

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

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CWP-25652-2022

Date of decision: 11.11.2022

INDERJEET SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Gursher Singh Bhandal, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The present petition raises a challenge to the order/letter dated 13.09.2022 (Annexure P-10) as well as the order dated 22.02.2022 (Annexure P-11) conveyed on 15.04.2022 passed by the respondent-Department whereby the representation dated 10.03.2022 filed by the petitioner in continuation of his earlier representation dated 29.12.2021 (Annexure P-4) has been dismissed without granting any opportunity of hearing and without allowing the petitioner to file his supplementary representation in terms of the order dated 04.03.2022 passed in CWP No.4273 of 2022 titled as "*Inderjeet Singh versus State of Haryana and others*".

2. Briefly, the facts of the case are that the petitioner, who is resident of House No.43 in Sector 15-A, Hisar is aggrieved of the commencement of the work of construction of water storage tank at a

distance of 13 feet from the residential house of the petitioner. It is averred that the land adjacent to the boundary of the house of the petitioner is under the ownership of Public Health Engineering Department, Haryana which had been left unutilized for last 30 years. In the month of September, 2021, the respondent-Department started work on the said land by cutting the vegetation and clearing the vacant area and commenced digging work for construction of the additional water storage tank at a distance of 26 feet from the side boundary wall of the house of the neighbours whereas the distance from the boundary wall of the house of the petitioner is 13 feet. The residents of the locality filed CWP No.26282 of 2021 titled as “Ramesh Arora & Others versus State of Haryana & Others” which was disposed of vide order dated 23.12.2021 directing the respondents to consider the representation of the petitioners/house owners therein and a status quo was directed to be maintained till a final decision is taken.

3. It is contended that the grievance of the petitioner is on same footing as the other aggrieved house owners and that the petitioner had also submitted a representation on 29.12.2021. It is alleged that there would be an irreversible damage to the structure of the house of the petitioner and the living conditions of the residents therein. He contends that in addition to submission of the representation dated 29.12.2021, the petitioner also filed CWP No.4273 of 2022 titled as “Inderjeet Singh versus State of Haryana & Others” which was disposed of vide order dated 04.03.2022 directing the petitioner to approach respondent No.1 by way of an additional representation in case it has not already been filed and/or to supplement the one already

filed within a week and the respondent No.1 was thereafter directed to consider the same and to pass an order thereupon after giving due opportunity to the petitioner. Respondents were directed to take a final decision thereafter.

4. It has been averred that the petitioner filed his supplementary representation on 10.03.2022 in compliance to the order dated 04.03.2022, however, he was not granted opportunity of personal hearing by the respondents. Resultantly, COCP No. 963 of 2022 titled "*Inderjeet Singh versus A.K. Singh, IAS & Others*" was filed which is pending consideration.

5. It is averred that the petitioner was thereafter granted an opportunity of hearing on 31.05.2022 by the respondent No.1, however, the same cannot be termed as effective or fair opportunity as the respondent No.1 stated that there cannot be any changes made to the lay-out plans of construction of water tank. A physical site inspection was also conducted on 20.06.2022 and thereafter a letter dated 22.09.2022 (Annexure P-9) was received by the petitioner in which it was submitted that the supplementary representation in continuation of the earlier representation dated 29.12.2021 of the petitioner has been decided in terms of the order dated 22.02.2022. He averred that the respondent-Department has covered the case of the petitioner with a decision already taken in the matter of "*Ramesh Arora and others versus State of Haryana and others*" (supra) and the entire proceedings initiated by the petitioner have been set to a naught.

6. Learned counsel for the petitioner has while referring to the facts above, argued that respondent-Department has completely

overlooked the representation of the petitioner and did not join him in the proceedings or grant him any opportunity of personal hearing. It was for the said reason that the petitioner had to approach this Court by way of filing CWP-4273 of 2022 at the very first instance.

7. The order dated 22.02.2022 have been reiterated by the respondents which is neither speaking nor after affording a fair opportunity to the petitioner to represent his case. All the submissions made by the petitioner have been ignored. It is thus contended that the petitioner's rights have been prejudiced by passing of the aforesaid non-speaking & cryptic order. The grievance of the petitioner is thus not redressed & the petitioner has been compelled to file fresh petition.

8. I have heard learned counsel appearing on behalf of the petitioner and have gone through the averments raised in the petition and also the accompanying documents.

9. The site plan appended with the petition shows that the big water tank for the city area is required to be constructed in the plot adjacent to the existing houses including the house of the petitioner. The said land was always reserved for Public Health & Engineering Department and was earmarked for construction of a water tank as per the future requirement of the city. The petitioner has himself admitted that the land had been earmarked for the Public Health Engineering Department for last more than 30 years. Hence, the petitioner was always aware of the location of his plot and that the area reserved adjacent to their plot has been kept for construction of a water storage tank. It is thus not a case where the usage of the land has been changed subsequently after making a mis-representation to the petitioner. The

photographs of the construction undertaken by the respondent-Department have also been appended which show that substantive work of laying RCC walls has been undertaken. The RCC boundary wall and structure is undisputedly being raised at a distance of 13 feet from the house of the petitioner. The representation dated 29.12.2021 was submitted by the petitioner, wherein he has failed to refer to any imminent hazard or danger to the house from the construction of water tank. As a matter of fact, he has only stated that the construction of the water storage tank is being undertaken at a distance of 26 feet from the side boundary wall of his house whereas it is at a distance of 13 feet from the boundary wall of the house of the petitioner. There is no reference as to whether the distance prescribed in the approved plan are in violation of any construction bye-laws and/or that the minimum set back/distances are not being maintained. The said representation also fails to refer to any expert material or document on the basis whereof it may be assumed that the distance of 13 feet from the boundary of the house of the petitioner is not a safe distance or that the structure being constructed by the respondent-Public Health Engineering Department violates any siting parameters or the minimum distance requirements. Besides, there is nothing in the said representation to contend that construction of water storage tank and/or the storage of water therein is likely to cause any structural damage to the existing construction. A perception of the petitioner about the possibility of dampness in the foundation, which is not borne out from any expert report and merely based upon the perceptions of the petitioner, cannot lay valid challenge before the Court to become an expert and to direct the respondent-

Public Health Engineering Department to carry out construction at a distance of 26 feet. The Court is not an expert of the distances required and to comment on as to what would be a safe distance so as to avoid possibility of any seepage or percolation of the water in the sub soil as is likely to cause damage to the existing structures adjacent to the water storage tank. No expert report has been appended by the petitioner to substantiate his apprehensions. Thus, fears of the petitioner which are bereft of any expert material or evidence cannot be presumed to be well construed.

10. Learned counsel for the petitioner was also asked during the course of hearing to refer to any material or document apart from just the apprehension of the petitioner which may reflect the fears of the petitioner to be well founded rather than mere apprehensions. Attention of the Court could not be drawn to any such material.

11. The next grievance espoused by the learned counsel for the petitioner was that the petitioner ought to have been granted a fresh hearing in terms of the order dated 04.03.2022 and a fresh decision was required to be taken after taking stock of the supplementary representation submitted by the petitioner. The petitioner was, however, called upon to refer to the illegality, perversity or defect in the reasoning adopted by the respondent No.1 and was called upon to demonstrate as to how the distances prescribed in the site plan are not safe distances in response where to, counsel for the petitioner could not refer to any material to impugn the said finding. He was called upon to refer to the written submission (Annexure P-8) dated 31.05.2022 and to point out any argument on the basis where of the submission of the

petitioner that construction of the water tank at a distance of 13 feet from the house of the petitioner would cause danger to structural stability or weaken the foundation of the house of the petitioner could be established. Learned counsel for the petitioner could not refer to any such material which is per se admissible and has merely expressed fears and apprehensions of the possible dangers/fall out which cannot be said to be well founded in law so as to empower High Court to take cognizance of the same and to exercise its powers of judicial review.

12. In the communication dated 22.09.2022 (Annexure P-9), the respondent-authorities have conveyed that the representation dated 29.12.2021 submitted by the petitioner was considered by the Additional Chief Secretary alongwith the representation submitted by other similarly situated persons which has been decided vide order dated 22.02.2022.

13. The relevant part of the order dated 22.02.2022 conveyed on 15.04.2022 is extracted as under:

“Whereas, the said case was heard on 22.02.2022 and was attended by the petitioners and respondent as per list attached (Annexure-3). The representation of the petitioners has been fully considered and keeping the interest of the peritioners and the overall public interest in view it has been decided that the construction of additional storage tank be made after leaving a space of 6 meters (20 feet) from the boundary wall of the houses no. 22 to 33 of Sector-15-A. Hisar i.e. on North side of this tank as per plan attached as annexure-4. However, the already constructed wall of the said tank will remain intact to the extent possible as per aforementioned criteria and the remaining east, west & south margin shall remain at 04 meters as has already been constructed as is clear in

the aforementioned plan. Respondent- department will make arrangement for proper disposal of all rain-water and storm- water between the boundary wall of the houses no. 22 to 33 and wall of the tank which is under construction. No earth/soil filling shall be done above the DPC level of the said houses. In this regard, a map showing details is prepared and attached as Annexure-4.”

14. Once a conscious decision has already been taken by the authorities concerned after calling a report from the Superintending Engineer and obviating all the apprehensions expressed by the residents of the locality, there is no occasion or reason for the competent authority to review its decision merely on receipt of yet another representation especially when no fault in the earlier order is pointed out by such representationists. The petitioner having failed to point out any imminent danger or damage to his constructions, on the strength of any expert evidence, may not be justified in seeking re-laying or re-planning of the construction of the water storage tank more so when the land had always been reserved for construction of a water storage tank by the Public Health Engineering Department even prior to the construction of house by the petitioners. The additional water storage tank which is being constructed for the growing needs of the locality is a part of the infrastructure project and such infrastructure projects cannot be left to the whims of the residents in the neighbourhood. Unless any deprivation of a statutory right and/or fundamental right or the procedural laws is reflected, mere apprehension of diminution in the value and utility of the property cannot be foundation for redesigning of the infrastructure projects.

15. It has been held by the Hon'ble Supreme Court that power of judicial review should not be usually exercised to interfere in the infrastructure projects as they have far reaching consequences and do more harm than good. Such a power is to be exercised sparingly and in exceptional circumstances where the acts of the authorities are illegal, suffer from malice, procedural impropriety or are so inherently dangerous as would render it unfit and unsafe to the residents of the adjacent localities. The extract of the judgment of the Hon'ble Supreme Court held in the matter of **M/s N.G. Projects Limited versus Vinod Kumar Jain and others in Civil Appeal No. 1846 of 2022**, decided on **21.03.2022** reads as under:-

“13. This Court sounded a word of caution in another judgment reported as Silppi Constructions Contractors v. Union of India and Ors. 2019 SCC OnLine SC 1133, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-

“19. This Court being the guardian of fundamental rights is duty bound to interfere when

there is arbitrariness, irrationality, mala fides and bias.

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20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority;

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The Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.

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(Emphasis supplied)

14. In National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd. 2022 SCC OnLine SC 111, this Court sounded a word of caution while entertaining the writ petition and/or granting stay which ultimately may delay the execution of the Mega projects. It was held as under:

“95. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the

constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved.”

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23. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.

16. The entire case of the petitioner is that the respondent-authorities did not grant an opportunity of hearing to him despite an order passed by the High Court, however, the same is a grievance that

has already been agitated by the petitioner by filing a contempt petition.

17. It is evident from the pleadings that the respondent authorities had accepted the supplementary representation and had also granted a fresh opportunity of hearing to the petitioner on 31.05.2022. Besides, a physical inspection of the site was also conducted on 20.06.2022, which are subsequent developments, however, no material to deviate from the decision taken earlier could be produced by petitioner, hence, the said decision has been re-iterated. It cannot be alleged that no opportunity was extended to the petitioner. All due opportunity was given and investigation conducted but no reason was found to carry out changes as demanded by the petitioner. Even though it would have been prudent for the respondents to pass a fresh order, however, facts of the present case fail to reflect any prejudice by such technical non-compliance in letter and spirit. The order sent on 13.09.2022 re-iterating the earlier order, after personal hearing and physical inspection only reflects non-understanding of procedural laws and its requirements. However, as the issue did not require any quasi-judicial adjudication, such technical glitches may have to be overlooked to examine the real cause and concern.

18. The issue which next arises for consideration is the sanctity and rationality of the planning and decision taken by the respondent-authorities to go ahead with the construction of the water storage tank. Request was made to refer to evidence to demonstrate illegality, procedural in propriety or deprivation of any vested statutory/fundamental right was asked from the petitioner so that the High Court may exercised its powers of judicial review, however, the

petitioner failed to refer to any such material.

19. The work relating to infrastructure are meant for larger public interest and are generally not governed by principals of natural justice and calling for objections before commencement of the project. Technical feasibility is required to be undertaken by the department and appropriate structural designs are put in place so as to obviate any damage to be caused to the residents. Once the residents failed to impugn the design/lay out and the approved structural plans as well as the quality as insufficient to address the fears, the project is not to be stalled solely because of unsubstantiated and ill founded apprehension of the residents.

20. Principal of natural justice are not just empty formalities and have to be put in place only when there is substantive prejudice reflected. A case should not be relegated to the authorities solely for a technical compliance of principles of natural justice once no real purpose is to be served or to be advanced. This Court finds its support from the judgment passed by the Hon'ble Supreme Court in the matter of **Natwar Singh Vs. Director of Enforcement and another reported as (2010) 13 SCC 255.** The relevant part of the said judgment is extracted hereinafter below:-

"26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting the subject-matter to be dealt with and so forth. Can the courts

supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation."

Emphasis supplied

21. In view of the above, I do not find that sufficient grounds exists for staying or setting aside the work of construction of water storage tank. The present petition is accordingly dismissed *in limine*.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 11, 2022

Vishal sharma

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