Before A. D. Koshal, Chief Justice and S. S. Dewan J.

DAYA RAM GARG, ETC.—*Petitioners.*

versus

THE STATE OF HARYANA AND OTHERS—*Respondents.*

Civil Writ No. 4061 of 1977

March 30, 1978.

Haryana Municipal Act (24 *of* 1973)—*Section* 258—*Notification issued under Section* 258 *revoked—Subsequent issuance of the notification—Whether by itself shows lack of application of mind by the Government—Provisions of sub-section* (3)—*Requirements of.*

Held that it is not incumbent on the Government to show that a change in the situation had taken place between the withdrawal of a notification and the issuance of the second notification under section 258 of the Haryana Municipal Act, 1973. The earlier notification may have been revoked for various reasons which might even be technical and the only question which would be relevant for determining the validity of the subsequent notification would be as to whether the Government had actually applied its mind while making the impugned notification and even in relation to that matter, the onus would be on the petitioner to show lack of application of mind by the Government.

(Para 2)

Held that the requirements of sub-section (3) of section 258 of the Act are, firstly, that the area notified must contain either a town or a bazar and, secondly, that such area must not be a "purely agricultural village". Where both these conditions are satisfied the notification under sub-section (3) of section 258 of the Act cannot be attacked.

(Para 7)

Petition Under Articles 226/227 *of the Constitution of India praying that* :

(a) *Records leading to the issue of the impugned notifications Annexure P-1 from the respondents be summoned.*

(b) *issue a writ in the nature of certiorari, quashing the impugned notification Annerure P-1.*

(c) *issue any other suitable order or direction which this Hon'ble Court may deem fit and proper by declaring provisions of sections* 258. 260, 262, 263 *and* 57 *of the Haryana Municipal Act,* 1973 *being null and void, and* ultra vires.

(d) *The petitioners be exempted to serve the prior notices upon the respondents, as the respondents will constitute a committee of the members of the notified area, thereby creating more complications defeating the purpose of filing this civil writ petition.*

(e) *Costs of this Civil Writ Petition be awarded to the petitioners.*

It is further prayed that operation of the impugned notification Annexure P/1 be stayed during the pendency of the civil writ petition.

G. C. Mittal, Advocate and C. B. Goel, Advocate, *for the petitioner.*

S. C. Mohunta A. G. Haryana with H. S. Gill, A. A. G., *for the respondents.*

JUDGMENT

A. D. Koshal, C.J. (Oral).—Taraori, Dodwa and Takhana were having a Gram Panchayat each prior to the 17th of November, 1977. By a notification of that date issued under section 258 of the Haryana Municipal Act, 1973 (hereinafter referred to as the Act), the Haryana Government declared an area which was comprised of part of the area of village Takhana, part of the area of village Dodwa and part of Taraori town to be a notified area. Eearlier to that a similar notification had been issued but withdrawn before the said date. The notification dated the 17th of November, 1977, is challenged in this petition under Article 226 of the Constitution of India on various grounds of which the following have been urged by Mr Mittal, learned counsel for the petitioners, today:

(a) The earlier notification was revoked on the 13th of April, 1977, i.e., only about 7 months prior to the impugned notification. No reasons are apparent such as may indicate that there was a change in the situation which necessitated a repetition of the action under section 258 of the Act. Consequently it cannot be said that the Haryana Government had applied its mind to the matter before issuing the impugned notification.

(b) The area notified contains two villages which are purely agricultural and have separate Gram Panchayats to administer them. The impugned notification has,

therefore, been issued in contravention of sub-section (3) of section 258 of the Act.

(c) The notified area is not comprised exclusively of a town. On that ground also the impugned notification contravenes sub-section (3) aforesaid.

(d) The notification is *ultra vires* of Articles 19(1)(g) and 31 of the Constitution of India inasmuch as it deprives the petitioners of the land forming the *shamilat deh* in village Dodwa without payment of compensation.

We shall deal with these attacks one by one.

2. In so far as attack (a) is concerned, we do not see how it was incumbent on the Government to show that a change in the situation had taken place between the 13th of April, 1977, and 17th of November, 1977. The earlier notification may have been revoked for various reasons which might even be technical and the only question which would be relevant for determining the validity of the impugned notification would be as to whether the Government had actually applied its mind while making the impugned notification, and even in relation to that matter the onus would be on the petitioners to show lack of application of mind by the Government towards which no attempt has been made. We do not see that it would be for the Government to satisfy the petitioners on the application of its mind in the absence of any *prima facie* evidence to the contrary. In this view of the matter attack (a) is repelled.

3. Sub-section (3) of section 258 of the Act runs thus:

"No area shall be made a notified area unless it contains a town or a bazar and is not a purely agricultural village."

The requirements of the sub-section are, firstly, that the area notified must contain either a town or a bazar and, secondly, that such area must not be a "purely agricultural village". Both the conditions are fully satisfied in the present case inasmuch as Taraori is admittedly a town and neither a village nor a purely agricultural village. In other words the area notified contains a town and such area does not consist merely of a purely agricultural village. Attacks (b) and (c) are, therefore, wholly without substance.

4. In support of attack (d) learned counsel for the petitioners challenges the constitutional validity of sections 4 and 7 of the Haryana Municipal Common Lands (Regulation) Act, 1974. No such challenge was made in the petition itself or before the Full Bench which, day before yesterday, considered questions of constitutional validity arising in the case. Nor again was any permission sought before the Full Bench for an amendment of the petition. In this view of the matter we refuse to allow Mr. Mittal to raise the point.

5. In the result the petition fails and it is dismissed but with no order as to costs.

K. T. S.

Before K S. Tiwana, J.

SATGURU JAGJIT SINGH AND OTHERS--*Petitioners.*

versus

JEET KAUR AND OTHERS—*Respondents.*

Criminal Misc. No. 3977-M of 1977

March 31, 1978.

Code of Criminal Procedure (2 *of* 1974)—*Sections* 145 *and* 146 (1)—*Attachment under section* 146 (1)—*Whether leads to the termination of proceedings under section* 145—*Magistrate—Whether can proceed after attachment to determine the possession under section* 145 (4).

Held that if a Magistrate identifying the seriousness of the emergent situation exercises discretion under Section 146(1) of the Code of Criminal Procedure 1973 for the reasons given in this provision and attaches the subject matter of the dispute, it cannot, result in the automatic folding up of the proceedings under section 145 of the Code. The purpose of this provision in the Code is to de-escalate the conflict between the parties in regard to a dispute regarding any land or water and to determine who was in possession of the subject matter of the dispute on the date of the order or who was wrongfully dispossessed within two months of the report. The proceedings which are initiated under Section 145 of the Code have to be taken to a logical end in accordance with the provisions of Chapter X, 'D' part, of the Code and cannot be dropped midway