

Sh. Gulwant Singh Perhar and Another Vs Smt. Kamal Kanta Anand and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 28, 1997

Acts Referred: Constitution of India, 1950 " Article 14

East Punjab Refugee Rehabilitation (Buildings and Building Sites) Act, 1948 " Section 4

Citation: (1997) 117 PLR 705 : (1998) 1 RCR(Civil) 400

Hon'ble Judges: N.K. Kapoor, J; K.K. Srivastava, J

Bench: Division Bench

Advocate: A.K. Chopra, N.K. Gupta and Gural Singh, for the Appellant; K.S. Ahluwalia, AAG and B.K. Mann, DAG, for the Respondent

Judgement

N.K. Kapoor, J.

Kuldip Parhar Memorial Charitable Hospital Society as well as State of Punjab have filed Letters Patent Appeal No.

134 and 256 of 1986 respectively against the judgment dated 9.12.1985 passed by D.V. Sehgal, J (as he then was) ordering for cancellation of

sale deed executed by the Government in favour of the Charitable Hospital. Since both these appeals are directed against the same judgment,

these are being disposed of by this judgment.

2. Petitioners sought issuance of a writ of certiorari or any other appropriate writ, order or direction for quashing orders Annexure P-21 and P.22.

Before examining the various contentions raised by the petitioners as well as defence set up by the contesting respondents and the judgment given

by the learned Single Judge, it would be appropriate to give in brief the background of the matter.

On partitioning of the country on August 15, 1947, there was influx of refugees from West Pakistan to the Indian part of the State of Punjab.

Government with a view to rehabilitate these refugees and to provide them vocation and shelter enacted an Act known as East Punjab Refugees

Rehabilitation (Building and Building Sites) Act, 1948 (for short "the Act"). Government acquired land for the purpose of carving the same into

plots for the construction of residential houses, shops, cattle sheds, garages, workshops, factories etc. As per provisions of the scheme, the plots

or the buildings constructed by the State Government thereon were to be leased out or sold to the displaced persons from West Pakistan. Thus

one such like colony -residential colony called "Model Town Jalandhar" was planned. In this colony some houses were built by the government

and were sold by auction and the remaining sites for buildings were sold whereupon construction was raised later on. The dispute between the

parties pertain to the properly situate within Model Town, Jalandhar. According to the case set up by the petitioners, there is an open space at the

back of houses bearing No. 401 to 407, in all covering 7 Kanals approximately. This area, according to the petitioners, was reserved for open

park. However, no such park had come into existence but all the same each one of the residents of house No, 401 to 407 had been making use of

the vacant site having opened their doors over it Dr. Gulwant Singh Parhar Owner of house No. 403-L, Model Town, Jalandhar, was alleged to

have unauthorisedly encroached upon area forming part of this area which was greatly resented by the petitioners and so is a matter of contention

between the parties. Respondent No. 5 with a view to purchase part of the area which was in his occupation (though unauthorisedly) approached

the authorities to purchase the same. The matter was proceeded at various levels and ultimately the government acceded to the request of Kuldeep

Parhar Memorial Charitable Hospital Society - registered body - for selling the same as per impugned orders Annexure P-21 and P-22.

3. The petitioners have challenged this action of the government on a number of grounds which can be summarised (i) the site in question having

been reserved for park/tubewell could not be sold in view of the amended provisions of Section 4(1) of the Act; (ii) that the open site had been

transferred to Municipal Committee, Jalandhar, and as the same was earmarked for public purpose of setting up of tubewell/public park, so the

sale of the same was impermissible in law; (iii) that only such open sites would be sold by the government which were earmarked for specified uses

i.e. open sites for religious places; educational institutions clubs or shops etc. Since the disputed space was meant for a public park, same could

not be sold much less without the prior approval of the Senior Town Planner; (iv) That the action of the authorities is arbitrary, unreasonable, mala

fide and in clear violation of Article 14 of the Constitution of India; (v) That the applications of the other applicants including the petitioners -

owners of the house adjoining the open space in dispute have not yet been decided by the government and so the transfer in favour of Charitable

Hospital being discreminatory is hit by Article 14 of the Constitution; (vi) That plot could not be allotted to the said Charitable Hospital at

concessional rate; (vii) That even as per original official plan, site is meant for benefit of purchasers of the buildings surrounding the same; and (viii)

Even if the Government had a right to dispose of the open space, transferee cannot be permitted to change the nature of the same i.e. transferee

has to keep the space open.

4. State of Punjab as well as contesting respondents defended the action of the authorities. Respondents No. 1 to 3 i.e. State of Punjab reiterated

that the land in dispute has been sold to respondent No. 4 - Kuldip Parhar Memorial Charitable Hospital Society (Regd.) - by negotiation under

the provisions of the Punjab (Building and Building Sites) Act, 1948 (Punjab Act. No. 42 of 1948) and there has been no infringement of legal

right of the petitioners. According to the answering respondents, petitioners, in fact, have no locus standi to approach the court. Reliance was

placed upon the decision in Civil Writ Petition No. 2891 of 1971 titled Piara Singh v. State, wherein identical challenge was made by the

government. The writ petition was dismissed by the learned Single Judge and appeal preferred too was dismissed by the Letters Patent Bench.

Other material averments made in the petition were replied/controverted.

5. The contesting respondent in his written statement controverted the various material averments made by the petitioners in the writ petition. The

respondents denied that the open site was left for use as a park or that the petitioners have acquired any right in the property or even a locus standi

to challenge the sale of plot by the authorities in his favour. The answering respondent further emphasised that Charitable Trust came into existence

in the memory of his son Lt. Kuldip Singh Parhar who laid down his life in 1965 war with Pakistan. In fact, Municipal Committee has named a

road and a big park in his memory. Kuldip Singh Parhar, Memorial Charitable Hospital Society was got registered. This society has been given

exemption u/s 80G of the Income Tax and income tax returns are being regularly filed and so it is incorrect to suggest that the Society is only a

family affair for getting the government land. The case of the Charitable Trust was examined by the authorities at various levels and ultimately the

Govt. agreed to part with 2 Kanals 11 Maras 155 Sq. feet of land to the Charitable Hospital Society as per Annexures P-21 and P-22. In

compliance with the order dated 21.4.1981, the answering respondent has also paid total consideration amount i.e. Rs. 90,561.00 and now has

become owner of the same free from all encumbrances.

6. Initially the petition was dismissed in limine. The apex court, however, vide order dated 21.3.1983 remitted the writ petition to the High Court

with a direction to dispose of the same by giving a considered judgment. The matter came up finally before D.V. Sehgal, J. The parties addressed

arguments on the following two questions:-

(i) Whether the State Government had the power to transfer a part of the open space in question to the Society-respondent No. 4; and

(ii) Whether the transfer of the land in favour of respondent No. 4 is arbitrary, discriminatory and damages the cause of the petitioners and other

owners of residential house No. 401 to 408 and is, therefore, violative of Article 14 of the Constitution.

The learned Single Judge answered the first question stating that the same, in fact, already stands determined by this Court in case reported as

Piara Singh v. The State of Punjab 1973 CLJ 599. So the learned Single Judge held that there was no reason to differ with the view taken in Piara

Singh's case (supra) that u/s 4 of the Act, open space can be sold or leased out by the State Government. However, while examining the second

question framed, it was held that transfer of land in favour of respondent No. 4 is arbitrary, discriminatory and damages the cause of the petitioners

and other owners of residential houses No. 401 to 408 and is violative of Article 14 of the Constitution. As a sequel to letter Annexure P-22, sale

deed executed between the Government and respondent No. 4 was ordered to be cancelled. However, by way of clarification it has been stated

that the judgment may not be construed to mean that the space in question cannot be converted into a building site or that a hospital cannot be

constructed thereon. According to learned Single Judge, all these things depend On the advice of the Chief Town Planner and the decision which

the Government might finally take on the advice tendered by him.

7. Learned counsel for the appellants-Charitable Hospital Society - has argued that the Court having come to the conclusion that the Open space

could be sold by the government in terms of Section 4 of the Act, however, has erred in law in holding the transaction to be arbitrary or otherwise

discriminatory and thus violative of Article 14 of the Constitution of India. Since the government had unbridled power to dispose of the property

and there being no proof on record in any manner violative of the plan of Township, wild allegations of discrimination or of arbitrariness levelled by

the petitioners could not be made basis to set aside the valid order passed by the authorities culminating in execution of sale deed in favour of

respondent No. 4. Elaborating the counsel argued that the land measuring approximately 7 Kanals at the back of residences bearing No. 400 to

408 was left as an open space. Respondent, No. 5 was owner of house No. 403-L Model Town. His eldest son who was in army laid his life in

the war of 1965. Respondent No. 5 with a view to set up a Charitable Hospital in his memory started making use of vacant land adjacent to his

house for this laudable purpose of setting up a hospital known as Kuldip Parhar Memorial Charitable Hospital. Eviction proceedings initiated u/s 4

and 5 of the Public Premises Act were dismissed by the Collector vide order dated 17.12.1979. Annexure P-5. Collector while dismissing the

petition held as under :-

I have considered these arguments. As Collector, Punjab, I have passed numerous eviction orders, but as far as I know none of these orders has

been implemented. If it were to be the ultimate result of these orders, then it is an exercise in, futility. Hence, Government in the Rehabilitation

Department is already considering the question of transfer of such strips of land in the Rehabilitation Colonies to the unauthorised occupants. I do

not feel inclined to make the eviction order. The respondent is doing humanitarian work, therefore, instead of evicting him, let Government think of

transferring the land occupied by him, of course, unauthorisedly. If the case of the respondent does not fit in the policy framed by Govt., then fresh

proceedings for his eviction could be initiated. With these observations, I return the case to the Tehsildar (S) H.Qs. without making any order on

his application dated August 24, 1979.

It is thereafter that the appellants approached the Government for sale of the land under their occupation. The matter was examined by the

Government at various levels. Deputy Commissioner vide communication dated 1.8.1980, Annexure P-13, recommended that the site in dispute

adjoining 403-L, Model Town, Jullundur, be given to this Charitable Society on payment as may be considered appropriate on the specific

condition that the land to be purchased by the Society will be utilised for public welfare only. Ultimately, the matter came up before the Minister-in

charge who finally recommended that the area in occupation of the appellants be sold by negotiation i.e. 2 Kanals 11 Maras 155 Sq. feet. It is

thereafter that Deputy Secretary to Govt. Punjab, Rehabilitation Department, exercising the powers of Deputy Commissioner under Sub-section

(h) of Section 2 of the Act, 1948, addressed a communication to the Tehsildar (s), Model Town, Jullundur, stating that it has now been decided by

the Government to offer an area measuring 2 Kanals 11 Maras 155 sq. feet situated in Model Town, Jullunder, belonging to the State

Rehabilitation Department, Jullunder, adjoining to Unit No. 403-L, Model Town, Jullunder, to the Chairman, Kuldip Parhar Memorial Charitable

Hospital Society (Regd) at the cost of Rs. 90,561/- (Annexure P-22), in pursuance of which total consideration amount was paid by the

Charitable Society.

8. Challenging the judgment of the learned Single Judge, counsel argued that as per detailed facts which have come on record, there was no basis

for the learned Single Judge to come to the conclusion that sale of vacant land which was already under the occupation of the registered society

(though unauthorisedly) was in any manner arbitrary or discriminatory. The petitioners having failed to establish any special damage could not in

law assail a bona fide act of the government merely on the ground that they had not been afforded an opportunity of placing their view point.

Concededly, the area in dispute is at the back of houses bearing Nos. 400 to 408 - a vacant site-which could be made use of by the government in

a manner it liked and so could also be disposed of. Such a State action cannot be set aside merely on the ground that the same had been effected

without the approval of the Chief Town planner. Moreover, any such advice of the Town Planner is not binding on the government. The advice of

the Town Planner is not a pre-requisite to sell a vacant land by the government. In any case, such an omission cannot be termed to be an

irregularity; in no way affecting a valid transaction which has come into existence between the appellants and the government. In any case, a valid

sale could neither be questioned by the petitioner-respondents nor the same could be examined by the court in writ jurisdiction, as essentially the

matter in issue is based upon certain facts which are disputed by the contesting parties.

9. Learned counsel for the respondents, on the other hand, argued that the action of the authorities is not only mala fide but otherwise too contrary

to the provisions of the Act which in an unmistakable term prohibit the authorities to change the nature of the property or to dispose of for any

purpose whatsoever. Elaborating, the learned counsel argued that a mere look at Annexure P-1, site plan of Model Town, Jullunder, graphically

brings out the exact location of the property in dispute i.e. it lies behind houses Nos. 401, 402 and 403. The area measures approximately 7

Kanals, out of which 2 Kanals 11 Maras 155 sq. feet has been sold to respondent No. 5 ostensibly stating it to be a Charitable Society which has

solely come into existence to usurp the land and that too on a concessional price. According to the counsel, as per site plan Annexure P-3A the

area shown in green color was left as an open site, which later on was to be developed into a park for the use of inhabitants of the locality and

especially for persons who are living in close proximity to these small areas. Precisely for these reasons, management of the portion marked green in

Annexure P-3A was transferred to Municipal Committee, Jullundur. The counsel further argued that as regards other vacant spaces marked pink in

the map or other such like spaces were, in fact, earmarked for a particular purpose, like school, Girls Guide House, a gurdawara, Mandir etc.

Accordingly, the Government could neither sell these green spots nor even change its user. Moreover, in the present case, the area on the back of

the houses was left as an open space for use of the inhabitants of the houses. Owners of the houses with a view to make use of this vacant space

had, in fact, opened their doors. Thus, merely for the fact that the appellants were able to encroach upon a portion of this vacant site could hardly

be a ground to allow them to purchase the same and that too on a concessional price.

10. The counsel further argued that setting up of a so called Charitable Hospital in the memory of his son who unfortunately died in the war of

1965 is, in fact, a camouflage. Earlier, he had applied when no such society had come into existence and it is only this Charitable Hospital was

declined that he thought of giving it a legal entity and so got the Society registered. Most of the members of the Society are from the family of

respondent No. 5. Relying heavily upon the various office notes wherein some doubts or objections were raised as to the claim of the present

appellants, the counsel argued that though the overall view of the various functionaries of the department was that this open space be left as it is

and the same may not be sold to the appellants, yet the appellants on account of proximity with the then Revenue Minister was able to get the

proposal finally approved. This by it-self is a sufficient indication to conclude that action of the government is not bona fide. Counsel to support his

various contentions placed reliance upon the cases reported as State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, ; Ram and Shyam

Company Vs. State of Haryana and Others, ; and Anil Sabharwal v. State of Haryana and Ors. (1997)116 P.L.R. (F.B.).

11. We have heard learned counsel for the parties, perused the judgment of learned Single Judge and the various Annexures reference to which

has been made by the respective counsel. The decision of the government to sell the land on a concessional price; its offer, acceptance and finally

transfer of its ownership in favour of respondent No. 4 - Kuldip Parhar Memorial Charitable Hospital Society (Regd) Model Town, Jullundur - is

the bone of contention between the parties. As per facts on, record, government finally decided to offer the land to Charitable Hospital Society on

a concessional price in April, 1981. Soon thereafter a communication was addressed by the Deputy Secretary to Government, Punjab,

Rehabilitation Department, to Tehsildar (S) that President of Kuldip Parhar Memorial Charitable Hospital Society (Regd.), Jalandhar, asked to

deposit a sum of Rs. 90,56,1.00 towards the cost of land in question in four half yearly equated annual instalments. This communication is dated

21.4.1981 (Annexure P-22). Soon on receipt of this communication, Societies of Registrar was informed and without any loss of time deposited

the total sale consideration of Rs. 90,56,1.00. As noticed earlier, petitioners challenged the same on a variety of grounds. Learned Single Judge

after having come to the conclusion that the State Government has power to transfer a part of the open space to respondent No. 4, yet held this

action to be arbitrary and discriminatory. Counsel for the respondent, however, while defending the ultimate decision of the learned Single Judge

argued that this finding of the learned Single Judge too deserves to be reversed. According to the counsel, since the disputed portion shown as

green in the site plan Annexure P-3A was left to be used as park, the same could not be sold by the government u/s 4 of the Act, 1948. We find

no merit in this submission of the learned counsel for the petitioner. The precise matter was subject matter of consideration in Piara Singh's case

(supra) wherein the Court held that u/s 4 of the Act, 1948, open spaces could be sold/leased out by the State Government. Against the aforesaid

decision of the learned Single Judge, Letters Patent Appeal Nos. 471, 472 and 473 of 1973 were dismissed in limine by the Letters Patent Bench

vide order dated 24.7.1973. Even in this case, learned Single Judge after referring to the earlier decision and also examining the facts as have come

on record came to the conclusion that this precise objection of the petitioners- now respondent - is devoid of any merit. We too find no ground to

Vary or differ this conclusion of the learned Single Judge.

12. Once one comes to the conclusion that the Govt. in terms of Section 4 of the Act has power to sell, lease out or otherwise dispose of the

building site, open spaces and the sites, whether such an action can be termed to be discriminatory or arbitrary giving a further cause to the

petitioners to assail its validity is a point which needs some close examination. Concededly, the ownership of vacant site vested with the

government which could be given on lease or sold. Open site could be converted into a building site by the government also. Learned Single Judge

too has come to the conclusion that there is no embargo on the power of the government to convert this site into building site or even to built a

hospital. Despite having come to this conclusion, learned Single Judge has, however, declined to uphold the transaction primarily on the ground that

advice of the Chief Town Planner was not sought. Whether such an advice was a pre-requisite and binding is yet another point which has been

highlighted by the respective counsel. Original site plan or certified copy has not been placed on record. An extract from the original plan -

Annexure P-1 and a photocopy of the plan is Annexure P-3A are on record. Annexure P-1 merely depicts the location of houses No. 400 to 408

and 409 and 410 and the location of the disputed plot; whereas plan Annexure P-3A gives description of Various plots, roads, open spaces etc.

As per Annexure P-3A, portion marked green falls in between houses No. 402 to 408, In fact, this plot is towards the back of these houses which

have opening on two sides. These open spaces are alleged to have been transferred to the Municipal Committee for maintenance. However, when

one looks to the precise plot/open space as per documents on record, management of which has been transferred to the Municipal Committee,

disputed site is missing. So it belies the contention of learned counsel for the appellants that its management too has been transferred to the

Municipal Committee. No material has been placed on record to infer that these green parts, as per Annexure P-3A, were to be developed later

on as a park. It has also not come on record as to whether any such assurance was given to the inhabitants or persons living close by to the area

that the nature of this space, be it open space/spaces, or a park shall not be changed to the detriment of persons residing nearby. Precisely for this

reason, learned Single Judge came to the conclusion that open space can be converted into a building site by the government and even a hospital

can be constructed thereupon. Examined in this context, the action of the government in transferring this property on a concessional basis to a

Charitable Society cannot be termed to be, arbitrary or discriminatory. Charitable institution is a class by itself, and even the purpose for which

land was sought by respondent No. 5 i.e. Charitable hospital in the memory of his son who laid his life to defend the motherland, indeed, not ought

to have been matter of controversy. In any case, the authorities on considering various aspects of the matter i.e. purpose of setting up a Charitable

Hospital for the benefit of all and needy could not be accused of favouring the appellants. The petitioners' objection that they had not been

afforded an opportunity to bid for this vacant land is, in fact, an argument of frustration.

13. It is during the pendency of a petition for his eviction before the Collector that respondent No. 5 for an on behalf of Kuldip Parhar Memorial

Hospital Society filed an application that the area in his unauthorised occupation be transferred to him on payment of reserve price. This application

is dated 15.11.1979, Annexure P-4. Collector vide order dated 17.12.1979 having come to the conclusion that the area is in unauthorised

occupation of Dr. Gulwant Singh Parhar, yet declined to pass an order of eviction stating that as respondent is doing a humanitarian work, it would

be; appropriate if the government decide to transfer the land under his occupation. This order is dated 17.12.1979, Annexure P-5. It is thereafter

that the matter was examined by various functionaries of the government at various levels and ultimately the then Revenue Minister finally acceded

to his request for transfer of the land. It has come on record that the Charitable Hospital Society is in occupation of this piece of land since 1966

and may be on account of long possession government thought it appropriate to get the value of the property instead of going for further litigation.

Such a decision of the government can not be termed, to be in any manner biased. Moreover, petitioners have failed to establish on record that

they acquired any vested right in this property or in any manner had a preferential claim vis-a-vis the respondent. At best, it can be stated that they

top had been making use of the land as and when required. In State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, the court was

considering the claim of contesting parties regarding grant of lease for excavating sand and minor mineral. It is in this context that it was held that as

both of them seek the privilege of extracting minerals under lease from the State, they be asked to bid against each other. It is in this context, it was

held that public auction with open participation and a reserved price guarantees public interest being fully subserved. The facts of the case are

entirely different. In the present case, respondents were found to be in possession of 2 Kanals 11 Maras 155 Sq. feet of land almost interruptedly

for more than 15 years. Not only this, respondents were able to raise construction over a portion of the land. Even the Collector declined to pass

an order of eviction against the respondents. Keeping all these facts in view, the government decided to sell the same.

14. In Ram and Shyam Company's case (supra), the apex Court held that bar of alternative remedy is a self imposed restriction upon the powers

of the High Court under Article 226 of the Constitution of India. Exhaustion of alternative remedy is a rule of convenience and discretion rather

than rule of law. There cannot be any dispute with regard to the law laid down by the; apex Court. All the same, in any case before any

appropriate writ or direction is issued, the court has come to a conclusion that the impugned order is illegal or invalid as being contrary to law.

Basis to hold the order to be illegal is missing in the instant case.

15. The decision in Anil Sabharwal's case (supra) too does not advance the case of the petitioners-present respondents in any manner. Therein the

Court was examining a petition filed in public interest challenging the mala fide action of the government in allotment of plots, though under

discretionary quota. In this context, the court held that the question of locus standi of the petitioners would not be material and the court would

allow litigation in public interest, if it is found :-

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement.

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own

interest on account of poverty, incapacity or ignorance.

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of

public duty or from violation of some provision of the Constitutional Law.

(iv) That such person or group of persons is not a busy body of meddle some inter-loper and have not approached with mala fide intention of

vindicating their personal vengeance of grievance.

(v) That the process of Public Interest Litigation was not being abused by politicians other busy bodies of political or unrelated objectives. Every

default on the part of the State or public authority being not justifiable in public in such litigation.

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the

institution of the judiciary and the democratic set up of the country.

(vii) That the State action was being tried, to be covered under the carpet and intended to be thrown out of technicalities.

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon

satisfaction that the information laid before the Court was of such a nature which required examination.

(ix) That the person approaching the Court has come with clean hands, clear heart and clear objectives.

(x) That before taking any action in public interest the court must be satisfied that its forum was not being misused by any unscrupulous litigant,

politicians, busy body or persons or groups with mala fide objective or either for vindication of their personal grievance or by resorting to public

interest.

16. The crux of the matter in the present case is the allegation of the petitioners-respondents that their applications to purchase some contiguous

land to their houses are yet pending before the government; whereas the appellants' petition for purchase of such an area has been allowed. Thus,

essentially challenge is to the valid sale deed in favour of the respondent No. 4 or on account of its arbitrariness and it being discriminatory.

17. Thus on considering the matter from all conceivable angles we are of the view that the Letters Patent Appeals merit acceptance. Accordingly,

we accept the appeals, set aside the judgment of the learned Single Judge and so dismiss the writ petitions. No order as to costs.