

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

LPA No. 440 of 2017 (O&M)

Date of decision: 17.02.2020

Gopal Krishan and others

...Appellants

Versus

Municipal Council Narnaul through Secretary and others

...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ashok Kumar Verma**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellants.

Ms. Kirti Singh, DAG, Haryana.

Mr. Rajesh Kumar Sheoran, Advocate
for respondent No.1.

Rakesh Kumar Jain, J. (Oral)

The question involved in this case is as to whether the Deputy Commissioner has the jurisdiction to hear the objections much less the appeal preferred either by any individual or by the Municipal Committee after the publication of the Final Plans under the Haryana Municipal Khasra and Town Plan Rules 1976?

In brief, the Haryana Municipal Khasra and Town Plan Rules 1976 (for short 'the Rules') were published by way of a notification issued by the Government of Haryana in 1976. As per these rules, every Municipal Committee in the State of Haryana was required to prepare an accurate plan of the Municipality showing all the public streets and other immovable properties vested in the Municipal Committee within six months of the

coming into force of these Rules. The Khasra Town Plan of the Municipal Council, Narnaul was prepared in which Khasra No.6614 was shown under the ownership of the appellant. The said Khasra Town Plan was ultimately published by the Deputy Commissioner, Mohindergarh at Narnaul on 11.07.2006. After the publication, the Municipal Council, Narnaul filed an appeal to challenge the order dated 17.02.2006, purported to have been passed by the Sub Divisional Officer (Civil) Narnaul as the Revising Authority, claiming therein that the land falling in Khasra No.6614 has been wrongly mentioned in the name of the present appellant otherwise it vests in the Municipal Council. The said appeal was allowed on 1st April, 2009 by the Deputy Commissioner, Narnaul in terms of Rule 11 of the Rules and ordered that the disputed Khasra No.6614 be recorded in the name of the Municipal Council, Narnaul.

The appellants, under a wrong advise, challenged the order dated 1st April, 2009 passed by the Deputy Commissioner Narnaul by way of an appeal before the Commissioner, Gurgaon Division, Gurgaon, which was dismissed on 10th February, 2012 on the ground of lack jurisdiction.

The appellants then filed the Civil Writ Petition No. 8494 of 2012 in this Court to challenge the order dated 1st April, 2009 passed by the Deputy Commissioner but the learned Single Judge dismissed the writ petition as not maintainable and relegated the appellants herein to avail their remedy of filing a Civil Suit on the ground that disputed questions of law and facts are involved and also allowed to apply for condonation of delay in terms of Section 14 of the Limitation Act, 1963. This appeal has been filed not only to challenge the decision of the learned Single Judge dated 13.01.2017 but also the entire proceedings before the Deputy

Commissioner, Narnaul on the ground that it was without jurisdiction.

At the time of preliminary hearing, the parties were directed to maintain status quo with regard to the possession of the land in question.

Learned counsel for the appellants has submitted that there is a complete misreading on the part of Respondent No.3 (Deputy Commissioner) of the rules in entertaining the appeal filed by respondent No.1. It is submitted that as per Rule 4, after the preparation of Khasra of the streets and other properties by the Committee, specified in Rule 3 in Form 'A' provided in the rules; six copies of the plans, so prepared, have to be supplied to the Deputy Commissioner within the time prescribed in Rule 3 and as per Rule 5, the Deputy Commissioner, on receipt of the plans and khasra from the Committee has to scrutinize the said plan and khasra and publish the same in the manner as it may deem fit but has to give a notice intimating the date of not less than two months, inviting objections from any person regarding the entries in the plan and khasra, which may be presented by any objector to an authority or the Revising Authority, to be appointed under Rule 7 by the Deputy Commissioner himself. It is further submitted by counsel for the appellants that the Revising Authority, to whom the objections are intended to be filed, has to keep a record of the objections by maintaining a register in Form 'B' in which he will make all the entries of objections at the time of the receipt, particulars of every objection and shall decide the objections.

It is further submitted that as per Rule 10, any person who is aggrieved of any order passed by any authority, may within a period of seven days approach the Deputy Commissioner for further revising the order of the Revising Authority and the Deputy Commissioner after giving a

notice to the parties concerned and hearing representation, if any, may either confirm the order of the Revising Authority or set it aside or pass such other orders with respect to the objections as he may deem fit. He further submits that after these proceedings are carried out, Rule 11 shall come into play as per which after the objections if any, disposed of by the Deputy Commissioner, he would authenticate the same and have the amended plan and khasra or fresh copy of it published for general information. As per Rule 12, the copy of original Plan and Khasra shall remain in the custody of the Deputy Commissioner and a copy thereof duly authenticated by him shall be furnished to the Committee. The Committee may supply certified copies of the Plan & relevant portions to the applicants on payment to be fixed by the Deputy Commissioner from time to time.

The counsel for the appellant has submitted that the Deputy Commissioner becomes functus officio after the publication of the final plan and khasra after hearing the objections, if any, and no appeal or revision is maintainable, before him against his own order as he is ultimately the last authority for the purpose of preparation and authentication of the final plan.

It is thus submitted that after the plan was published on 17.02.2006 by the Deputy Commissioner, he had no jurisdiction to hear an appeal preferred by the Municipal Council, Narnaul to set aside the final plan prepared by him. It is also submitted that it is a case where no objection was filed by the Municipal Council before the Revising Authority as provided in Rule 8 of the rules. It is further submitted that the petitioner had to file a writ petition unnecessarily before this Court because they were forced to approach this court to challenge the order of the Deputy Commissioner otherwise the writ petition should have been filed at the

instance of the Municipal Council, Narnaul to challenge the order of the Deputy Commissioner. It is also submitted that the learned Single Judge has committed patent error of law to relegate the appellant to file a civil suit on the pretext that since there are disputed questions of law and facts involved in the matter, therefore, only Civil Court can decide the same.

On the other hand, learned counsel appearing for the Municipal counsel-respondent No.1 has conceded that no objection whatsoever was filed by it in terms of Rule 8 before the Revising Authority and has also conceded that the Deputy Commissioner has not decided anything which was brought to his notice on their behalf before making the publication of the final plan and khasra on 17.02.2006. All that has been argued by counsel for respondent No.1 is that the Deputy Commissioner has the jurisdiction to revise its order.

We have heard learned counsel for the parties and perused the record with their able assistance.

In order to appreciate the controversy, it would be relevant to refer to the relevant Rules of the Rules which are reproduced as under:-

“3. Every Municipal Committee shall, within six months of the coming into force of these rules, cause to be prepared an accurate plan of the municipality to a scale of not less than one centimetre to seventeen metre showing all the public streets and other immovable property vested in the municipal committee.

4. The committee shall also cause to be prepared a Khasra of the streets and other properties specified in rule 3 in form A.

The committee, if it considers necessary, get these plans prepared from commercial sources and the expenditure thus incurred shall be a charge on municipal fund. Six copies of the Plans so prepared shall be supplied to the Deputy Commissioner within the period specified in rule 3.

5. The Deputy Commissioner shall on receipt of the Plans and Khasra from the committee cause the Plan and Khasra, to be scrutinised and published in such manner as he deems fit together with a notice intimating the date not less than two months from the date of the notice by which objections from any person with regard to entries on the Plan and Khasra may be presented to the Revising Authority appointed under rule 7 and the time and place at which the plan and Khasra may be inspected.

6. The Deputy Commissioner shall arrange to allow any person to inspect the Plan and Khasra during the office hours and at the places specified in the notice on any day which is not a public holiday.

7. The Deputy Commissioner shall appoint an Assistant Commissioner or Extra Assistant Commissioner on the District Staff to be the Revising Authority for the purpose of hearing objections relating to the Plan and Khasra.

8. When the Plan and Khasra have been published under the provisions of rule 5, objections in respect of entries on the Plan and Khasra may be presented to the Revising Authority appointed under rule 7 during the office hours within the

period specified in the notice issued under rule 5 on any day which is not a public holiday.

9. The Revising Authority shall maintain a register of objections in form B in which the Revising Authority shall cause to be entered at the time of receipt, particulars of every objection received.

10. Any person aggrieved by any order, which the Revising Authority may pass, may, within seven days from the date of such order, apply to the Deputy Commissioner for revising the order and the Deputy Commissioner, after giving the notice to the parties concerned and hearing any representation, which he may wish to make, may confirm it or set aside and pass such other orders with respect to the objections which he may deem fit :

Provided that the process of calling for objections and their settlement shall not take more than six months.

11. After the objections, if any, have been disposed of, the Deputy Commissioner shall cause the Plan to be corrected, if necessary, in accordance with the orders passed on the objections and shall then authenticate and have the amended Plan and Khasra or fresh copy of it, published for general information.

12. The original Plan and Khasra shall remain in the custody of the Deputy Commissioner and a copy thereof duly authenticated by the Deputy Commissioner to be correct, shall be furnished to the committee. The committee may

supply certified copies of the Plan and Khasra or relevant portions of these to applicants on payment to be fixed by the Deputy Commissioner from time to time.”

A careful reading of the aforesaid Rules would show that the Deputy Commissioner has no jurisdiction to hear the appeal after the authentication and publication of the plan and khasra. Hence, the submission made by learned counsel for the appellants is hereby accepted as the correct interpretation of the aforesaid Rules and the question which has been posed in the beginning of this judgment, is decided accordingly, holding that the Deputy Commissioner shall have no jurisdiction to hear the objections, much less, the appeal preferred either by the individual or by the Municipal Committee after the publication of the final plan under the Rules.

The writ petition is, thus, hereby allowed and the impugned order passed by the learned Single Judge is set aside though without any order as to costs.

[RAKESH KUMAR JAIN]
JUDGE

[ASHOK KUMAR VERMA]
JUDGE

17.02.2020

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Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No