

Before M. R. Agnihotri, J.

RAJINDER GARG,—Petitioner.

versus

MUNICIPAL COMMITTEE, PATIALA AND ANOTHER  
—Respondents.

Civil Writ Petition No. 2868 of 1987

December 6, 1988.

*Punjab Municipal Act (III of 1911)—Ss. 189, 192, 193 and 193-A—Sanction to construct building granted by Municipal Committee—Such sanction conveyed to the owner—Withdrawal of such sanction—Power of Municipal Committee to withdraw.*

Held, that the sanction to building plan of the petitioner had rightly been communicated to him. This sanction once granted could not be withdrawn later on either under section 192 or under section 193 of the Act. There is no provision under which sanction granted to the plan for the construction of building can be withdrawn by the Municipal Committee under the Punjab Municipal Act, 1911.  
(Para 4)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:

- (i) That the record of the petitioner may kindly be summoned for the perusal of this Hon'ble Court.
- (ii) That a writ of certiorari be issued for quashing impugned order annexure P. 4.
- (iii) That any appropriate writ or order or direction be issued which is deems fit in the circumstances of the case.
- (iv) An ad-interim order be issued staying the operation of the impugned order pending the decision of the present writ petition.
- (v) That the requirement of filing the certified copies of annexure P.1 to P.4 the true copies whereof have been attached in view of the urgency of the matter as any initiative to procure the certified copies thereof at this stage would unnecessary delay the filing of the petition in this Hon'ble Court.
- (vi) Petitioner be exempted from serving the required advance notice of motion, on the respondents in the peculiar circumstances of the case because of the delay in construction and the spoiling of the material place at the site.
- (vii) Cost of the petition be awarded to the petitioner and petition be allowed.

H. S. Brar, Advocate, for the Petitioner.

R. S. Mittal, Sr. Advocate with P. S. Bajwa, Advocate, for the Respondents.

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JUDGMENT

*M. R. Agnihotri, J.*

(1) In this petition under Articles 226 and 227 of the Constitution of India, the short point for decision by this Court is, as to whether a sanction for constructing a building granted by the Municipal Committee can be withdrawn under section 193-A of the Punjab Municipal Act, 1911, or not.

(2) The petitioner through his General Attorney applied to the Municipal Committee, Patiala, for sanction of the plan for construction of a shop-cum-office. Along with the necessary plan, the requisite fee of Rs. 50 was also deposited on 3rd April, 1987. The Municipal Committee, after examining the application, issued the necessary building construction permit to the petitioner on 8th April, 1987 requiring him to construct the building strictly in accordance with the plan. Thereupon, the petitioner started digging the foundation and necessary construction of the building when on 21st April, 1987, he was informed that under orders of the Administrator sanction of the plan already granted by the Municipal Committee was withdrawn under section 193-A of the Punjab Municipal Act, 1911. This order of the Municipal Committee, Patiala, dated 21st April, 1987 (Annexure P.4) is sought to be quashed by the petitioner in this petition on the ground that neither the Municipal Committee was competent in law to withdraw the sanction for construction of the building once the same had been granted under section 189 of the said Act, nor was the ground on which the same had been withdrawn existent or relevant to such withdrawal.

(3) In reply to the writ petition filed by the Municipal Committee, the impugned order is sought to be justified on the ground that the plan for construction of the building submitted by the petitioner's attorney could not be entertained by the Municipal Committee because the area known as 'Lila Bhawan', in which the plot of the petitioner was situated, stood reserved for special purposes in the Town Planning Scheme sanctioned under section 192 of the Punjab Municipal Act. Further, according to the Municipal Committee as the entire area in the Town Planning Scheme of 'Lila Bhawan' had been declared as unbuilt area, a Town Planning

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Scheme in respect of that area had been prepared under section 192 of the Punjab Municipal Act. Therefore, the then Executive Officer of the Municipal Committee was not competent to entertain the application of the petitioner for sanction of the building plan. Regarding the applicability of Section 193-A of the Act, it has been admitted that the said provision was not applicable to the facts and circumstances of the case. However, it is stated that mention of section 193-A was only a typographical mistake and in fact the impugned order had been passed under section 193 of the Act to which provision the order was otherwise also attributable.

(4) In the supplementary affidavit filed by the petitioner by way of replication to the written statement of the Municipal Committee, the aforesaid factual position has been controverted. It is asserted that no doubt a Town Planning Scheme was made by the Municipal Committee, Patiala, and was sanctioned by the State Government under section 192 of the said Act, but the land of the petitioner stood excluded from the area reserved for special purposes detailed in the plan annexed to the Scheme. Therefore, the land belonging to the petitioner and many other landowners like him remained with the owners and was never made a part of the aforesaid Town Planning Scheme. It is further asserted that no scheme whatsoever under section 192 of the said Act was prepared thereafter under which the land belonging to the petitioner was ever included in the Scheme nor had any such Scheme been sanctioned by the State Government. In these circumstances, sanction to the building plan of the petitioner had rightly been communicated to him by the Executive Officer of the Municipal Committee on 8th April, 1987. This sanction once granted could not be withdrawn later on either under section 192 or under section 193 of the Act. This replication dated June, 3, 1987 has not been rebutted by the Municipal Committee. After examining the pleadings of the parties and having heard their learned counsel, I am of the considered view that there is sufficient merit in the pleas taken by the petitioner. There is no provision under which sanction granted to the plan for the construction of a building can be withdrawn by the Municipal Committee under the Punjab Municipal Act, 1911. Otherwise also, the ground on the basis whereof the sanction has been withdrawn by the impugned order is wholly non-existent and irrelevant.

(5) Consequently, the impugned order dated 21st April, 1987 (Annexure P.4), by which sanction of the building plan has been

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withdrawn is quashed and by issuing a writ of *mandamus* the Municipal Committee, Patiala, is directed to permit the petitioner to continue with the construction of the building in accordance with the plan already sanctioned by its order dated 8th April, 1987. Thus, this petition is allowed with costs which are quantified at Rs. 500.

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S C.K.

*Before J. V. Gupta, J.*

MUKHTIAR-INDER KAUR,—*Petitioner.*

*versus*

AVTAR SINGH AND ANOTHER,—*Respondents.*

*Civil Revision No. 2362 of 1987.*

December 12, 1988.

*Court Fees Act (VII of 1870)—Ss. 7(v)(a) and 7(v)(d)—Suit for possession of agricultural land—Such land assessed to land revenue—Valuation of such suit for purposes of Court fee—Determination of.*

*Held*, that the order directing the plaintiff to pay the Court fee on the market value of the land was not correct. It has been found as a fact by the trial Court itself that the suit land is an agricultural land and is assessed to land revenue. Once it is so found, then the plaintiff is entitled to pay Court fee under S. 7(v)(a) of the Court Fees Act, 1870 and not under S. 7(v)(d) as held by the trial Court. It has thus acted illegally and with material irregularity in exercise of its jurisdiction.

(Para 4).

*Petition under section 115 C.P.C. for revision of the order of the Court of Shri M. S. Viridi, Sub-Judge 1st Class, Patiala dated 9th June, 1987 making correction under section 152 C.P.C. in the order dated 2nd February, 1987 and ordering that it was a clerical mistake and the section should have been written as Section 7(v)(d) and not Section (v)(a) and further directing the plaintiff to affix the Court fee on the market value of the suit land and to file the amended plaint on 20th July, 1987.*

Bachhitar Singh, *Advocate, for the Petitioner.*