(2002) 07 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4485 of 1999

Jitinder Singh		APPELLANT
	Vs	
Municipal Corporation and Another		RESPONDENT

Date of Decision: July 15, 2002

Citation: (2003) 1 RCR(Civil) 343

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: S.D. Sharma and Neeraj Sharma, for the Appellant; Deepali Puri, for the Respondent

Judgement

M.M. Kumar, J.

1. This order would dispose of two Civil Revision Petition name by C.R. No.4485 of 1999 and 6427 of 1999 as the common questions of facts and law have been raised. The facts are being mentioned from C.R. No.4485 of 1999 which has been filed by the plaintiff-petitioner. The revision petitions have been filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity ''the Code'') and are directed against the order dated 10.9.1999 passed by the Addl. District Judge, Chandigarh partially allowing the appeal of the plaintiff-petitioner which had been filed against the order dated 26.8.1999, the Civil Judge (Junior Division) Chandigarh has dismissed the application of the plaintiff-petitioner in which prayer for ad interim injunction had been made. The Addl. District Judge while partially allowing the appeal of the plaintiff-petitioner held that defendant-respondent did not have any power to direct the plaintiff-petitioner to remove third floor as it is beyond the ambit of Section 415 of the Punjab Municipal Corporation Laws (Extension to Chandigarh) Act, 1994 (for brevity ''the Act''). However, the Id. Addl. District Judge held that the Assistant Commissioner, Municipal Corporation acted within his power by directing the removal of cantilever and doors.

2. Brief facts of the case as unfolded in the pleadings of this case are that the plaintiff-petitioner filed Civil Suit No.685 dated 21.8.1999 for permanent injunction restraining the defendant-respondents from demolishing the third floor of his building cantilever and doors etc. The order dated 16.8.1999 issued by the Assistant Commissioner was also challenged. In the afore-mentioned order, the Assistant Commissioner has directed the plaintiff-petitioner to close the door, remove the cantilever and also to demolish the third floor as it was found to be constructed in contravention of various provisions of the Act. The case set up by the plaintiff-petitioner in the suit is that no opportunity has been given to him and the Assistant Commissioner did not have any power to issue such like orders. It was further asserted that u/s 415 of the Act it would not amount to encroachment as alleged by the Assistant Commissioner in his order dated 16.8.1999. Alongwith the suit an application for ad interim injunction under Order 39 Rules 1 and 2 of the Code was also filed. The trial Court dismissed the application and the Addl. District Judge partially allowed the application by issuing directions to the respondent-Corporation to refrain from demolishing the third floor. This conclusion has been arrived at on the rationale that construction of third floor does not amount to en-croachment within the meaning of Section 415 of the Act and therefore, there was no power with the Assistant Commissioner to issue an order in that regard. The operative part of the order passed by the Addl. District Judge reads as under:
"Plaintiff filed a suit seeking restraint not to close his door towards this very land. He then sought relief with regard to the cantilever in the suit land without disclosing the pendency of earlier one. In these circumstances, the learned trial Court was justified in refusing to grant injunction on the ground that he has concealed the factum of earlier suit. Thus, the non-disclosure of the pendency of the earlier suit and the interim relief granted in this case, makes the plaintiff dis-entitle to the relief for demolishing of cantilever. In other words. I do not find any fault with the order passed by the learned trial Court with regard to the removal of cantilever."

3. I have heard Shri S.D. Sharma, learned Senior Advocate for the plaintiff-petitioner and Ms. Deepali Puri, Advocate for the defendant-respondents.

4. Shri S.D. Sharma, learned senior counsel for the plaintiff-petitioner has raised two fold submissions. Firstly, he has argued that once the Addl. District Judge has come to the conclusion that the third floor would not amount to encroachment within the meaning of Section 415 of the Act then the order itself becomes contradictory in as much as the same argument would apply to the removal of cantilever. His second argument is that the order dated 16.8.1999 has been issued without affording any opportunity of hearing to the plaintiff-petitioner as the order has straightway directed the plaintiff-peti- tioner to remove the cantilever as well as the third floor. In so far as the order directing the closing of the door is concerned, Shri S.D. Sharma submits that the door has been closed voluntarily by the plaintiff-petitioner.

5. Ms. Deepali Puri, argued that ten days time was given to the plaintiff-petitioner to take steps for removal and in any case fresh notice in accordance with the provisions of the Act could be given to the plaintiff-petitioner and thereafter his reply would be considered.

6. Having heard the learned counsel and perusing the order of the Civil Judge as well as of the Addl. District Judge. I am of the considered opinion that Civil Revision petition No.4485 of 1999 is liable to be allowed and the order passed by the Addl. District Judge directing the removal of the cantilever has to be set aside.

7. The principles of natural justice are so well entrenched in our judicial system that it cannot now be doubted that the administrative or quasi judicial order can xxxxxxxxx be passed adversely affecting the rights of a person without following the principles of audi alteram pattern. The development of this principle through various cases can be noticed from the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Swadeshi Cotton Mills Vs. Union of India (UOI), ; Municipal Corporation of Delhi Vs. Man Mohan Lal and Another, and Charan Lal Sahu v. Union of India AIR 1990 S.C.1468. The observations of the Supreme Court in Charan Lal Sahu''s case (supra) reads as under"

"No man or no man''s right should be affected without the opportunity to ventilate his views. We are conscious that justice is a psychological yearning, in which man seek acceptance of their view point by having an opportunity of vindication of their view point before the forum or the authority enjoined or obliged to take a decision affecting their right."

8. However, during the development of the principles of audi alteram partem another principle has also developed namely that in cases where the refusal to grant hearing has not caused any prejudice then such as order will not be vitiated.

9. In the case of State Bank of Patiala and others Vs. S.K. Sharma, , their Lordships of the Supreme Court summed up various principles after referring to large number of earlier cases which reads as under:

"We may now summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

1 to 4 xx xx xx xx

5. Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action- the Court or the Tribunal should make a distinction

between a total violation of natural justice (rule of audi alterem partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and "no fair hearing", (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.

(It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

6 to 7 xx xx xx xx"

10. A perusal of principle 5 would adequately show that a distinction has to be made between a case where no opportunity has been furnished and a case where no adequate or fair opportunity has been afforded. In a case where the order has been passed without affording any opportunity such an order would undoubtedly be invalid and void and after declaring the order to be void, normally liberty would be given to the Authority concerned to pass afresh order in accordance with law. The case in hand is of such a nature that no notice had been given to the petitioner and therefore no room is left to doubt that the order has to be declared as illegal and void ab initio.

11. The Supreme Court in a large number of judgments has also held that the principle of audi alteram partem are now part of Article 14 of the Constitution of India. In Union of India and Another Vs. Tulsiram Patel and Others, while reading the principles of natural justice as part of Article 14 of the Constitution their Lordships observed as under:

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is subject matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination: where discrimination is the result of state action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14 however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal authority or body of men, not coming

within the definition of "State" in Article 12 is charged with the duty of deciding a matter".

12. In view of the above, C.R. No.4485 of 1999 is allowed and the connected C.R. No.6427 of 1999 is dismissed. The order dated 16.8.1999 is set aside. However, it shall be open to the defendant-respondent to issue fresh notice, if so advised, in accordance with the law to the plaintiff-petitioner and pass appropriate orders thereon after afford ing an opportunity of hearing.