

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA Nos. 243 and 264 of 2015 (O&M)

DATE OF DECISION : 20.04.2015

Raj Kumar Taneja

.... APPELLANT

Versus

State of Punjab and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Atul Lakhanpal, Senior Advocate, with
Ms. Bably Kumari, Advocate,
for the appellant.

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SATISH KUMAR MITTAL, J. (Oral)

This order shall dispose of LPA Nos. 243 and 264 of 2015, both filed by Raj Kumar Taneja, against the order dated 01.05.2014 passed by the learned Single Judge, whereby two separate writ petitions (CWP Nos. 8202 and 15552 of 2010) filed by the appellant have been dismissed with costs of ₹ 20,000/-.

Though there is delay of 153 days in filing and 38 days in re-filing LPA No. 243 of 2015, whereas there is delay of 153 days in filing and 43 days in re-filing LPA No. 264 of 2015, and the appellant has filed separate applications (CM Nos. 462-63-LPA of 2015 in LPA No. 243 of 2015; and CM Nos. 517-18-LPA of 2015 in LPA No. 264 of 2015) for

condoning the said delay, yet we have heard learned counsel for the appellant on merits and have gone through the order passed by the learned Single Judge.

In this case, the appellant had filed two separate writ petitions, one (CWP No. 8202 of 2010) seeking direction to the respondents to permit him to construct the shop (Khokha) at Kot Isse Khan, District Moga, at the site allotted to him; and the other (CWP No. 15552 of 2010) seeking quashing of the order dated 23.07.2010 (Annexure R-4) passed by the Director, Rural Development and Panchayat Department, Punjab, whereby the resolution dated 11.08.2009 (Annexure R-1) passed by the Panchayat Samiti, Kot Isse Khan, cancelling the resolution dated 16.03.2009 passed by the Lease Committee recommending the case of the appellant to raise construction of shop, was upheld, and the appeal filed by the appellant challenging the resolution dated 11.08.2009 was dismissed.

In both the writ petitions, the appellant claimed his right to raise construction of shop at the site allotted to him, on the basis of the resolution dated 16.03.2009 passed by the Lease Committee, recommending his case for raising construction of shop on payment of certain rent to be fixed by the Panchayat Samiti. On the basis of the said resolution, the Block Development & Panchayat Officer, vide letter dated 25.03.2009 (Annexure P-1) further recommended the case of the appellant to the Director, Rural Development and Panchayat Department, to approve the aforesaid resolution dated 16.03.2009. Undisputedly, the said resolution was not

approved, rather vide resolution dated 11.08.2009 (Annexure R-1) and subsequent resolution dated 30.11.2009 (Annexure R-2), the said resolution was cancelled, while observing as under :-

“It was also passed in the meeting of the Panchayat Samiti held on 11.08.2009 and Panchayat Samiti again passes the resolution, that Resolution No. 2 dated 16.03.2009 which was passed on 16.03.2009 be sent to the Govt., because this resolution is not in the interests of the Panchayat Samiti and the place regarding which the resolution was passed to construct the shop, was the passage of the general public. Due to construction of the said shop the general public passage will close down. Due to which public will face inconvenience.”

It is also an undisputed fact that the appeal filed by the appellant against the resolution dated 11.08.2009 was also dismissed vide order dated 23.07.2010 (Annexure R-4).

The learned Single Judge, after taking into consideration the fact that the resolution dated 16.03.2009 recommending the case of the appellant to raise construction of shop has been cancelled, came to the conclusion that there is a general path on the site allotted to the appellant for raising construction of shop, and in case the appellant is allowed to construct the shop, it would cause great inconvenience to the general public.

Learned counsel for the appellant argued that the similarly situated persons have been granted permission to raise construction of shops, therefore, the appellant should also be granted such permission. We do not find any substance in this argument. As far as the present case is concerned, in the order dated 23.07.2010 (Annexure R-4), a categorical

finding has been recorded by the Director that in case, the appellant is allowed to raise construction of shop, then it will cause obstruction to the general public. In view of the said finding of fact recorded by the Director, the recommendation of the Panchayat Samiti was not accepted and the resolution dated 16.03.2009 was cancelled. Under the Punjab Panchayat Samitis and Zila Parishads (sale, lease and other alienation of property and public places) Rules, 1964 (hereinafter referred to as 'the Rules'), the Director, Rural Development and Panchayat Department, Punjab, is competent to cancel the resolution passed by the Panchayat Samiti. We do not find any illegality in the order dated 23.07.2010 (Annexure R-4) passed by the Director. Under the Rules, the Panchayat Samiti cannot lease out a portion which falls under the passage and obstructs free access to the general public. Therefore, merely on the ground of discrimination, the aforesaid order dated 23.07.2010 cannot be quashed. Rather, under the Rules, the resolution passed by the Panchayat Samiti was cancelled by the Director exercising the powers under the Punjab Panchayat Samitis and Zila Parishads Act, 1961. Thus, we do not find any ground to interfere with the order passed by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

April 20, 2015
ndj

(HARINDER SINGH SIDHU)
JUDGE