

Election Tribunal. The petition must, accordingly, fail and is dismissed. By taking a frivolous objection the petitioner, who is a sitting Member of the Assembly has succeeded in prolonging the disposal of the election petition brought against him. He must, accordingly, pay the costs of these proceedings, which I fix at Rs. 150.

Net Ram  
v.  
Election  
Commission  
and others  
—  
Gurdev Singh,  
J.

B.R.T.

LETTERS PATENT APPEAL.

Before D. Falshaw, C.J., and A. N. Grover, J.

THE STATE OF PUNJAB AND ANOTHER,—Appellants.

versus

SADDA RAM AND OTHERS,—Respondents.

Letter Patent Appeal No. 296 of 1960.

*Punjab New Capital (Periphery) Control Act, 1952 (I of 1953)—S. 12(1) and (2)—Person acquitted of an offence under sub-section (1)—Whether can be proceeded against under sub-section (2).*

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Held, that the Deputy Commissioner cannot ignore any decision given by a competent Court in proceedings initiated by the Deputy Commissioner himself for the punishment of an offence under sub-section (1) of section 12 of the Punjab New Capital (Periphery) Control Act, 1952. If a person has been acquitted of that offence on the finding that no breach of the provisions of sub-section (1) has been committed by him, it is not open to the Deputy Commissioner to go behind or re-open that decision and take action under sub-section (2) of section 12.

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice D. K. Mahajan in C.W. No. 399 of 1995, decided on 25th May, 1960.*

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Appellants.

SURINDER SINGH, ADVOCATE, for the Respondents.

Grover, J.

GROVER, J.—This appeal arises out of an order made by D. K. Mahajan, J., allowing Civil Writ No. 399 of 1959 and quashing the notice issued by the Estate Officer under section 12(2) of the Punjab New Capital (Periphery) Control Act, 1952.

In the petition which was filed by Sadda Ram, Teja Singh, Ujagar Singh and Jagat Singh, it was stated that *Khasra* No. 17 was owned by them and their residential houses were standing on it, in some of which they were residing. In the year 1955 a notice was issued under the aforesaid Act for demolition of those houses on the ground that they had been constructed in contravention of the provisions of the Act. The Estate Officer lodged a complaint against the aforesaid persons under section 12(1) of the Act. They were tried by the Magistrate, 1st Class, Kharar, who convicted them. On appeal the learned Sessions Judge set aside their convictions. The learned Sessions Judge had held that there was no evidence showing that the Deputy Commissioner had made any declaration under sub-section (1) of section 3 of the Act, and further there was nothing to show that any restrictions had been imposed in the area in question on the construction or erection of any buildings. It is mentioned in the judgment that the Public Prosecutor found it impossible to support the conviction of Sadda Ram. His conviction was consequently set aside. The learned Single Judge considered that unless a competent Court had finally decided that no breach of the provisions of section 12(1) of the Act had been committed, the Deputy Commissioner or the Estate Officer was bound under section 12(2) by that decision and he could not issue any notice under the aforesaid provision. The present appeal has been brought by the State and the Estate Officer challenging that decision.

The Act was enacted to control and regulate the periphery of the New Capital of the State of Punjab. By section 3 the State was empowered to declare the whole or any part of the area to which the Act extended to be controlled area by means of notification. Section 5 provides that no person shall erect or re-erect any building or make or extend any excavation etc. in the controlled area save in accordance with the plans and restrictions and with the previous permission of the Deputy Commissioner in writing. Section 6 prescribes the procedure for making an application for permission and for grant of such permission by the Deputy Commissioner. Section 11 says that no land within the controlled area, except with the permission of the State Government, be used for purposes other than those for which it was used on the date of the notification under sub-section (2) of section 3. Section 12 may be reproduced in its entirety:—

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12. (1) Any person who:—

- (a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section 7, or
- (b) uses any land in contravention of the provisions of sub-section (1) of section 11;

shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing contravention, with a further fine which may extend to fifty

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rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

- (2) Without prejudice to the provisions of sub-section (1), the Deputy Commissioner may order any person who has committed a breach of the provisions of the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed, and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrear of land revenue."

The argument raised on behalf of the appellants is that sub-section (2) of section 12 is independent of sub-section (1) and confers powers on the Deputy Commissioner to order any person who has committed a breach of the provisions of sub-section (1) to restore any building etc. to its original state etc. and, therefore, if a person has been acquitted for an offence under sub-section (1) there can be no bar to the Deputy Commissioner proceeding to take action under sub-section (2). Even if sub-section (2) of section 12 is independent of sub-section (1) it is not possible to see how the Deputy Commissioner can ignore any decision given by a competent Court in proceedings initiated by the Deputy Commissioner himself for the punishment of an offence under sub-section (1). If it has been found, as was found by the learned

Sessions Judge, that no breach of the provisions of sub-section (1) has been committed then the Deputy Commissioner cannot go behind or re-open that decision. The only authority on which the learned counsel for the appellants relied is *M/S Macherlappa and sons v. Government of Andhra* (1), where it was laid down that prosecution for an offence of failure to furnish the return due under rule 11 (1) of the Madras General Sales Tax Rules punishable under section 15(a) of the Act ending in an acquittal did not debar the assessment by the Sale Tax authorities based on the same questions. That was a wholly different case and there can be no doubt that a decision by a criminal Court could not debar the department from making an assessment of sales tax. No such question arises in the present case nor is the language of sub-sections (1) and (2) of section 12 *in pari materia* with the provisions which came up for consideration by the Andhra Court.

There is no merit in this appeal which is dismissed, but in the circumstances there will be no order as to costs.

D. FALSHAW, C.J.—I agree.

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Grover, J.

B.R.T.

Falshaw, C.J.

#### APPELLATE CIVIL

Before A. N. Grover and Inder Dev Dua, JJ.

AMIN LAL,—Appellant.

versus

HUNNA MAL,—Respondent.

F.A.O. 4-E of 1963.

*Representation of the People Act (XLIII of 1951)—Ss. 82 and 90—Election petition containing vague allegations of*

1963

(1) A.I.R. 1958 Andhra Pr. 371.

August, 27th.