

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18256 of 2014

Date of Decision: 31.3.2015

Daljit Singh

....Petitioner.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

PRESENT: Mr. S.S. Salar, Advocate for the petitioner.

Mr. Rajesh Bhardwaj, Addl. Advocate General, Punjab.

AJAY KUMAR MITTAL, J.

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the order/letter dated 29.8.2014 (Annexure P-6) vide which respondent No.4 has ordered to demolish the construction/the shutters replaced by him on the front of more than 50 years old building on the pretext of new construction on scheduled road whereas the notification to declare schedule road had been issued on 23.12.2014.

2. The facts necessary for adjudication of the present petition as narrated therein are that the litigation is pending between the petitioner and his nephew respondent No.6. Respondent No. 6 made a complaint dated 16.6.2014 (Annexure P-1) to respondent No.4 that the petitioner has recently constructed a building on Malerkotla road by

violating the provisions of PUDA Act, 1995. The house of the petitioner is about 50 years old and due to the change of plinth level, front wooden doors were replaced with iron shutters. The petitioner received a notice dated 24.6.2014 to which he filed a detailed reply dated 20.6.2014 (Annexure P-2) to respondent No.5. Respondents No.4 and 5 after being satisfied with the reply, filed the complaint. Thereafter, respondent No.6 filed COCP No. 1904 of 2014 against respondent No.4 for not taking any action inspite of direction by this Court in CWP No. 4559 of 2007. This Court vide order dated 25.7.2014 issued notice of motion to respondents No.3 and 4. On receipt of notice, respondent No.5 vide letter dated 13.8.2014 (Annexure P-4) directed the petitioner to demolish the construction in the building. The petitioner submitted reply dated 20.8.2014 (Annexure P-5) to the said letter/notice. Respondent No.4 vide order dated 29.8.2014 (Annexure P-6) without affording an opportunity of hearing to the petitioner ordered to demolish the construction within seven days. Hence, the present writ petition.

3. Upon notice of motion having been issued, respondent No.3 and respondents No. 4 and 5 filed their separate written statements by way of affidavits controverting the averments made in the writ petition. It was pleaded by respondents No.4 and 5 that the petitioner was afforded opportunity of personal hearing and a show cause notice dated 24.6.2014 was issued to him. The petitioner was directed to dismantle the permanent structure which was being started by him. It was further pleaded that respondent No.5 wrote a letter dated 16.6.2014 (Annexure R-3) to respondent No.4 that the petitioner was told to stop from doing the construction work but the same was not stopped. Respondent No.4 also issued a show cause notice dated 24.6.2014 (Annexure R-4) to the

petitioner asking as to why the unauthorized structure be not demolished. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made. The petitioner filed replication controverting the averments made in the written statements filed by the respondents and reiterating that of made in the writ petition.

4. We have heard learned counsel for the parties and perused the record.

5. The primary contention of the learned counsel for the petitioner is that order dated 29.8.2014 (Annexure P-6) had been passed in the absence of the petitioner and his rights had been affected and the same being in violation of the principles of natural justice, deserves to be set aside. According to the learned counsel, respondent No.4 had failed to exercise its jurisdiction while ordering to demolish the front of the building of the petitioner. It was submitted that the order, Annexures P-6, be set aside and the matter be remitted to respondent No.4 to pass a fresh order after hearing counsel for the respective parties.

6. On the other hand, learned State counsel supported the order passed by respondent No.4 and prayed for dismissal of the writ petition.

7. The Hon'ble Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal

way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this

principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that thou should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the

concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

8. In view of the above, the order dated 29.8.2014 (Annexure P-6) passed in violation of the principles of natural justice as per law laid down by the Hon'ble Supreme Court in **V.K. Awasthy's case (supra)** is hereby quashed. Accordingly, the matter is remitted to respondent No.4 to pass a fresh order after affording an opportunity of hearing to the respective parties within three months from the date of receipt of copy of the order, in accordance with law.

9. Writ petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

March 31, 2015
gbs

(REKHA MITTAL)
JUDGE