

(2008) 08 P&H CK 0076

High Court Of Punjab And Haryana At Chandigarh

Case No: None

New Generation Real Estates Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Aug. 5, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226
- Northern India Canal and Drainage Act, 1873 - Section 55

Citation: (2008) 152 PLR 92 : (2008) 4 RCR(Civil) 658

Hon'ble Judges: Satish Kumar Mittal, J; Daya Chaudhary, J

Bench: Division Bench

Judgement

Satish Kumar Mittal, J.

The petitioner company, which is a Colonizer and has developed Residential Duplex Independent Houses at village Himmatgarh, NAC, Zirakpur, has filed this petition under Articles 226 of the Constitution of India for quashing the notices dated 30.7.2008 and 1.8.2008 issued by the Sub Divisional Officer, Patiala Drainage Sub Division, Patiala.

2. In the aforesaid notices, it has been stated that the petitioner has unauthorizedly covered the "Singh Nallah Choe" in a length of 150". The said unauthorized construction is causing obstruction in free flow of rain/flood water and difficulties are being faced while cleaning the Nallah and removal of obstruction from the Nallah. The petitioner was asked to remove the aforesaid covering within a period of 15 days from the receipt of the notice. Keeping in view the rainy season, the second notice was issued directing the petitioner to remove the aforesaid covering by 5.8.2008. It was also made clear in the notice that if the said covering is not removed, then it will be removed by the department at the cost of the petitioner.

3. It is pertinent to mention here that before the aforesaid two notices, notice dated 8.5.2007 was issued by respondent No. 2 to the petitioner to remove the slab which

was constructed by the petitioner as the same was obstructing the free flow of water in the vicinity of Singh Nallah Choe.

4. The said notice was issued in pursuance of an order passed in C.W.P. No. 1840 of 2005 (Om Parkash v. State of Haryana, decided on May 04, 2006) wherein a direction was issued to the respondents to take immediate steps to stop unauthorized and illegal squeezing/narrow downing the Singh Nallah Choe at various places. For implementing the said direction, a Committee has been constituted by the intervention of the Chief Secretaries of Punjab and Haryana. Accordingly, a direction was also issued by this Court to the Chief Secretaries to ensure that the Committee should meet regularly so that a decision in the matter is taken as expeditiously as possible.

5. In pursuance of the above direction issued by this Court in C.W.P. No. 1840 of 2005, the respondent authorities issued the aforesaid notices asking the petitioner to dismantle the R.C.C. slab constructed on the top of Singh Nallah Choe, which is running from Panchkula and flows through the land owned by the petitioner in Zirakpur.

6. We have heard the counsel for the petitioner.

Admittedly, a notification u/s 55 of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as "the Act") has been issued by the State Government whereby all the public autonomous bodies, person or persons have been prevented from creating any obstruction by making any type of construction or by covering the Singh Nallah. Undisputedly, the said Nallah being a public drainage vest in the State and under the Act nobody can obstruct the said Nallah by covering the same without prior approval from the authorities. By the said notification, a direction was also issued to all the concerned persons to remove all the constructions created by them, if any, on the Singh Nallah Choe", so that natural flow of rainy water is maintained. The petitioner is not the owner of the said Nallah and the same vests in the State. In view of these facts, we do not find any substance in the prayer made by the petitioner because admittedly before covering the said Nallah no prior approval was ever obtained. We are also not convinced with the argument of the learned Counsel for the petitioner that the R.C.C. slab constructed by the petitioner on the top of the Nallah is in no way causing any hindrance in free flow of water in the Nallah. In our opinion, it is for the authorities to see whether any obstruction has been caused or not. As far as the petitioner company is concerned, it is not having any right to cover the said Nallah by putting the R.C.C. slab without seeking prior approval. Therefore, we do not find any ground to quash the impugned notices. Dismissed.