fixed by the State. It was on April 16, 1992 that the Haryana Municipal Amendment Act, 1992, though received assent of the Government on April 8, 1992, was published in the Haryana Gazette. *Vide* amendments introduced in Sections 38 and 57 of the Haryana Municipal Act, 1973 provisions was made for pension funds and expenditure thereon. Thus fixing a date in April, 1992 which was in consonance with the amendment aforesaid is not at all arbitrary or imaginary date introduced. It was open to the State to fix any date for allowing pensionary benefits to the employees of the Municipal Committees. Before the cut-off date such of the employees of the Municipal Committees having retired got the benefit of Contributory Fund Scheme. Such of the employees who were in service immediately before April, 1992 were given the option to continue to be governed by the Contributory Fund Scheme or to be governed by the Pension Scheme. It was in this context that while amending Sections 38 and 57 of the Municipal Act the words 'Provident Fund' was not deleted. It was contemplated that some of the employees may opt to be governed by the Provident Fund Scheme. Only word 'Pension' was introduced as it was in principle decided by the Legislature while amending Haryana Municipal Act that the employees would be given benefit of pension, that such provisions was made in framing the pension Rules, which do not violate Article 14 of the Constitution.

Finding no merit in the writ petitions, the same are dismissed. No costs.

J.S.T.

Before Hon'ble Harmohinder Kaur Sandhu, J.

JAGBIR SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Crml. Misc. No. 306-M of 1993.

February 11, 1994.

Code of Criminal Procedure (II of 1974)—S. 482—Quashing—Petitioner charged for offences under section 302/34 and 201 IPC—During examination-in-chief permission given to public prosecutor to produce evidence of confession made by petitioner during an enquiry conducted by S.D.M.—Order challenged—Held that any confession other than in accordance with 164 Cr.P.C. is inadmissible in evidence.

Held, that confessional statement of an accused can be recorded by a Metropolitan Magistrate or a Judicial Magistrate in the manner provided in Section 164 of the Code of Criminal Procedure and it was not a case of the prosecution that any such confession of the accused was to be got proved. Any confession recorded after the commencement of investigation otherwise then in accordance with the provisions of Section 164 Cr.P.C. is inadmissible in evidence. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Even if some confession was recorded by the Sub Divisional Magistrate during enquiry proceedings that was inadmissible in evidence and enquiry record should not have been summoned for the purpose of proving that confession. The impugned order is, therefore, liable to be quashed. (Para 4)

Baldev Singh, Advocate, *for the Petitioner.*

S. S. Gill, AAG Haryana, assisted by P. V. Santoshi, Advocate, *for the Respondent.*

JUDGMENT

Harmohinder Kaur Sandhu, J.

(1) On the statement of Daya Nand son of Jug Lal a resident of village Mitha Thal, District Bhiwani case F.I.R. No. 211 dated 19th September, 1991 was registered at Police Station, Sadar, Bhiwani, under Section 364 read with Section 34 I.P.C. During the investigation of the case dead body of Manoj Kumar was recovered and the offence was converted to section 302 I.P.C. After completion of the investigation charge-sheet was presented against the petitioner and Umed Singh brother of the petitioner. They were charged for offences under Section 302/34 and 201 I.P.C. and 7 witnesses were examined. On 1st May, 1992 examination-in-chief of Daya Nand complainant was recorded when the case was adjourned at the instance of counsel for the complainant who wanted to move an application to summon an enquiry file from Sub Divisional Magistrate, Bhiwani. Subsequently an application was moved by the public prosecutor for permission to produce evidence of a confession made by the petitioner during an enquiry conducted by Sub Divisional Magistrate, Bhiwani. The application was opposed by the petitioner but the learned Sessions Judge, Bhiwani passed order dated 20th October, 1992 summoning the record of the enquiry. The petitioner has prayed for quashing of the above said order by invoking the inherent powers of this Court under section 482 Cr.P.C.

(2) It was alleged in the petition that the impugned order summoning the enquiry file and allowing the prosecution to examine and cross-examine the witnesses with regard to the statements recorded during the enquiry was illegal as the statements could not be looked into in view of the provisions of Section 6 of the Commission of Enquiry Act, 1952. The enquiry conducted by Sub Divisional Magistrate, Bhiwani was a fact-finding enquiry similar to the enquiry conducted by a commission under the Commission of Enquiry Act, 1952 and the provisions of said Act were applicable to the present case. The statements recorded during the enquiry were not admissible and could not be considered during the trial of a criminal case.

(3) In the return filed by the respondent it was alleged that the enquiry conducted by the Sub Divisional Magistrate, Bhiwani was conducted at the instance of the Deputy Commissioner, Bhiwani and the Sub Divisional Magistrate was not appointed as enquiry commission under the Commission of Enquiry Act. So, provisions of that Act were not applicable.

I have heard the counsel for the parties.

(4) This fact is admitted that during the investigation of the case registered against the petitioner allegations of *mala fides* on the part of the police were before Deputy Commissioner, Bhiwani and the Deputy Commissioner directed the Sub Divisional Magistrate, Bhiwani to enquiry into the same. It was only a fact finding enquiry and the provisions of Section 6 of the Commission of Enquiry Act, 1952 were not applicable so far as the statements recorded during that enquiry were considered. Copy of the application which was made by the public prosecutor for producing enquiry report is not on the record of this file but the impugned order shows that application was moved under Section 311 Cr.P.C. for permission to produce evidence regarding confession of the accused recorded by the Sub Divisional Magistrate during enquiry proceedings and the Sessions Judge summoned the record of the enquiry proceedings and observed that witnesses will be summoned for the purpose of cross-examination with respect to the enquiry lateron. This order is not proper. Confessional statement of an accused can be recorded by a Metropolitan Magistrate or a Judicial Magistrate in the manner provided in Section 164 of the Code of Criminal Procedure and it was not a case of the prosecution that any such confession of the accused was to be got proved. Any confession recorded after the commencement of investigation otherwise then in accordance with the provisions of Section 164 Cr.P.C. is inadmissible in evidence. Where a power is given to do a certain

thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. Even if some confession was recorded by the Sub Divisional Magistrate during enquiry proceedings that was inadmissible in evidence and enquiry record should not have been summoned for the purpose of proving that confession. The impugned order is, therefore, liable to be quashed.

(5) For the reasons recorded above I allow this petition and quash the order of Sessions Judge, Bhiwani dated 20th November, 1992. The Court will proceed to determine the case in accordance with law.

J.S.T.

Before Hon'ble J. L. Gupta, J.

THE AMBALA URBAN ESTATE WELFARE SOCIETY,—*Petitioner.*

versus

HARYANA URBAN DEVELOPMENT AUTHORITY AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 7260 *of* 1989.

April 7, 1994.

Constitution of India, 1950—*Art.* 226—*Haryana Urban Development Authority Act (Act No.* 13 *of* 1977)—Locus Standi—*Petitioner a society of plot holders who purchased plots from respondents in* 1973—*At time of allotment all basic amenities promised by respondents—To date such amenities not provided*—Mandamus *sought asking respondents to provide modern amenities—Whether a writ would lie or petitioner to be relegated to avail remedy before Civil Court.*

Held, that it is no doubt true that sale and purchase of land or plots are primarily matters of contract. An aggrieved party is normally relegated to its remedy before the civil court. However, in a case where a statutory authority is constituted to serve public interest and the law enjoins upon it to provide amenities, the writ court would be failing in its duty if relegates a party to the long drawn proceedings before a civil court.

(Para 22)

Constitution of India, 1950—*Art.* 226—*Haryana Urban Development Authority Act (No.* 13 *of* 1977)—*S.* 2(*a*)—*Amenities—Court not*