

(1977) 04 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6735 of 1974

Sham Lal

APPELLANT

Vs

The Union Territory Chandigarh
and others

RESPONDENT

Date of Decision: April 29, 1977

Acts Referred:

- Punjab New Capital (Periphery) Control Act, 1952 - Section 6(1)

Citation: (1977) 2 ILR (P&H) 617

Hon'ble Judges: S.S. Sidhu, J; S.S. Sandhawalia, J

Bench: Division Bench

Advocate: R.S. Mongia with Mr. Inderjit Malhotra, for the Appellant; R.K. Chhibbar, for the Respondent

Final Decision: Allowed

Judgement

S.S. Sidhu, J.

Sham Lal petitioner has filed this writ petition in which he has challenged the notice, Annexure P-3, issued by the Assistant Estate Officer, exercising the powers of the Deputy Commissioner, Chandigarh, directing him to demolish the unauthorised construction and to restore the land to its original state. He has challenged the aforesaid notice on a variety of grounds as mentioned in the petition and has prayed that since that notice is wholly illegal, without jurisdiction and against the provisions of the Punjab New Capital (Periphery) Control Act, 1952 (hereinafter referred to as the Act), and the rules made thereunder, the same is liable to be quashed.

2. This writ petition came up for hearing before the single Bench. That Bench after hearing the counsel for the parties, referred the case for decision by a Division Bench vide its following order passed on 30th September, 1976:--

The salient points raised in this writ petition now stand admittedly concluded against the petitioner by the Division Bench judgment in *Shiromani Gurdwara Parbandhak Committee Amritsar v. Union Territory of Chandigarh*, (1975) 77 PLR 354, 1975 P.L.R. 354. Nevertheless Learned Counsel for the petitioner has raised a significant point of distinction on facts which called for determination and is indeed not free from difficulty.

The relevant facts which deserve notice in this context are that Sham Lal petitioner had applied u/s 6(1) of the Punjab New Capital (Periphery) Control Act, 1952, for permission to erect a cattle-shed-cum-residence on a small area of land purchased by him. By the order of the Deputy Commissioner-cum-Estate Officer dated the 7th of October, 1971 (Annexure R-1 to the written statement) permission was, however, accorded u/s 6(2)(a) of the Act for cattle-shed only on conditions mentioned in the said order. The stand of the Chandigarh Administration is that the petitioner erected a residential house on the premises despite the fact that permission for the same had in terms been refused. Consequently the Deputy Commissioner, Chandigarh, vide annexure P. 3 issued a notice u/s 12(2) of the Act directing the petitioner to demolish the unauthorised construction and to restore the land to its original state. The petitioner had challenged the above-said notice on a variety of grounds.

Primary reliance on behalf of the petitioner is on sub-section (6) of section 6 of the Act which is in the following terms :--

6(6) if at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in the plans u/s 4 be deemed to have been given without the imposition of any conditions."

In the light of the aforesaid provisions, Learned Counsel for the petitioner contends that admittedly no order was passed on the application of the petitioner within the prescribed period of three months and consequently permission for the construction of both the cattle-shed and the residential building must as a matter of law be deemed to have been granted without any pre-conditions. The submission was that the constructions raised by the petitioner thereafter were thus fully authorised by law and the impugned notices for the demolition were wholly without jurisdiction.

On the other hand the contention of Mr. R.K. Chhibbar on behalf of the Chandigarh Administration is that both sections 5 and 6 are subservient to and controlled by section 11 of the Act. On that premises it is contended that wherever there has to be a change of user of agricultural land for purposes other than those sub-servient to agriculture the sole authority to grant permission is the Central Government itself and that the Deputy Commissioner u/s 6 has no authority or jurisdiction within that special field.

Section 11(1) which calls for interpretation in relation to the other relevant provisions is in the following terms:--

11(1). No land within a controlled area shall except with the permission of the Central Government be used for purposes other than those for which it was used on the date of notification under sub-section (2) of section 3 ; and no land shall be used for the purposes of a charcoal-kiln, pottery-kiln or lime-kiln or brickfield or brick-kiln, except under and in accordance with, the conditions, of a licence from the Deputy Commissioner on payment of such fees and under such conditions as may be prescribed.

It is manifest from the rival contentions that rather salient issues of interpretation regarding sections 5, 6 and 11 of the Act, and their impact inter se arise herein which are bound to have wider ramifications on all cases arising under the said provisions. As an ancillary issue, Punjab New Capital (Periphery) Control Rules, 1959, framed under the Act have also fallen for construction. It has been submitted on behalf of the Chandigarh Administration that these issues should be authoritatively settled as they have a direct bearing on the land development activities taken by the Administration within the area of their jurisdiction. Sitting singly my judgment would inevitably be subject to appeal under the Letters Patent and it is, therefore, apt that this matter should conclusively be decided by a Division Bench. Let the papers be placed before my Lord the Chief Justice for appropriate orders.

This is how this case has now come up before us.

Before arguments of the Learned Counsel for the parties advanced before us can be properly appreciated, it will be useful to refer to the provisions of sections 4, 5 and 6 of the Act, which are as under:--

4. (1) The Deputy Commissioner shall within three months of the declaration under sub-section (1) of section 3 deposit at his office and at such other places as he considers necessary, plans-showing the area declared to be a "controlled area" for the purposes of this Act, signifying therein the nature of the restrictions applicable to the controlled area.

(2) The plans so deposited shall be in the form prescribed and shall be available for inspection by the public free of charge at all reasonable times.

(5) Except as provided hereinafter, no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, in the controlled area save in accordance with the plans and restrictions and with the previous-permission of the Deputy Commissioner in writing.

6. (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which, the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner, after making such enquiry as he considers necessary, shall, by order in writing, either--

(a) grant the permission, subject to such conditions, if any, as may be specified in the order ; or

(b) refuse to grant such permission.

(3) When the Deputy Commissioner, grants permission subject to conditions, or refuse to grant permission under sub-section (2), the conditions, imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case and the interest of the general public.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, if such building is required, for purposes subservient to agricultural nor shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for agricultural purposes.

(5) The. Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, which was in existence on the date on which the notification under sub-section (2) of section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than that for which it was used or designed on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner, no order in writing has been passed by the Deputy Commissioner, permission shall, without prejudice to the restriction signified in the plans u/s 4 be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register as may be prescribed with sufficient particulars of all cases in which permission is given or deemed to have been given or refused by him under this section, and the said register shall be available for inspection without charges by all persons interested and such persons shall be entitled to take extracts therefrom.

4. It has been contended by the Learned Counsel for the petitioner that on 5th July, 1971, the petitioner had applied u/s 6(1) of the Act for permission to erect a cattle shed-cum-residence on a small area of land purchased by him in the area of Pipliwala town of Manimajra, and that admittedly no order was passed on the application of the petitioner within the prescribed period of three months and consequently permission for construction of both the cattle-shed and the residential building must be deemed to have been granted without any pre-condition as provided for in section 6(6) of the Act. It is further submitted by him that the

constructions raised by the petitioner after the expiry of three months from the date of his filing the application were, thus, fully authorised by law and the impugned notice for demolition, Annexure P-3 was wholly without jurisdiction.

5. The Learned Counsel appearing on behalf of the respondents, on the other hand, contends that both sections 5 and 6 are subservient to and controlled by section 11 of the Act and, therefore, wherever there has to be a change of user of agricultural land for purposes other than those subservient to agriculture, the sole authority to grant permission is the Central Government itself and that the Deputy Commissioner-cum-Estate Officer, Chandigarh, by virtue of the provisions of section 6 of the Act, has so authority or jurisdiction within that special field.

6. We have appreciated the above arguments of the Learned Counsel for both the parties. In our opinion, the contention of the Learned Counsel for the petitioner must prevail against that of the Learned Counsel or the respondents. We are of the considered view that sections 5 and 6 are not subservient to and controlled by section 11 of the Act. Rather, these two sections are quite independent of the latter section. Section 11 contains general provision with regard to prohibition on use of land within the controlled area. It prohibits all kinds of uses of that land for purposes other than those for which it was used on the date of notification under sub-section (2) of section 3 of the Act, except in so far as either permission from the Central Government or licence from the Deputy Commissioner to make any other kind of use of that land, as the case may be, has been obtained in accordance with the provisions of this section. Sections 5 and 6 contain specific provision laying restriction that in the controlled area no person shall erect or re-erect any building or make or extend any excavation, or lay out any means of access to a road, save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing. From the collective reading of sections 5 and 6, it is clear that a person can put a land in the controlled area to three specific kinds of uses viz. of erecting or re-erecting any building, of making or extending any excavation and of laying out any means of access to a road, only in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner, in writing. Thus, the scope of these two sections is quite limited, as it empowers the Deputy Commissioner to grant or refuse the permission of putting the land situated in the controlled area only to three specific kind of uses. As far as section 11 is concerned it, has got a much wider scope. Whenever it is intended by a petitioner to put the land to any kind of use other than those mentioned in sections 5 and 6, then permission has to be obtained by him for the same u/s 11(1) from the Central Government. It is an accepted principle of law that when there exist a general provision and a specific provision of law on a particular subject, the latter provision shall prevail, provided the question to be determined is covered by both the provisions of law. The general provision of law shall come into play only when in a particular case the specific provision of law is of no help. In the present case, the petitioner made an application to the Deputy Commissioner-cum-Estate Officer,

Chandigarh, on 5th July, 1971, u/s 6(1) read with section 5 of the Act. By the order of the Deputy Commissioner-cum-Estate Officer, Chandigarh, dated 7th/23rd October, 1971 (Annexure R-1 to the written statement), permission was, however, accorded u/s 6(2)(a) of the Act for the construction of the cattle-shed only on the conditions mentioned in the said order. It means that the permission sought for was not granted within the statutory period of three months. That being so, the provisions of subsection (6) of section 6 of the Act came in to play in this case. Accordingly, permission for the construction of both the cattle-shed and the residential building, as a matter of law, shall be deemed to have been granted without any pre-condition by the Deputy Commissioner-cum-Estate Officer and consequently the construction raised by the petitioner thereafter shall be deemed to have been fully authorised by law. That being so, the impugned notice for the demolition of that construction, Annexure P-3, is wholly illegal and without jurisdiction. The contention of the Learned Counsel for the respondents that even if no permission in writing had been granted by the Deputy Commissioner-cum-Estate Officer on the application of the petitioner, the petitioner was bound to apply to the Central Government for obtaining its permission to erect house-cum-cattle shed on the land u/s 11(1) of the Act, therefore, has no merit and the same has to be overruled. If that contention is accepted, then the result would be that the provisions of sections 5 and 6 would be rendered nugatory. We doubt if the Legislature had any intention of making those two sections subservient to section 11 at the time when those were enacted by it.

7. The Learned Counsel for the respondents has vehemently contended that uptill now the concerned departmental authorities while taking action under the provisions of the Act had been construing that sections 5 and 6 are subservient to and controlled by section 11 and, therefore, the courts should be reluctant to give a different interpretation to and place different construction upon the provisions of those sections. He in support of his contention has cited some authorities. The first authority cited by him is Principle, [Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman](#), in which it has been held as under:--

Where the question involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the such authorities on the relevant Regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept.

This authority contemplate that both the constructions of a particular statute etc. should be such as give meaningful interpretation to the statute. If one interpretation is such as to make the provision of the statute nugatory, then that interpretation is not to be accepted as correct by the Court when such matter comes

up before it for decision. This authority, therefore, is hardly of any help for the respondents.

8. Another authority relied upon by the Learned Counsel is *Ram Labhaya v. Dhani Ram* AIR 1947 Lah. 296, in which a reference is made to the nature of "departmental construction" of the statute which, as stated in Crawford's "Statutory Construction" (Thomas Law Book Company Saint Louis, U.S.A. 1940), is as under:--

As a general rule executive and administrative officers will be called to interpret certain statutes long before the Courts may have an occasion to construe them. In as much as the interpretation of statutes is a judicial function, naturally the construction placed upon a statute by an executive or administrative official will not be binding, upon the Court yet where a certain contemporaneous construction has been placed upon an ambiguous statute by the executive or administrative officers who are charged with executing the statute, and especially if such construction has been observed and acted upon for a long period of time, and generally or uniformly acquiesced in, it will not be disregarded by the Courts except for the most satisfactory, cogent or impelling reasons. In other words,, the administrative construction generally should be clearly wrong before it is overturned.

Thus, according to Crawford, the administrative construction generally should be clearly wrong before it is overtured. In the present case, the "departmental construction" to the effect that sections 5 and 6 are subservient to and controlled by section 11 of the Act, is clearly wrong because it renders the provisions of those two sections nugatory. The Legislature never had the intention that the provisions of section 5 and 6 should be of no effect at all. These sections were incorporated in the Act for a definite purpose and that purpose can be achieved only if these two sections are treated as independent of and not subservient to and controlled by section 11 of the Act. Thus, the above authority too is of no help for the respondents in this case.

9. The third case cited is *Mst. Ishro v. Om Parkash* AIR 1953 Pepsu 201. In that case, it was held as under:--

It is also true that the opinion of an executive authority in a matter of this kind cannot be regarded as authoritative as that of a Court, but it is all the same relevant and valuable.

The Pepsu High Court, while dealing with the nature of "departmental construction" of a statute in that case also made a reference to the observations of the Calcutta High Court in *Baleshwar Bagarti v. Bhagirathi Das* 35 Cal. 201, 35 Calcutta 701, which are as under:--

The Courts in construing a statute are entitled to give weight to the interpretation put upon it by those whose duty it has been to construe, execute and apply it, although such interpretation has not by any means a controlling effect upon them.

Thus, according to the decision given in the above-noted case, the " departmental construction" of a statute, though relevant and valuable, yet it is not authoritative and binding on the Courts so as to have controlling effect on them. Consequently, that authority too is of no help to support the contention of the Learned Counsel for the respondents.

10. It may also be pointed out here that the Learned Counsel for the respondents has not cited any case before us in which the departmental authorities, while taking action under the provisions of the Act, may have construed that sections 5 and 6 are subservient to and controlled by section 11 of the Act. Any way, we are of the considered opinion that sections 5 and 6 are independent of section 11 and have been incorporated in the Act with a definite and specific purpose and that purpose will stand defeated if it is construed that those sections are subservient to and controlled by section 11.

11. For the reasons given above, we accept this writ petition, and holding that the impugned notice for demolition of the construction in question, Annexure P-3, is wholly illegal and without jurisdiction, set aside the same. The respondents shall bear the costs of the petitioner.

S.S. Sandhawalia, J.

12. I agree.