(2011) 05 P&H CK 0305

High Court Of Punjab And Haryana At Chandigarh

Case No: L.P.A. No. 258 of 2010

Municipal Corporation, Chandigarh and Others		APPELLANT
	Vs	
Col. Retd. Daljit Singh and Others		RESPONDENT

Date of Decision: May 19, 2011

Acts Referred:

- Punjab Municipal Act, 1911 - Section 56

Citation: (2012) 1 ILR (P&H) 817

Hon'ble Judges: A.K. Goel, Acting C.J.; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Lisa Gill, for the Appellant; Rajiv Atma Ram, Senior Advocate with Saurabh Arora, for the Respondent

Final Decision: Allowed

Judgement

Adarsh Kumar Goel, ACJ.

This appeal has been preferred against the order of learned Single Judge allowing the writ petition of the respondents against order of resumption dated 3.7.1992, inter-alia, on the ground that the only President of the appellant Committee could exercise such powers and not any other authorized officer. The site in question was allotted to the predecessor of the writ petitioners on 23.11.1989 by the appellant committee. The allottee failed to deposit the required amount as per terms of the allotment. The site was transferred to the writ petitioners on 27.6.1990 with the permission of the appellant. The writ petitioners also failed to pay even the first installment and sought to surrender the site to save forfeiture of initial deposit. The appellant committee initiated action and passed order of resumption dated 3.7.1992 and rejected the prayer for surrendering the site. The amount deposited by the allottee was forfeited. It was held that since the writ petitioners failed to pay the installments in spite of Show Cause Notice dated 8.12.1990, prayer for surrender could not be accepted in view of Clause 10 of the allotment letter. The writ

petitioners filed appeal before the Commissioner of Municipal Corporation and it was argued that an Executive Officer could not have passed an order of resumption and only President could pass such order. The Commissioner held that as per resolution dated 10.5.1990 passed by the Notified Area Committee, power of the Committee mentioned in Schedule I of the Punjab Municipal (Executive Officers) Act, 1931 ("the 1931 Act") could be exercised by the Executive Officer. The appeal was accordingly dismissed vide order dated 15.6.1999.

2. The writ petitioners challenged the order of resumption and the appellate order. Learned Single Judge held that though the powers of the committee could be exercised as per delegation in the resolution as per the 1931 Act, power of resumption was not of the Committee but only of the President and thus, could not be exercised by any other authorized representative. It was also noted that the writ petitioners had made deposit with 24% interest and, thus, order of resumption was liable to be set aside.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellants submits that the power exercisable by the President in the terms of allotment letter is power of the Municipal Committee and thus the said powers could be exercised in accordance with the statutory provisions by such authority to whom the same are delegated. Learned Single Judge was in error in restricting the exercise of said powers only to the President. It was further submitted that the order of resumption being valid, mere fact that during pendency of the writ petition, deposit was made by the writ petitioners after more than 15 years of order of resumption, could not by itself be ground for setting aside the order of resumption.

5. Question for consideration is whether learned Single Judge was justified in setting aside the resumption on the ground that order passed by the Executive Officer who was authorized to deal with the matter under resolution of the municipality was without jurisdiction and whether merely on deposit being made, during pendency of the writ petition, resumption was liable to be set aside, without adjudication on the validity of order of resumption.

6. Before we deal with the question, it will be appropriate to refer to the observations in the order of learned Single Judge on the issue of authority competent to pass order of resumption:-

The executive power of the Municipality vests in the Executive Officer. These executive powers include the powers conferred and duties imposed upon the functions vested in, and the objections to be tendered and notice given to the Committee under the Sections of the Act mentioned in Schedule I. A look at the various Sections of the Act specified in Schedule I of the aforementioned Act does not indicate anywhere that the power of resumption of a site vested with the Committee and therefore, such a power could be delegated to the Executive Officer. Moreover, "Committee" has also been defined in

Section 2(b) of the Executive Officer Act as a Committee of a Municipality or a Notified Area, as the case may be, to which this Act had been extended. There is no material on the file to show that the power of resumption of site vested with the Committee and not with the President. In such a situation, any delegation by a Committee of its power in favor of an Executive Officer did not entitle such an Executive Officer to proceed and pass an order of resumption. Only the President of the Committee was competent under Clause 10 of the allotment letter to pass an order of resumption and no one else. In view of above, it has to be held that order Annexure P.2 passed by Executive Officer of the Notified Area Committee, Manimajra, while ordering resumption of the plot, was void abinitio. Resultantly, the order of resumption of the site in question is treated to be non-existent in the eyes of law.

7. Learned counsel for the respondents supports the above observations and submits that the municipality or its authorized representative or the Executive Officer could not deal with the issue of resumption and only President of the Committee could deal with the issue as held by the learned Single Judge. Alternatively, the resumption was liable to be set aside on deposit having been made.

8. Municipalities are now constitutional bodies covered under Part IXA of the Constitution and their functions are governed by Article 243W read with Article 243ZF and the State legislation. u/s 56 of the Punjab Municipal Act, 1911, all property of the Committee is vested in it. Once the property is of the committee and allotment was made on behalf of the committee, it could not be held that power to order resumption was not exercisable on behalf of the Committee. As held in Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, , a municipal committee could delegate exercise of its powers in such manner as may be permissible under a statute.

9. We are unable to uphold the finding of learned Single Judge that only President of the Committee could pass order of resumption and no one else. Reference to agreement (Page 77 of the paper book - A2) dated 15.9.1989 by which allotment was made itself shows that agreement is between the writ petitioners and the appellant committee and as per Clause 13 thereof, power of the committee or the President or the Secretary could be exercised by any person duly authorized to represent the committee. The said clause is as under:-

13. It is hereby agreed and declared that unless a different meaning shall appear from the context:-

(a) The expressions "Owner used in these presents include in addition to the Notified Area Committee, Manimajra, the President and Secretary of the Committee and in relation to any matter or anything contained in or arising out of these presents every person duly authorized to act or to represent the Notified Area Committee, Manimajra in respect of such matter or thing.

10. Relevant part of the resolution dated 10.5.1990 (Page 83 of the paper book) is as under:-

The Executive Officer will exercise all powers for purpose of carrying on the administration of the NAC, Manimajra subject to the provision of the Punjab Municipal Act and the rules and bye-laws made there under and the Municipal Administration shall be under his direct control.

11. Needless to say that the letter of allotment itself is on behalf of the appellant committee and the President is only a functionary of the committee. In such situation, it could not be held that the Committee or any of its functionaries other than the President could not have taken any action. If the Committee could make an allotment, it could resume the same on a case of resumption being made out. A juristic person has to act through its authorized representative. In A. Sanjeevi Naidu, etc. Vs. State of Madras and Another, , it was observed that a civil servant does not act as delegate of the Minister but as limb of the Government. Same is the position in a Municipal Corporation. In United Bank of India Vs. Naresh Kumar and others, , it was observed that a juristic person could act through its representative and the authority of such representative could be ratified expressly or impliedly and once authorized representative has lawfully acted, the Court could not take into account such technical defect in absence of jurisdictional infirmity. Even if letter of allotment authorized exercise of power of allotment to President, this did not exclude exercise of power by any other lawfully authorized functionary of the committee.

12. In Gujarat Pradesh Panchayat Parishad and Others Vs. State of Gujarat and Others, , it was observed :-

33. In A. Sanjeevi Naidu, etc. Vs. State of Madras and Another, this Court had an occasion to consider the role to be played by the Council of Ministers (elected wing) and civil servants (administrative wing). Keeping in view the democratic governance, the Court made the following observations: (SCC p. 449, para 10)

10. The Cabinet is responsible to the Legislature forevery action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the Cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the governmental functions. Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his Ministry. This again is apolitical responsibility and not personal responsibility. Even the most hard-working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well-planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies

and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of his Minister, He does it on behalf of the Government. It is always open to a Minister to call for any file in his Ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of government business either generally or as regards any specific case. Subject to that overall power, the officers designated by the ''Rules'' or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates.

(Emphasis supplied)

34. A similar view was expressed recently by this Court in Tarlochan Dev Sharma Vs. State of Punjab and Others,

35. The parties also referred to Government and Bureaucracy in India of 1947-76 by Mr. B.B. Mishra. The learned author, in that work, stated:

It must, however, be recognised that even the most dynamic and competent of Ministers have understandable limitations which restrict the sphere of direct participation in all the intricate and detailed aspects of administration. These include the complexities of a modern Government, the possibility of frequent changes in the ministerial field, the frequency of visits to constituencies, parliamentary preoccupations, and above all, the technical nature of the various decisions that have to be made without a thorough knowledge of connected papers contained in original files. The Minister''s dependence on his Secretary necessarily increases in a democratic set-up. And although his leadership in the entire sphere of administration is in theory recognised as all-pervasive, the scope of his actual operation does not go much beyond a clear understanding and direction of policy matters, and not a knowledge of details. Thus, the Maxwell Committee in 1937 laid down a principle calculated to ensure administrative efficiency within the framework of ministerial responsibility. The Committee emphasised that as collective ministerial responsibility maintained the political unity of the Government, so should the unity of administrative control of each Department be ensured by concentrating the responsibility to advise the Minister in one official, namely, the Secretary

36. It is evident from the above that there is clear distinction between elected representatives and civil servants. Elected representatives of the people at District Panchayat level will formulate policy and civil servants will execute it by implementing programmes and policy decisions. In matters of formulation of policies and programmes also, civil servants may make significant contribution by bringing the relevant data to the notice of the political executive. Likewise, elected representatives may inform civil servants about problems and difficulties of people which can be taken care of by the administration. But, both the functions are to be performed by two wings which are different though interdependent.

13. We are, thus, of the view that the impugned order of resumption could not be set aside only on the ground that the power to pass order of resumption was not of the Committee but of the President. Reasons for our view are summed up as under:-

(a) Property is of committee and allotment was made on behalf of committee;

(b) Power conferred on President to resume was also the power of the committee;

(c) Agreement entered into between the parties expressly authorized power to be exercised by a duly authorized functionary;

(d) A juristic person could function through lawful representative, particularly as per statutory provision;

(e) Conferment of power on President did not exclude exercise of power as per statutory scheme.

14. We may now come to the second reason for setting aside resumption viz. the deposit during pendency of the petition. In our view, mere deposit during pendency of the writ petition by itself is not enough for setting aside order of resumption without adjudicating on the question of validity of exercise of power of resumption. It is only after exercise of power is found to be illegal, question of setting aside resumption can arise and even in such situation, decision may have to be taken to terms on which resumption could be set aside. Since on this aspect, we are unable to uphold the view of learned Single Judge, fresh adjudication in the matter may be necessary.

15. Accordingly, we allow this appeal, set aside the impugned order and remand the matter for fresh decision on merits in accordance with law. The writ petition may be listed as per roster on 18.7.2011.