of his site is within 500 meters from the outer boundary of the forest area of the Wild Life Sanctuary. If that is so, the NOC initially issued by the Board was based upon incorrect facts and false records. The rectification of that error by the Board and that too after observing the principles of the natural justice, warrants no interference by this Court. The Petitioner's contention that he has made huge investments or has taken loan from the Bank etc. also does not carry any weight. It is not the case of the Petitioner that he had absolutely no knowledge of Bir Bhadson Wild Life Sanctuary. The plea taken by him from the very beginning is that no Wild Life Sanctuary exists at the spot. The purchase of land or investment, if any, made by the Petitioner was at his own peril and risk for which he can not blame none.

11. For the reasons aforesaid, I do not find any merit in this writ petition which is accordingly dismissed.

12. However, keeping in view the gravity of the issue and importance of sustenance of the Wild Life Sanctuary and the larger public interest involved, there shall be a direction to the official Respondents to conduct a survey and find out as to whether there exists any other industrial unit in the vicinity of the Wild Life Sanctuary in violation of the siting parameters laid down by the State Government and in case there is any such industrial unit or activity which is prohibited by the State Government, appropriate action against them shall also be taken in a time-bound manner and a compliance report shall be submitted to this Court.