

Municipal Committee, Dhanaula, *v.* The District Magistrate, Sangrur, etc.
(Sarkaria, J.)

CIVIL MISCELLANEOUS

Before R. S. Sarkaria, J.

MUNICIPAL COMMITTEE, DHANAULA,—*Petitioner*

versus

THE DISTRICT MAGISTRATE, SANGRUR, AND ANOTHER,—
Respondent.

Civil Writ No. 1128 of 1967

October 16, 1967

Punjab Municipal Act (III of 1911)—S. 232—Power of Deputy Commissioner under—Scope of—Municipal Committee fixing dates for holding cattle fair—Order of Deputy Commissioner restraining Municipal committee from holding cattle fair on those dates—Whether valid—Code of Criminal Procedure (Act V of 1898)—S. 144—Order that holding of the cattle fairs by Municipal Committee was “likely to lead to a breach of peace and to encourage lawlessness”, without any real particulars or urgent necessity—Whether valid.

Held, that section 232 of the Punjab Municipal Act, 1911, does not give unrestricted powers to the Deputy Commissioner to control and regulate the performance of any statutory duty or function by the Municipal Committee. The only power which the Deputy Commissioner has under this section is (a) *to suspend* the execution of any resolution or order of the Committee, or (b) *prohibit* the doing of any *act* by the Committee. A *general* order directing the Municipal Committee to perform its statutory duty or function of holding cattle fairs within its limits on particular days for an *indefinite* period amounts to regulation in excess of the restricted power of suspension or prohibition given to the Deputy Commissioner in specified circumstances under section 232 of the Act.

Held, that mere reproduction of the words of the statute in the order, that the holding of the cattle fairs by the Municipal Committee “was likely to lead to a breach of peace and to encourage lawlessness” without any real particulars or urgent necessity, was not a sufficient satisfaction of the conditions laid down in section 144 of the Code of Criminal Procedure. It cannot be over-emphasised that the power conferred by section 232 of the Punjab Municipal Act on the Deputy Commissioner or by section 144, Criminal Procedure Code, on the

District Magistrate, is a discretionary one and being extraordinary, it has to be used sparingly and with care and circumspection, only where all the conditions prescribed are strictly fulfilled. Furthermore, this extraordinary power should ordinarily be exercised in defence of legal rights and the lawful performance of statutory duties, rather than in suppressing them. This power is not to be used in a manner that would either give material advantage to one party to the dispute over the other or interdict the doing of an act by a party in exercise of its right or power declared or sanctioned under the decree of the Court.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order dated June 6, 1967, passed by respondent No. 1.

M. R. AGNIHOTRI, ADVOCATE, for the Petitioner.

G. S. GREWAL, ADVOCATE, for the Respondents.

ORDER

SARKARIA, J.—This writ petition by the Municipal Committee, Dhanaula, is directed against an order, dated 6th June, 1967, of the Deputy Commissioner (District Magistrate), Sangrur, restraining the petitioner from holding its cattle fair on the dates on which the Panchayat Samiti, Barnala, was to hold its cattle fair.

It is alleged in the petition that the petitioner has framed Cattle Fair Bye-laws under sections 188 and 199 of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act'), which were duly confirmed by the Governor of Punjab, and were published in the Gazette, dated 12th May, 1964. These bye-laws came into force on 1st July, 1964. Ever since the Municipal Committee, Dhanaula, is holding a monthly cattle fair from the 11th to the 18th of each calendar month within its municipal limits. The Panchayat Samitis are also, by virtue of the Panchayat Act and the Rules framed thereunder, empowered to hold within their territorial jurisdiction cattle fairs. A severe competition took place over this matter between the Municipal Committee and the Samiti. The Punjab Government, therefore, on 12th May, 1964, issued a directive that all Panchayat Samitis should shift their cattle fair sites from municipal limits to the Samiti limits. They also advised that in order to avoid overlapping, it be ensured that two fairs are not held simultaneously and on contiguous grounds by a Samiti and a Committee.

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In spite of these instructions, on 16th November, 1964, the Deputy Commissioner passed an order under section 232 of the Act suspending the activity of the Municipal Committee, Dhanaula, in the matter of holding cattle fair (copy of this order is Annexure 'B'). The Municipal Committee represented to the Government, who, by an order, dated 28th January, 1965 (copy annexure 'D'), rescinded the order of the Deputy Commissioner. In the meantime, the petitioner also filed a suit in the Court of the Subordinate Judge, 1st Class, Barnala, on 11th November, 1964, and obtained a temporary injunction on 10th March, 1965 (*vide* Annexure 'F') restraining the Panchayat Samiti from holding the cattle fair within the municipal limits. The suit was finally decreed in favour of the petitioner on 15th July, 1965 (*vide* Annexure 'G').

On 6th June, 1967, the Deputy Commissioner acting as District Magistrate, issued the order (copy of which is Annexure 'H') that the Municipal Committee, Dhanaula, should not hold its cattle fairs on the dates on which the Panchayat Samiti, Barnala, had fixed for holding its own cattle fairs. It is this order which is being impugned by means of this writ petition as illegal, arbitrary, and without jurisdiction, on the following grounds :—

- (1) That in holding the cattle fair in accordance with the bye-laws within its territorial limits, the Municipal Committee was only performing its statutory duty and the Deputy Commissioner's order restraining it from doing so was without any legal force.
- (2) That a previous order of the same kind passed by the Deputy Commissioner in 1964 had been rescinded by the Government. Repetition of the same mistake is wholly uncalled for.
- (3) That the order was tantamount to flouting the decree for injunction granted by the Subordinate Judge, 1st Class, Barnala, in favour of the Municipal Committee, and against the Samiti.
- (4) That the District Magistrate had no power under any law to pass an order of the kind.

- (5) That the order is only a subter-fuge to neutralise the effect of the Government order as well as of the dismissal by the Civil Court of the suit brought by the Panchayat Samiti against the petitioner.
- (6) That the holding of cattle fairs is one of the fundamental rights of the petitioner granted by Article 19 of the Constitution. The impugned order amounts to infringement of that right.

Respondent 1 (District Magistrate), in his written statement, admitted that the impugned order was issued. He, however, added that in April, 1966, the petitioner and the Panchayat Samiti entered into an agreement whereby they started the practice of holding joint cattle fairs and sharing the income. The arrangement, however, collapsed as the petitioner did not pay the Samiti their share of the income. In order to prevent a breach of the peace and a clash, the Municipal Committee was asked to adopt different dates for holding their cattle fairs. The written statement of Respondent 1 is not clear as to whether the impugned order was made by Respondent 1 in his capacity as District Magistrate or as Deputy Commissioner. In paragraphs 4 and 9, it is hinted that the impugned order was passed by the respondent as District Magistrate. But in para 10(i) it is stated that the Deputy Commissioner has express powers of control over Municipal Committees under section 232 of the Act. In clauses (iv) and (v) of paragraph 10, however, an attempt has been made to show that the District Magistrate (District Authorities) incharge of law and order could not remain silent spectators when the law and order had been threatened.

Thus, the first question to be determined is, whether this order was made by the Respondent in his capacity as District Magistrate or as Deputy Commissioner. It must be remembered that the office and the duties of the District Magistrate are distinct from that of the Deputy Commissioner, though the same person may be performing the duties of both these offices. On the face of it, the impugned order appears to have been passed by the *District Magistrate*, as such, and not by the *Deputy Commissioner*. The material part of this order reads as follows :—

“The Chairman, Zila Parishad, Sangrur, has fixed dates for the holding of cattle fairs at Dhanaula by the Panchayat

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Samiti.....Municipal Committee, Dhanaula, is also going to hold cattle fairs on these dates. It is also reported that there will be overlapping and inconvenience to the public which is likely to lead to a breach of peace and to encourage lawlessness. In order to avoid overlapping, public inconvenience and breach of public peace, I, Tajendra Khanna, I.A.S., District Magistrate, Sangrur, hereby order

Though the District Magistrate in the impugned order (Annexure 'H') does not expressly refer to section 144, Criminal Procedure Code, but in the context it is clear that his intention was to pass an order under section 144, Criminal Procedure Code, as District Magistrate, and not one under section 232 of the Act. A clue to this is also to be found in the last sentence of paragraph 4 of the written statement of Respondent 1. None of the conditions for invoking the jurisdiction under section 144, Criminal Procedure Code, had been satisfied. No finding was recorded that there were sufficient grounds for proceeding under that section and immediate prevention or speedy remedy was desirable. Moreover, as recited in the impugned order, its object was not only to prevent breach of public peace but also to prevent overlapping and public inconvenience. The order was clearly *ultra vires* the provisions of section 144, Criminal Procedure Code. Further, no order under section 144, Criminal Procedure Code, can remain in force for more than two months from the date of making thereof unless the State Government otherwise directs.

Counsel for the respondent, however, wants me to construe the impugned order as one under section 232 of the Act. This section reads as follows :—

“232. The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a Committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the Committee in the exercise of its powers under the Act, if, in his opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of

the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons”.

In the first place, it is the Deputy Commissioner and not the District Magistrate who is empowered to act under section 232 of the Act, and the impugned order has apparently not been passed by the Deputy Commissioner. Secondly, a previous order passed by the Deputy Commissioner to the same effect had been rescinded by the Punjab Government under section 235 of the Act. Thirdly, the Deputy Commissioner can pass an order under section 232 only if in his opinion the resolution, order, or act of the Committee is in excess of the powers conferred by law, or contrary to the interests of the public, or is likely to cause waste or damage of municipal funds or property, or is likely to lead to breach of the peace, etc. In this case, the Municipal Committee was only performing its statutory duty within its territorial limits. It had also armed itself with a decree of the Civil Court whereby the respondent Panchayat Samiti was restrained from holding any cattle fair within the territorial jurisdiction of the petitioner.

Section 232 of the Act does not give unrestricted powers to the Deputy Commissioner to control and regulate the performance of any statutory duty or function by the Municipal Committee. The only power which the Deputy Commissioner has under this section is, (a) to *suspend* the execution of any resolution or order of the Committee, or (b) *prohibit* the doing of any *act* by the Committee. A *general* order directing the Municipal Committee to perform its statutory duty or function of holding cattle fairs within its limits on particular days for an *indefinite* period amounts to *regulation* in excess of the restricted power of suspension or prohibition given to the Deputy Commissioner in specified circumstances under section 232 of the Act. In passing the impugned order, the Deputy Commissioner had arbitrarily arrogated to himself the general powers of superintendence, direction, and control over the working of the Municipal Committee, which the Legislature has not vested in him.

Incidentally, the present case is a sad commentary on the working of the Municipal Committees and their sister local bodies, i.e., Panchayat Samitis, etc. The function of the Deputy Commissioner should be to co-ordinate the working of the two sister local bodies while remaining within the letter of law. If he finds that the legal

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provisions in the relevant statutes (e.g., S. 110(1)(e) of Punjab Panchayat Samitis, etc. (Act No. 3 of 1961), or bye-laws made thereunder do not give him or the Government adequate and effective powers to achieve this object, the proper course for him is to bring the matter to the notice of the Government, who may, in their wisdom, move for amendment of the law and thereby remove the causes of unhealthy competition and sources of friction between Municipal Committees and Panchayat Samitis.

Moreover, the conditions precedent to the exercise of jurisdiction either under section 232 of the Act or under section 144, Criminal Procedure Code, had not been fulfilled. The impugned order is vague on that point. A mere reproduction of the words of the statute in the impugned order, that the holding of the cattle fairs by the Committee was "likely to lead to a breach of peace and to encourage lawlessness" without any real particulars or urgent necessity, was not a sufficient satisfaction of those conditions. It cannot be over-emphasised that the power conferred by section 232 of the Act on the Deputy Commissioner or by section 144, Criminal Procedure Code, on the District Magistrate, is a discretionary one and being extraordinary, it has to be used sparingly and with care and circumspection, only where all the conditions prescribed are strictly fulfilled. Furthermore, this extraordinary power should ordinarily be exercised in defence of legal rights and the lawful performance of statutory duties, rather than in suppressing them. This power is not to be used in a manner that would either give material advantage to one party to the dispute over the other or interdict the doing of an act by a party in exercise of its right or power declared or sanctioned under the decree of a Court. The impugned order offends against all these cardinal principles.

For all the reasons aforesaid, I would allow this petition and quash the impugned order, dated 6th June, 1967 (Annexure 'H'). In the circumstances of the case, there will be no order as to costs.

R. N. M.