

Before Rameshwar Singh Malik, J.

RATTAN LAL AND OTHERS—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 18981 of 2011

July 10, 2013

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Whether Deputy Commissioner has jurisdiction to issue directions to Municipal authorities to take over possession, control and management of the tube-well of the petitioners - Demarcation of disputed land carried out in pursuance to a Public Interest Litigation before the High Court - Petitioners found in possession of said land - Order of Deputy Commissioner to take over possession, control

and management of the tube-well passed without show cause notice or an opportunity of the hearing to the petitioners - Held, golden rule of audi alteram partem violated - Reason is the soul of any decision - Impugned order not sustainable and set aside - Writ Petition allowed.

Held, that it has gone undisputed on record that the Deputy Commissioner directed Tehsildar to carry demarcation and submit demarcation report. The report from the Municipal Corporation was also sought. However, neither any show cause notice was issued to the true owners in possession, i.e. petitioners, nor any opportunity of being heard was granted to them, before passing the impugned order. These were simple but strong reasons, why the learned counsel for the respondents could not substantiate their arguments.

(Para 9)

Further held, that it is the settled proposition of law that administrative order passed by any of the state authorities should be just and well reasoned. However, in the present case, an arbitrary order has been passed. Even the golden rule of Audi Alteram Partem has been glaringly violated in the present case. Having said that, this Court feels no hesitation to conclude that the impugned order dated 16.9.2011 (Annexure P-5) passed by the Deputy Commissioner, Faridabad-respondent No.3 cannot be sustained.

(Para 10)

Held, that as aptly said, reason is the soul of any decision. However, in the present case, the Deputy Commissioner, Faridabad, has failed to record any reason, whatsoever, while passing the impugned order. In this view of the matter, it is unhesitatingly held that the impugned order passed by the Deputy Commissioner Faridabad, was not only arbitrary, but it was without jurisdiction as well. Thus, the impugned order cannot be sustained.

(Para 14)

Arvind Kashyap, Advocate, *for the petitioners.*

Ajay Gulati, DAG Haryana.

Jagdish Manchanda, Advocate, for respondents No. 5 and 6.

RAMESHWAR SINGH MALIK, J.

(1) Petitioners have challenged the order dated 16.9.2011 (Annexure P-5) passed by the Deputy Commissioner Faridabad, thereby directing the Municipal Corporation, Faridabad, to take over the possession, control and management of the tubewell of the petitioners, which is claimed to have been installed in their own land. Thus, the short issue involved in the present case, is whether the Deputy Commissioner had jurisdiction to issue directions to the Municipal authorities to take over the possession, control and management of the tubewell of the petitioners.

(2) Facts first.

(3) Pleaded case of the petitioners is that they are the owners in possession being co-sharers of khasra No. 1434, which has been allotted new number as 538. Khasra No. 1390, as per Aks Shajra, was a shamlat deh. It has been so recorded in the site plan Annexure P-1. Late Sh. Des Raj son of Sh. Tulsi, father of the petitioners installed the tubewell in his land more than 20 years ago. Respondents No. 5 and 6, who were the collateral of the petitioners, were not happy with the installation of the tubewell. They used to make one or the other false complaint against the petitioners. Thereafter, they filed CWP No. 6979 of 2011 before this Court in the form of Public Interest Litigation, which was disposed of by a Division Bench of this court, vide order dated 25.4.2011 (Annexure P-2).

(4) In compliance of the above said order passed by this Court, the Deputy Commissioner, Faridabad-respondent No.3, directed the Tehsildar to carry out demarcation and submit his report. The demarcation report was submitted by the Tehsildar. As per the demarcation report, petitioners were found owners in possession over khasra No. 1434 and new khasra number thereof, was 538 wherein the tubewell in question was situated. Thus, despite the fact that the petitioners were found as owners in possession of the tubewell, the Deputy Commissioner, vide his impugned order, directed the Municipal Corporation Faridabad, to take over the possession, control and management of the tubewell. Neither any show cause notice was issued, nor any opportunity of being heard was granted to the petitioners. Thus, feeling aggrieved against the abovesaid impugned order, petitioners have approached this Court by way of instant writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned order.

(5) Notice of motion was issued and pursuant thereto, written statements were filed.

(6) Learned counsel for the petitioners vehemently contended that the impugned order was without jurisdiction on the face of it, besides being arbitrary in nature. He further submits that even the basic principles of natural justice have been glaringly violated by the Deputy Commissioner, while passing the impugned order. He next contended that once the ownership and possession of the petitioners qua the tubewell in question has been duly established, as per the demarcation report of the Tehsildar, the Deputy Commissioner had no authority to take over the possession, control and management of the tubewell of the petitioners. It was nothing but highhandedness on the part of the District Administration, because of which the impugned order was liable to be set aside. Finally, he prays for setting aside the impugned order by allowing the present writ petition.

(7) On the other hand, learned counsel for the respondents, faced with the specific query put by the Court as to how the impugned order was sustainable in law, they were at loss to putforth any meaningful argument in support of the impugned order. When a pointed question was put, as to why any show cause notice was not issued to the petitioner or any opportunity of being heard was not granted to the petitioner before passing the impugned order, learned counsel for the respondents had not answer. However, they submit that there was nothing illegal in the impugned order and the writ petition was liable to be dismissed.

(8) Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned order cannot be sustained and the present writ petition deserves to be allowed for the following more than one reasons.

(9) It has gone undisputed on record that the Deputy Commissioner directed Tehsildar to carry demarcation and submit demarcation report. The report from the Municipal Corporation was also sought. However, neither any show cause notice was issued to the true owners in possession, i.e. petitioners, nor any opportunity of being heard was granted to them, before passing the impugned order. These were simple but strong reasons, why the learned counsel for the respondents could not substantiate their arguments.

(10) It is the settled proposition of law that administrative order passed by any of the state authorities should be just and well reasoned. However, in the present case, an arbitrary order has been passed. Even the golden rule of Audi Alteram Partem has been glaringly violated in the present case. Having said that, this Court feels no hesitation to conclude that the impugned order dated 16.9.2011 (Annexure P-5) passed by the Deputy Commissioner, Faridabad-respondent No.3 cannot be sustained. The discussion about the demarcation report in the impugned order itself, reads as under:-

"In the meeting it was decided that Tehsildar, Faridabad be directed to obtain the Nissandehi report regarding the ownership of private tubewell in Khasra No. 1434, Kattan Pahari Desj Raj Colony, village Anangpur.

The Nissandehi/Demarcation report was received on 18.8.2011 from Tehsildar, Faridabad along with report of the Assistant Consolidation Officer Gurgaon vide Memo No. 386 dated 17.8.2011 mentioning that before consolidation the Khasra No. 1434 (2 kanal 10 marla) was in the ownership of Shamlat Deh, but during consolidation the new Khasra No. 538 is mentioned in Chakbandi Register and now it is a private land and father of the petitioner's as well as other co-sharers are shown owner of the land."

(11) The relevant averments taken by the petitioners about non issuance of any show cause notice or granting of opportunity of being heard to the petitioners, in para 8 and 12 of the writ petition, which read as under:-

8. "That the respondent No.3 without issuing any notice to the petitioners who are the actual owners of the said tubewell/bore and using the same for their personal use and without considering the facts and circumstances of the case properly wrongly ordered to take over the tubewell/bore of the petitioners vide impugned order dated 16.9.2011. A copy of the impugned order dated 16.9.2011 is annexed herewith as Annexure P-5.

12. That the impugned order has been passed without giving any notice or opportunity of hearing to the petitioners and passed the impugned order which is against the revenue record as it is the personal property of the petitioners which cannot be taken away by passing the impugned order."

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(12) In the reply filed on behalf of the Deputy Commissioner respondent No.3, he has not controverted the above said averments and para 8 and 12 of the reply, read as under:-

"That the contents of para No. 8 of the writ petition are wrong and hence denied. However, it is submitted that the order dated 16.9.2011 has been passed by then Deputy Commissioner, Faridabad after affording opportunity of being heard to the parties of the said writ petition. It is further submitted that keeping in view all the facts and circumstances it was decided vide order dated 16.9.2011 that MCF should take over the private illegal tubewell for public interest and common purpose of drinking water for the colony vide order dated 16.9.2011.

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That the contents of para No. 12 of the writ petition are wrong and hence denied. However, it is submitted that the order dated 16.9.2011 has been passed by then Deputy Commissioner, Faridabad after affording opportunity of being heard to the parties of the said writ petition. It is further submitted that keeping in view all the facts and circumstances it was decided vide order dated 16.9.2011 that MCF should take over the private illegal tubewell for public interest and common purpose of drinking water for the colony vide order dated 16.9.2011."

(13) From a bare combined reading of the above said averments taken by the contesting parties, it becomes clear that the averments taken on behalf of respondent No.3 do not inspire any confidence, because he has miserably failed to assign any reason much less cogent reasons thereof,

directing the Municipal Corporation, Faridabad, for taking possession, control and management of the tubewell. The operative part of the impugned order, reads as under:-

"The reports from the MCF were received late, hence delay as caused. Therefore, after hearing both the parties' (petitioners and MCF), it is decided that MCF should takeover the private illegal tubewell for public interest and common purpose of drinking water for the colony.

(14) As aptly said, reason is the soul of any decision. However, in the present case, the Deputy Commissioner, Faridabad, has failed to record any reason, whatsoever, while passing the impugned order. In this view of the matter, it is unhesitatingly held that the impugned order passed by the Deputy Commissioner Faridabad, was not only arbitrary, but it was without jurisdiction as well. Thus, the impugned order cannot be sustained.

(15) No other argument was raised.

(16) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition deserves to be allowed. Thus, the impugned order dated 16.9.2011 (Annexure P-5) passed by the Deputy Commissioner, Faridabad respondent No.3, is hereby ordered to be set aside. However, the competent authority of the respondent State shall be at liberty to pass appropriate order, in accordance with law.

(17) Resultantly, the instant writ petition stands allowed.

S. Gupta