

(1988) 02 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3012 of 1985

Iqbal Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision: Feb. 5, 1988

Acts Referred:

- Punjab Town Improvement Act, 1922 - Section 36

Hon'ble Judges: J.V. Gupta, J

Bench: Single Bench

Advocate: M.L. Sarin and Mr. S.S. Nijjar, for the Appellant; H.S. Mattewal, for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

J.V. Gupta, J.

There was a scheme framed u/s 36 of the Punjab Town Improvement Act, (hereinafter called the Act), known as the "Model Town Extension Part II Scheme". Notice u/s 36 of the Act was issued on May 23, 1973, inviting objections to the said scheme, which was published on June 8, 1973. The said scheme was approved by the State Government vide copy of the notification, Annexure P.3, dated July 17, 1974. This very notification, copy, Annexure P 3. and the notification dated May 21, 1975, copy. Annexure P 4, issued by the State Government u/s of the Act, and also the notification u/s 36 of the Act, copy, Annexure P.2, were challenged in Civil Writ Petition No. 3761 of 1975. The said writ petition was dismissed by this Court on March 9, 1978, holding that the notice u/s 36 of the Act had been duly served. Letters Patent Appeal No. 265 of 1978, filed by Shrimati Bhagwan Kaur and others, against the order dated March 9, 1978, was also dismissed on May 1, 1978. Ultimately, the matter was taken up to the Supreme Court in SLP No 2835 of 1978. The same was allowed by the Supreme Court on October 19, 1979 and Civil Appeal No. 3158 of 1979 was registered there. The said civil appeal was allowed by the Supreme Court on October 29, 1979. The observations made by the Supreme Court

therein have been re-produced in paragraph 14 of the writ petition. It was directed by the Supreme Court therein after setting aside the proceedings for acquisition of the lands of the Appellants that they (the Appellants) will file their objections, if any, to the acquisition of their lands within four weeks from that day and the Improvement Trust will give a hearing to the Appellants in respect of the objections within four weeks thereafter in the manner prescribed by law and in case the Improvement Trust comes to the conclusion that the land should be acquired, the Improvement Trust will proceed further with the acquisition of the land in accordance with law. Meanwhile, Respondent No. 3. gave an award dated October 31, 1974. The said award covered land of the Petitioners as well, vide copy, Annexure P.5. In the said award itself, it was observed in paragraph 12, inter alia as follows.-

The Improvement Trust is, however, directed to make payment of compensation within three months from the date of award otherwise the affected land owners will be at liberty to seek their remedy for recovery of compensation in the civil Court. In case it is not possible for the Trust to make payment of compensation within the said period, the Trust must notify its intention to make payment within a definite period but not later than six months in any case, otherwise Trust should withdraw from the scheme as provided u/s 40 of the Land Acquisition Act, 1894.

Though the said award was given on October 31, 1974, no action was taken by the Ludhiana Improvement Trust, Ludhiana, (hereinafter called the Trust), for taking possession of the land, in dispute. It was on May 9, 1985, that a notice was issued under Sections 31(1) and 16(1) of the Land Acquisition Act, 1894, directing the Petitioners to collect compensation. It was further stated in the notice that possession of the land shall be taken on May 21, 1985. A copy of one of such notices is Annexure P 6. In paragraph 18 of the writ petition, it was averred that the compensation for the land under acquisition had not been paid till date. The Petitioners are still in possession of the land sought to be acquired. The Government of Punjab issued instructions on December 18, 1979, copy, Annexure P.7, whereby it was decided that if the possession of the land is not taken within one year of the notification u/s 4 of the Land Acquisition Act. then the notification is deemed to have lapsed. In the present case, the possession has not been taken for 11 years. The main point raised on behalf of the Petitioner is that the whole of the acquisition proceedings are a nullity and are liable to be quashed as the notification u/s 36 of the Act is deemed to have lapsed on May 23, 1974 or on June 8, 1974, one year after the first publication of the notice, Annexure P.2. In reply to paragraph 18 of the writ petition, it has been stated on behalf of respondents Nos. 2 and 3 in the return that notices under Sections 31(l)and 16 of the Land Acquisition Act, were duly sent to the Petitioners conceded to receive the compensation, but they did not come forward to do so. May 21, 1985, was fixed for taking over the possession and the possession of the land under dispute was taken over physically by the Land Acquisition Collector and handed over to the Trust in accordance with law on the subject. The

instructions, Annexure P 7, have no applicability to the acquisition of the land under the Act. Besides, they are only executive instructions and have no statutory force. Any such instruction issued by the Revenue Department cannot curtail the powers under the Punjab Town Improvement Act or the Land Acquisition Act. Moreover, they are not in force either as the same were withdrawn subsequently. Apart from that, ample safeguards have been provided in the amended Land Acquisition Act such as Section 23-(I-A) for compensating the Petitioners by payment of interest at different stages.

2. The learned Counsel for the Petitioners vehemently contended that since the possession of the lands was not taken for more than 11 years from the issuance of the notification u/s 42 of the Act, the notification stood withdrawn in view of the instructions, copy, Annexure P.7. In support of this contention, the learned Counsel relied upon Parkash Singh v. The State of Punjab 1983 P. L. J. 259., wherein relying upon similar instructions, the acquisition proceedings were held to have been withdrawn by the State Government.

3. The learned Counsel for the Respondent submitted that the instructions, copy, Annexure P.7, could not be issued because the scheme itself was to be approved by the State Government within three years of its submission and, therefore, in the very nature of things, the possession could not be taken within one year of the notification u/s 42 of the Act.

4. After hearing the learned Counsel for the parties, I am of the considered opinion that the present case is squarely covered by the judgment of this Court in Parkash Singh's case (supra). Vide copy of the instructions, Annexure P.7. it was provided *inter alia*,

You are requested to ensure that the lands which have been proposed to be acquired u/s 4 of the Land Acquisition Act, 1894, are taken possession of within one year invariably after the issue of the notification u/s 6.

These instructions are contained in the letter written by the Joint Secretary to Government, Punjab, Revenue Department, to all the Deputy Commissioners in the State. Later on, the said instructions were withdrawn. Dealing with such like aspect of the matter in Parkash Singh's case (supra), it was observed in paragraph 3 of the judgment by this Court as follows:

After hearing the learned Counsel for the parties at some length, I find that the Petitioners deserve to succeed. On the face of it, the communication dated March 3, 1980, withdrawing the earlier instructions dated December 28, 1979, is prospective in effect, that is, the earlier instructions with regard to the withdrawal of acquisition proceedings stood withdrawn subsequent to March 3, 1980. This communication cannot possibly have any retrospective effect and cannot revive the acquisition proceedings which had been abandoned or had come to an end with the issuance of the earlier instructions dated December 28, 1979.

The said instructions were equally made applicable to the acquisitions of lands made under the Act as well, as in that case, the Improvement Trust was a party and the land was acquired under the Act. Thus, in view of the instructions, vide Annexure P (sic), since the possession was not taken within one year after the issuance of the notification u/s 42 of the Act, the acquisition proceedings stood abandoned or withdrawn.

5. It was also contended on behalf of the Respondents that earlier, the Petitioner has filed Civil Writ Petition No. 3990 of 1983 ((Rachhpal Singh v. The State of Punjab), which was dismissed and, therefore, the present petition was not maintainable. However, this fact was disclosed by the Petitioners in the writ petition itself by stating in paragraph 24 of the writ petition that the Petitioners filed Civil Writ Petition No. 3990 of 1983. The same was dismissed by the Hon'ble Acting Chief Justice and Mr. Justice D. S. Tewatia, as withdrawn, as no cause of action had arisen. In fact, the order dated August 22, 1983, passed by the Division Bench therein reads,-

Present: Mr. Gurbachan Singh, Advocate -o -

The learned Counsel states that this petition be dismissed as withdrawn as no cause of action has so far arisen to the Petitioners. Dismissed as such.

In view of the said order, this contention raised by the learned Counsel for the Respondent has no merit.

6. Faced with this situation, the learned Counsel for the Respondent submitted that in any case, in view of the amended provisions of Section 23(1-A) of the Land Acquisition Act, the Petitioners will be entitled to interest at the rate of 12 per cent, per annum for the period commencing on or from the date of the publication of the notification u/s 4(1) of the said Act, till the date of the award by the Collector or the date of taking possession of the land whichever is earlier. Thus, argued the learned Counsel, the Petitioners do not suffer in any manner as they will be entitled to claim interest from the date of the award even if the possession was not taken. There is no merit in this contention either because in view of the instructions, copy, Annexure P.7, the acquisition proceedings had already come to an end and could not be revived subsequently by the Land Acquisition (Amendment) Act, 1984.

6. No other contention has been raised at the time of arguments.

7. Consequently, the writ petition succeeds and is allowed. It is held that the lands of the Petitioners are no more subject to the acquisition proceedings and the same stand abandoned or withdrawn. However, there will be no order as to costs.