

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

224

CWP-25409-2018

Date of Decision: 05.10.2018

Shree Ram Leela Committee (Regd No.812), DerabassiPetitioner.

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. H.S. Brar, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Senior Deputy Advocate General,
Punjab.

Shekher Dhawan, J.

Petitioner-committee has filed the present writ petition for setting aside the order dated 26.09.2018 (Annexure P3) whereby respondent No.2 passed the orders which are in violation of Sections 46 and 47 of Punjab Municipal Act, 1911 (hereinafter referred to as, 'the Act, 1911').

As per averments made in the petition, the petitioner is a registered society under the Society Registration Act, 1860 and used to hold Shree Krishan Janamashtmi, Shivratri, Ram Leela and Dussehra festivals in Derabassi since 1986. Respondent No.4-Municipal Council, Derabassi is the owner of Ram Leela ground, situated near bus stand Derabassi. Five different societies applied for permission to hold Ram Leela and Dussehra on the said ground/ place and the full house unanimously granted permission to the petitioner-society for holding the Ram Leela from 08.10.2018 to 20.10.2018 vide Resolution No.117 dated 29.08.2018.

However, respondent No.3-Executive Officer of the Municipal Council,

Derabassi granted permission to respondent No.5-Shree Ram Leela Dussehra committee (Registration No.6148) and received Rs.6500/- as rent of Ram Leela ground vide Receipt No.82/158 dated 10.01.2018, though he had no power under the Act, 1911, to deal with the property owned by the Municipal Committee. Respondent No.2 set aside the Resolution No.117 dated 29.08.2018 passed by the Municipal Council, Derabassi in complete violation of Sections 47 and 56 of the Act, 1911. The petitioner prayed that order dated 26.09.2018 (Annexure P3) be set aside and directions be issued to respondents No.1 to 3 to implement the Resolution No.117 dated 29.08.2018 (Annexure P2) passed by respondent No.4 under Section 56 of the Act, 1911.

On being given notice, respondent-State filed reply inter~alia taking a plea that permission was granted by the Executive Officer to hold Ram Leela to respondent No.5 vide order No.4909 dated 16.08.2018 and the approval was given on first-cum-first serve basis. As per respondents No.1 and 2, respondent No.5-committee had applied for permission vide office receipt No.75 dated 08.01.2018 and deposited the amount of Rs.6500/- vide G-8 No.82/158. Being administrative matter, respondent No.3-Executive Officer, being competent, granted permission to respondent No.5, while exercising powers under Section 4 of the Punjab Municipal (Executive Officer) Act, 1931. Thereafter, Resolution No.117 dated 29.08.2018 was passed by the Municipal Council, Derabassi. Learned State counsel placed reliance upon decision dated 20.09.2017 in LPA No.1706 of 2017, wherein Division Bench of this Court observed as under:-

“Even otherwise staging of Ram Leela, providing space and ensuring peace during its process are matters best left to the wisdom of the official functionaries. Hence, instant appeal is hereby dismissed. The record of Municipal Council has been returned to the learned State counsel.”

It was, thus, prayed that the present writ petition be dismissed.

Learned counsel for the petitioner contended that as per provisions of Sections 46 and 56 of the Act, 1911, Municipal Council, being the owner of the property and land belonging to the Municipal Committee is competent to pass resolution and grant permission and the Executive Officer cannot grant such permission. On this ground, reliance was placed upon the decision of the Division Bench of this Court in **S.A. Builders Limited vs. Chandigarh Administration, 1992 (2) R.R.R., 59** and on the same point, reliance was also placed upon the decision of coordinate Bench of this Court in **Rikhi Ram vs. Municipal Committee, Amritsar, 1986 R.R.R., 524.**

Learned State counsel representing respondents No.1 and 2 contended that Sections 46 and 47 of the Punjab Municipal Act, 1911 has already been omitted vide Schedule-II of the Punjab Municipal (Executive Officer) Act, 1931 and as per Section 4 of Punjab Municipal (Executive Officer) Act, 1931, only the Executive Officer has powers to grant such a permission and the Executive Officer, while exercising such powers, granted permission to respondent No.5 on first-cum-first serve basis. For ready reference, Section 4 of the said Act is extracted hereunder:-

“4. Powers of the Executive Officer.-*In a [municipality or notified area as the case may be] in which an Executive Officer has been appointed: -*

(a) the executive power for the purpose of carrying on the administration of the municipality shall, subject to the provisions of this Act and of any rules made under this Act, or under the Municipal Act, vest in the Executive Officer;

(b) the powers conferred and duties imposed upon, the functions vested in, and the objections to be tendered and notice given to, the committee under the sections of the Municipal Act mentioned in Schedule I, shall not be exercised or performed by, vested in, or be tendered or given to, the committee, but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to, the Executive Officer, provided that-

(i) the power conferred by Section 39 of the Municipal Act shall not be exercised by the Executive Officer and may be exercised by the Committee in respect of the appointment of any Officer or servant of the committee to a post for which the monthly remuneration exceeds Rs. 25, and in respect of the power of removal or dismissal of any officer or servant whose monthly remuneration exceeds Rs.45, provided that the Executive Officer shall dismiss an employee if required by the committee to do so;

(ii) the power to revise the valuation and assessment conferred by Section 65 of the Municipal Act and the power to amend the assessment list conferred by sub-clause (1) of Section 67 of the Municipal Act shall be exercised by a sub-committee consisting of the Executive Officer and two members of the committee appointed by the committee for the purpose;

iii) the power of the Executive Officer to withhold the grant of a license for any of the trades or purposes specified in Sections 121, 122 of the Municipal Act or to withhold written permission under Section 124 of the Municipal Act may by byelaw be made subject to revision by the Committee;

- (iv) the exercise or discharge by the Executive Officer of any power, duty or function thus conferred, imposed or vested in him, shall be subject to such restrictions, limitations and conditions as may be imposed by any rules made by the State Government, under the Municipal Act upon the exercise or discharge of such power, duty or function by the committee;*
- (c) the Municipal Act shall be deemed to have been amended in the manner set forth in schedule II;*
- (d) no bye-laws inconsistent with this Act shall be made by the committee in exercise of the powers conferred by Section 31, of the Municipal Act and, if any such be-laws have been made, they shall be deemed to have been cancelled to the extent to which they are thus inconsistent;*
- (e) if any bye-law made by the committee in exercise of the powers conferred by Sections 188, 189, [-] or 198 or in any rule made in exercise of the powers conferred by Section 3 of the Hackney Carriage Act, 1879, it is provided that notice shall be given to or licenses granted by the committee, such bye-law or rule shall be deemed to have been amended so as to provide that subject to bye-laws made under the Municipal Act or rules made under this Act such notice shall be given to, or such license granted by, the Executive Officer.”*

Section 6 of the said Act lays down unequivocal terms of such a contract by the Executive Officer. For ready reference, Section 6 of the said Act is extracted hereunder:-

“6. Contracts. - *(I) Every contract to be entered into by the committee shall be made on behalf of the committee by the Executive Officer;*

Provided that the Executive Officer shall be bound by any resolution of the Committee fixing terms, rates or maximum prices in the particular case or any class of cases.

(2) *No contract affecting immoveable property or involving a sum exceeding such sum as the committee may fix shall be made by the Executive Officer unless it has been sanctioned by the committee.*

(3) *Every contract made by the Executive Officer shall be reported to the committee within fifteen days of its being made.*

(4) *Every contract made by the Executive Officer on behalf of the committee shall be entered into in such manner and form as would bind him if it were made on his on behalf and may in like manner and form be varied or discharged:*

Provided that every contract involving a sum exceeding one hundred rupees or affecting immoveable property shall be in writing and shall be sealed with the common seal of the committee.

(5) *The common seal of the committee shall remain in the custody of the Executive Officer and shall not be affixed to any contract or other instrument except in the presence of the Executive Officer who shall sign the contract in token that the same was sealed in his presence.*

(6) *No contract executed otherwise than as provided in this section shall be binding on the committee:*

Provided that, when work is given on contract at unit rates and the number of units is not precisely determinable, the contract shall not be deemed to contravene the provision of this section merely by reason of the fact that the pecuniary limits prescribed in sub-section (2) or sub-section (4) are eventually exceeded.”

The matter in controversy is also pending before the Sub Divisional Officer (Civil) and he has to pass the order and the decision taken by the Municipal Council was also under challenge before Director of Local Government, Punjab. Vide order dated 26.09.2018 (Annexure P3),

Director of Local Government, Punjab also observed that the matter in

controversy was purely administrative matter and the Executive Officer, Municipal Council, Derabassi had given approval for using Ram Leela Maidan (Stage/Ground) at his level as per Section 4 of Punjab Municipal (Executive Officer) Act, 1931, and the approval was given on first-cum-first serve basis and the amount was deposited by respondent No.5-Committee on 10.01.2018 when applied for the permission.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no such case set up by the petitioner that anything contrary was decided by the Municipal Committee and the Executive Officer has rightly acted as per powers vested in it, as per Sections 4 and 6 of the Punjab Municipal (Executive Officer) Act, 1931. More so, Sections 46 and 47 of the Act, 1911 has already been omitted. Respondent No.5 had deposited a sum of Rs.6500/- long back on 10.01.2018 and the permission has been granted by the competent authority.

Since, there are no grounds to set aside the order impugned in the present writ petition, the same is hereby dismissed, being without having any merit.

(SHEKHER DHAWAN)
JUDGE

05.10.2018

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No