

(1996) 02 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4041 of 1986

Karnail Singh

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision: Feb. 5, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Town Improvement Act, 1922 - Section 41(1), 41(5)

Citation: (1996) 113 PLR 715

Hon'ble Judges: S.S. Sudhalkar, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: I.K. Mehta and K.K. Mehta, for the Appellant; A.K. Wali, Assistant A.G., for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.

All these petitions have been filed against the notice dated 21.6.1976 issued by the Chairman Ludhiana Improvement Trust, Ludhiana, for framing a Development-cum-Housing Accommodation Scheme in an area measuring 475 acres lying on the right side of Pakhowal Road beyond Sidhwan canal at Ludhiana. The petitioner has also challenged the notification dated 28.6.1979 issued by the Government of Punjab u/s 41(1) of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act of 1922). In all the petitions prayers have been made to quash the impugned notice and the notification and to restrain the respondents from dispossessing the petitioner.

2. A brief statement of facts of the three writ petition would enable us to properly appreciate the various points raised in the writ petitions. In Civil Writ Petition No. 4041 of 1986 petitioner Karnail Singh son of Dharam Singh has pleaded that he is in possession of land measuring 110-Kanals, 18 marlas situated in village Sunet

Hadbast No. 159, Tehsil and District Ludhiana and he has been cultivating the land for the last 15 years for earning his livelihood. According to the petitioner the Ludhiana Improvement Trust (hereinafter referred to as the respondent-trust) passed a resolution in its meeting held on 24.3.1936 framing a Development-cum-Housing Accommodation Scheme on the right side of Pakhowal Road beyond Sindhwan canal under Sections 24 and 28(2) of the Act of 1922 for an area measuring 475 acres, including the land belonging to the petitioner. Notice dated 21.6.1976 issued u/s 36 of the Act of 1922 was published in the Punjab Government Gazette dated 2.7.1976. Earlier to this a Development-cum-Housing Accommodation Scheme had been framed on 29.6.1972 in respect of an area comprising 827 acres. This scheme was quashed by the High Court in Civil Writ Petition No. 5256 of 1975 (The Ludhiana Lok Hitkari Co-operative House Building Society Ltd. Ludhiana v. The Ludhiana Improvement Trust and Ors.), decided on 26.2.1976. The petitioner says that although Section 38 of the Act of 1922 makes it imperative for the respondent-trust to serve notice on every person who is found to be owner of the immovable property or occupier thereof and such notice has to be issued within a period of thirty days next following the first day on which any notice has been published u/s 36 of the Act indicating its proposal to acquire the property and at the same time calling upon such person to file objection within sixty days but no such notice was served upon the petitioner after publishing of notice Annexure P-I. Further allegation of the petitioner is that no notice as required u/s 40(3) was published by the respondent-trust and thus the petitioner was prevented from filing of the representation to the State Government against the sanctioning of the Scheme, and, therefore, the Scheme sanctioned by the Government is vitiated. Another objection raised by the petitioner is that although the Scheme was framed way back in the year 1976 compensation has not been paid to him by the respondent No. 2 and he continues to occupy the property which shows that the respondent No. 2 did not really require the land for the purpose of the development and housing scheme. The petitioner has also placed reliance on the Government letter dated 28.12.1979 purporting to reduce the period within which the notification is required to be issued u/s 6(1) of the Land Acquisition Act 1894. Petitioner says that the notification issued by the Government on 28.6.1979 should be deemed to have lapsed due to failure of the respondent-trust to take possession of the property. Reliance has also been placed by the petitioner on an order dated 20.11.1984 passed by this Court in Civil Writ Petition No. 3056 of 1982 (Sunder Singh and Ors. v. State of Punjab).

3. In its reply the respondent-trust pleaded that the notification issued u/s 36 was published in the Government Gazette dated 2.7.1976 and the final notification issued u/s 42 was published on 28.6.1979, and, therefore, it was within three years of the date of first publication of the notification issued u/s 36 of the Act of 1922. Allegation of non-publication of the notice u/s 40(3) of the Act has also been denied. It has also been stated by respondent No. 2 that possession of the disputed

property had been taken as back as on 7.1.1982 and the writ petition filed after over four years and six months of the taking of possession is clearly based. Annexures R-1 and R-1/A have been produced to show that the possession of the property was taken by the Trust through the Land Acquisition Collector and the compensation awarded by the Land Acquisition Collector was also received by the recorded owner on 25.1.1982.

It has been asserted that in the Jambandi, Smt. Bhagwant Kaur has been recorded as owner and the petitioner is merely a cultivator and further that the land stands mutated in the name of the Trust vide mutation No. 5794 dated 3.6.1983. It has also been stated that the Trust has already undertaken the development programme for giving effect to the Scheme by constructing roads etc. On the issue of service of notice, the respondent-trust has stated that the same was served on the recorded owners of the land and it was also issued to the occupiers of the land. According to the respondent No. 2 notices were published in the Official Gazette dated 2.7.1976, 10.7.1976 and 17.7.1976 as also in the daily Tribune dated 3.7.1976, 10.7.1976, 17.7.1976 and the objections received by the Trust were duly considered and decided on 25.7.1977. Smt. Bhagwant Kaur owner of the disputed land was one of the objectors and her objections were considered by the Trust. Respondent No. 2 has further pleaded that notice as required by Section 40(3) was published in the Punjab Government Gazette on 1.6.1979 and 8.6.1979 as well as in the daily Tribune dated 25.5.1979 and 1.6.1979 and in the daily Ajit on 24.5.1979 and 1.6.1979. Respondent No. 2 has pleaded that after considering the objections raised by the aggrieved persons, the Divisional Town Planner was requested to prepare a layout plan in accordance with the decision taken by the respondent- trust and the revised layout plan was prepared by the Divisional Town Planner on 25.4.1979. The Trust has also stated that it deposited a sum of Rs. 1,24,72,829.85 with the Land Acquisition Collector on 30.10.1981 and the possession was taken on 7.1.1982. Another statement of the respondent-trust is that about 1200 plots have been allotted to the members of the public and the Trust has spent a sum of Rs. 60/65 lacs on the development of the Scheme. It is stated that Smt. Bhagwant Kaur received compensation to the tune of over Rs. 11 lacs and the petitioner can have no grievance regarding the acquisition of the land. In regard to the writ petition filed by Sunder Singh, it has been stated that that decision was rendered by the High Court because no one appeared on behalf of the Trust at the time of arguments. Reply filed by respondent No. 1 is more or less on the same lines in which reply has been filed on behalf of the respondent No. 2, and, therefore, detailed reference to that reply is not necessary. In his replication the petitioner has stated that neither the compensation has been paid to him nor possession has been taken and whatever has been done by the respondent is nothing more than taking of paper possession. 4. Civil Writ Petition No. 4451 of 1986 has also been filed by Karnail Singh son of Dharam Singh with the allegations that he owns and is in possession of the land measuring 1-Kanal 1-marla comprised in Khewat No. 205, Khatoni No. 257, Khasra

No. 5/19 situated in village Phullanwali, Tehsil and District Ludhiana. On this land, he has constructed sixteen shops which open on Pakhowal Road. His livelihood depends on the income received from these shops. The averments made in the writ petition are similar to the averments made in Civil Writ Petition No. 4041 of 1986 and, therefore, it is not necessary to repeat the same. In reply, respondent No. 2 has also reiterated its stand that the notice/notifications have been published in accordance with law. It has also been pleaded that the petitioner was dispossessed by the Land Acquisition Collector, Ludhiana, on 23.11.1981 but thereafter he unauthorisedly occupied the land and made construction over the same. When such lawful construction came to the notice of the Trust, action was initiated for demolition thereof. In his replication, the petitioner has reiterated his claim for asserting that the construction of the shops was made by him in accordance with law and not after his alleged dispossession. The petitioner has reiterated his claim that he still continues to be in possession of the disputed land.

5. Civil Writ Petition No. 2710 of 1988 has been filed jointly by Karnail Singh son of Dharam Singh and Shingara Singh son of Dharam Singh with the allegation that they are in possession of the land measuring 173 kanals 2-marlas situated in village Jawaddi, Hadbast No. 160, Tehsil & District Ludhiana, in the capacity of tenants for last about 20 years. Other averments made in the writ petition as well as in the reply filed by the respondent-Ludhiana Improvement Trust are identical and it is not necessary for us to make a detailed reference to the same except the fact that the land in dispute was owned by Smt. Bhagwant Kaur widow of Bharpur Singh. Smt. Bhagwant Kaur is said to have transferred the entire property to Smt. Devinder Kaur widow of Pritam Singh, who, in turn gave 1-Kanal 4-Marlas land to Shingara Singh petitioner and 68-Kanals 8-Marlas to Zohra Singh son of Karnail Singh and 102 Kanals 12 Marias to Manjit Singh son of Karnail Singh and the petitioner Karnail Singh is neither Pattedar nor tenant in respect of the disputed land. It has been stated that Devinder Kaur had earlier filed a suit in the Civil Court at Ludhiana and got a stay order in her favour due to which the respondents could not take possession and thereafter the petitioner filed this petition and persuaded the court to pass stay order. It has also been stated that after framing of development scheme a number of persons have raised construction on the land allotted to them in accordance with the revised layout plan prepared by the Divisional Town Planner and purpose of the Scheme continues to be a development scheme. It has also been stated that a number of petitions challenging the notice dated 2.7.1976 and the notification dated 28.6.1979 have been dismissed by the High Court and, therefore, this Court should not upset the Scheme framed by the Trust. Reference has also been made to Civil Writ Petition No. 1913 of 1985 in which an interim order was passed in the first instance but subsequently the writ petition was dismissed on 3.3.1989. In the replication filed by them, the petitioners have reiterated their stand and have pleaded that they have a right to continue to occupy the land.

6. Learned Assistant Advocate General raised an objection to the entertainability of the writ petitions on the ground of delay and laches. He pointed out that the writ petitions have been filed after more than one decade of issue of notice dated 21.6.1976 which was published on 2.7.1976 and there is no explanation for the delay of over one decade in the filing of the writ petition as against the said notice. Qua notification dated 20.6.1979 also, the writ petitions have been described as highly belated. Shri Walia submitted that in the context of notification dated 28.6.1979, two petitions have been filed after seven years and the third writ petition has been filed after nine years. During this period, a lot of development have taken place inasmuch as a number of landowners including Smt. Bhagwant Kaur have received compensation from the Improvement Trust, the Trust has invested more than sixty to sixty-five lacs of rupees and even those to whom the land has been allotted have raised constructions and acceptance of the writ petitions at such a belated stage would result in unsettling the settled rights of the parties. Shri Walia submitted that when third parties rights come into existence, delay in the filing of the writ petition acquires great significance and this Court should not interfere with the impugned Scheme and the Government Notification after more than 15 years of the issue of the notification u/s 40 of the Act of 1922. Shri Walia invited our attention to an order dated 3.3.1989 passed in Civil Writ Petition No. 1761 of 1995 (Smt. Jaswant Kaur and Ors. v. State of Punjab) as also order dated 31.7.1989 passed in Civil Writ Petition No. 2944 of 1985 (Tarlok Singh and Ors. v. State of Punjab and Ors.). These two orders show that the writ petitions filed by the petitioners for challenging the notifications issued under Sections 36 and 42 of the Act of 1941 in respect of the impugned Scheme have been dismissed by this Court on the ground of delay and laches.

7. Learned counsel for the petitioners vehemently argued that the petitioner should not be non-suited only on the ground of delay and laches because the property continues to be in the possession of the petitioners and as the petitioners did not feel threatened with dispossession, they were not required to file the writ petitions earlier. Shri Mehta argued that the petitioner have approached the Court as soon as their rights were threatened by the respondent.

8. We have given our thoughtful consideration to the rival contentions and have carefully gone through the orders passed by this Court on 3.3.1989 and 31.7.1989 dismissing the Civil Writ Petition No. 1761 of 1985 along with connected writ petitions and Civil Writ Petition No. 2944 of 1989. Two co-ordinate Benches of this Court have taken the view that the writ petitions filed in the year 1985 to question the legality of the notice/notification issued on 21.6.1976 and 28.6.1979 suffer from laches. Both the Division Benches have taken the view that in the absence of explanation of delay in the filing of the writ petition, this Court should not unsettle the settled position. In our opinion, complete failure of the petitioners to explain the delay in the filing of the writ petition for over six years and eight years as against the notification dated 28.6.1979 coupled with the fact that rights of the third party have already intervened is a strong factor which has got to be taken note by the Court

while exercising the equitable jurisdiction under Article 226 of the Constitution of India. Delay and laches in the filing of the writ petitions is a factor which assumes great significance where the rights of third party got intervened due to passage of time. The record produced before this Court shows that after the framing of the Scheme and acquisition of the land the Trust has allotted parcels of land to various individuals and a huge amount has been spent by the Trust for undertaking the development activities. Quashing of the impugned notice/notification in the year 1996 on the basis of the petitions filed in the years 1986 and 1988 would certainly jeopardies the rights of the third parties and would cause immense public mischief. Therefore, we are of the opinion that the writ petitions deserves to be dismissed on the ground of delay and laches. Mere fact that the possession of the some parcel of land has not been taken from the petitioners due to stay order passed by the Curt cannot be a ground for overlooking the long delay of six to eight years in the filing of the writ petitions. We respectfully agree with the view taken by the co-ordinate benches of this Court in Civil Writ Petition No. 1261 of 1985 (Jaswant Kaur and Ors. v. State of Punjab and Ors.) and Civil Writ Petition No. 2944 of 1985 (Tarlok Singh and Ors. v. State of Punjab and Ors.).

Notwithstanding our conclusion that the writ petitions deserve to be dismissed on the ground of laches, we deem it proper to examine on merits also the contentions raised by Shri Mehta, learned counsel appearing for the petitioners. Shri Mehta argued that the respondent-trust has not acted in accordance with the provisions of the Act of 1922 inasmuch as the notification has not been published in accordance with the statute. Another contention of the learned counsel is that in terms of the Government order issued on 28.12.1979 reducing the time limit for taking over of the possession of the land, the failure of the trust to take possession within the specified time is fatal to the execution proceedings. Neither of these contentions is having substance and deserve to be rejected as will be seen hereafter.

Sections 36, 38 and 42 of the Act of 1922 are reproduced below for the purpose of ready reference:-

"36. Preparation, publication and transmission of notice, as to improvement schemes, and supply of documents to applicants:-

(1) When a scheme under this Act has been framed, the trust shall prepare.

"a notice stating-

(i) the fact that the scheme has been framed.

(ii) the boundaries of the locality-comprised in the scheme, and

(iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) the trust shall-

(a) notwithstanding anything contained in Section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspaper with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the President of the Municipal Committee, and to the medical Officer of health.

(3) The chairman shall cause copies of all documents referred to in Clause (iii) of Sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by the rule u/s 74.

38. Notice of proposed acquisition of land:-

(1) During the thirty days next following the first day on which any notice is published u/s 36 in respect of any scheme under this Act the trust shall serve a notice on-

(i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme.

(ii) the occupier (who need not be named) of such premises as the trust proposes to acquire in executing the scheme.

2. Such notice shall-

(a) state that the trust proposes to acquire such property for the purpose of carrying out a scheme under this Act; and

(b) require such person if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by or by the order of, the chairman.

42. Notification of sanction of scheme:-

(1) The State Government shall notify the sanction of every scheme under this Act and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street Scheme, development scheme, or expansion scheme and provided further that the requirements of Section 27 have been fulfilled.

(2) A notification under Sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Provided that no notification in respect of sanction of a scheme shall be issued after the expiry of three years from the date of first publication of notice relating to that scheme u/s 36."

9. A combined reading of the above-quoted provisions shows that after the scheme has been framed, the trust shall prepare a notice incorporating therein the elements indicated in various sub-clauses of Section 36(1) and a notice is to be published weekly for three consecutive weeks in the official Gazette and in a newspaper inviting objections. Section 38 requires giving of notice in respect of the scheme to every person who is found to be the owner or occupier of immovable property. Section 41 empowers the Government to sanction Or reject the scheme.

The Government can also return the scheme to the trust for reconsideration. Section 42 requires the notification of the sanctioned scheme. In terms of Section 42(2) the outer limit for the issue of the notification in respect of sanction of a scheme is three years from the date of first publication of the notice u/s 36.

10. In the instant case, notice for framing of the Scheme was prepared on 21.6.1976 and was published on 2.7.1976. This notice was duly served on the owners of the land. It was also published in the Gazetted notifications of 2nd, 10th and 17th July, 1976 and the daily Tribune dated 3rd, 10th and 17th July, 1976. Similarly, notification issued u/s 42 was published in the Tribune dated 25.5.1979 and 1.6.1979 and daily Ajit dated 24.5.1979 and 1.6.1979. It has also been published in the Gazette of the Government of Punjab. Thus, there has been a full compliance of the mandatory provisions contained in the above-quoted provisions and we do not find any ground to accept the submission of Shri Mehta regarding violation of the requirement of publication of the notification. We find that the time limit prescribed in Section 42(2) had been adhered to by the respondents. We may also make reference to the decision of the Supreme Court in [Teja Singh and others Vs. State of Punjab and another](#), which relates to the same scheme. In that case, the petitioners Teja Singh and some other persons had filed writ petitions challenging the scheme framed by the respondent No. 2 vide notification dated 24.3.1976. Their writ petitions were dismissed by a Division bench on 1.3.1979. One of the points argued before the Supreme Court was that the scheme was bad due to the fact that the trust had modified the scheme and there was no republication of the scheme u/s 36. Their Lordships rejected this submission and held that the Act does not contemplate any republication of the modified scheme. Argument regarding non-service of notice has been rejected by the Supreme Court on the ground that service of notice on one co-owner would be sufficient service of notice on other co-owners. The observations made by the Apex Court in this respect are very significant and are, therefore, quoted below :-

"Thus, we hold that service of notice on one of the co-owners, when more than one have interest in the acquired land, would be sufficient service of notice on other co-owners.

Therefore, non-service of notice on the petitioner Nos. 1, 4 and 6 and Bikram Singh does not invalidate the scheme framed by the trust. So, it is a valid scheme."

11. Argument regarding violation of Sections 36 and 38 has also been negated by the Supreme Court in the following words :-

"It is next contended that since notification u/s 36 is equivalent to Section 4(1) of the Land Acquisition Act 1894 (for short, "the Central Act") and as the scheme was not published within three years, notification u/s 38 shall be deemed to have been lapsed by operation of Section 6 of the Central Act. We find no force in the contention. We find that the High Court is right in its conclusion that the notification u/s 36 was published on July 12, 1976 and the sanction of the notification was made u/s 40(1) on June 28, 1979. Section 40 clearly indicates that the period of three years would begin to run only from the date when the notification u/s 36 was published and not from the date on which the scheme was prepared by the trust. Though the scheme was prepared on June 21, 1976 since it was published on July 3, 1976, the limitation began to run only from July 2, 1976, and the Government had sanctioned it within three years from the date namely, on June 28, 1979. The ratio in [Bhatinda Improvement Trust Vs. Balwant Singh and others](#), , on facts has no application. Therefore, we need not go into the question of the applicability of the Central Act and the Limitation in that behalf."

12. Shri Mehta tried to distinguish this judgment by arguing that their Lordship have confined the judgment to the petitioner but in our opinion the ratio of the judgment of the Supreme Court which relates to the same subject matter has to be applied to the facts of this case and, there is no reason for us to ignore the judgment of the Supreme Court whereby the same scheme and the notification have been upheld.

13. Contention of the learned counsel with reference to the Government order dated 28.12.1979 requires a closer scrutiny. The Government order has been issued in the context of Section 6(1) of the Land Acquisition Act, 1894. By this order a deeming provision has been made to the effect that if possession is not taken within one year of the issue of the notification u/s 6, the same would be deemed to have lapsed. Though neither of the parties has placed before us the relevant facts, from the decision of this Court in *Mrs. Tara Paul v. State of Punjab* 1995 P.L.J. 159, we have been able to find that the order dated 28.12.1979 was superseded by subsequent order dated 3.3.1980. Had this not been done by the Government, we would have suo moto declared it to be unlawful. We are amazed that the executive authorities of the Government of Punjab could go to the extent of issuing an executive fiat to bring about an amendment in the statute. Where the statute prescribes a particular period of limitation within which a particular act has to be done it is not simply open to the executive authorities to reduce or modify that period. The executive authorities cannot usurp the function of the Legislature and we have no hesitation to hold that the order dated 28.12.1979 was nothing but a transgression of the jurisdiction of the Legislature to bring about an appropriate amendment in the legislation. Such an order cannot but be ignored being contrary to the provisions of law. Moreover, we find that the argument advanced by Shri Mehta is fully answered

by the decision of this Court in *Mrs. Tara Devi Paul v. State of Punjab* (supra) in which a Division Bench has held as under :-

"Careful perusal of Section 6 of the Land Acquisition Act including the relevant proviso shows that it relates to prohibition that no declaration in respect of any particular land covered by notification u/s 4 (of the Land Acquisition Act) under Sub-section (1) shall be published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification. In the present case after publication of notification u/s 42 of the Act, notification u/s 42 of the Act was published within the stipulated period of three years as contemplated u/s 6 of the Land Acquisition Act much before the Government Instructions dated 28.12.1979 came into operation. We are thus of the considered view that the argument advanced by the learned counsel for the petitioner that the acquisition proceedings had lapsed merely because the possession was not taken by the Land Acquisition Collector within one year of the award made by the Land Acquisition Collector is devoid of any merit. The view expressed by the Single Bench Authorities of this Court in *Jagjit Singh's case* (supra) *Parkash Singh's case* (supra) and *Iqbal Singh's case* (supra) in our view does not lay down correct law and the said view is expressly over-ruled."

14. As none of the contentions of the learned counsel for the petitioners merits acceptance, the writ petitions deserved to be dismissed and we order accordingly. The stay order passed by the Court stands automatically vacated.