

(1996) 03 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Amended Civil Writ Petition No. 3799 of 1981

The Sewak Co-operative House
Building Society Ltd. and
Another

APPELLANT

Vs

The Bhatinda Improvement
Trust and Another

RESPONDENT

Date of Decision: March 21, 1996

Acts Referred:

- Punjab Town Improvement Act, 1922 - Section 41

Citation: (1996) 113 PLR 516

Hon'ble Judges: T.H.B. Chalapathi, J

Bench: Single Bench

Advocate: M.L. Sarin and Hemani Jain, for the Appellant; H.S. Mattewal and S.P. Karwal, for the Respondent

Final Decision: Dismissed

Judgement

T.H.B. Chalapathi, J.

This writ petition is filed to quash the scheme framed by the 1st respondent under Annexure P-2, P-4, P-5" and as published in Annexure P-8 and notified in Gazette Notification Annexure P-10 issued u/s 41 of the Punjab Town Improvement Act, 1922.

2. The 1st petitioner is a Co-operative Society consisting of 116 members and the second petitioner is its President. The members of the petitioner-society hold small residential plots in Khasra Nos. 1988, 1989, 1984, 1986, 1987 and 1988 in Bhatinda. The 1st respondent-the Bhatinda Improvement Trust Bhatinda passed a resolution on 5.5.1976 to survey the area for the purpose of formulating the scheme. In Annexure P-2, the 1st respondent published a notice on 21.9.1976 u/s 24 read with Section 28(2) of the Punjab Town Improvement Act, 1922 (hereinafter referred to as

the "Act") for framing a development scheme on an area measuring 16.44 acres between Panj Rattan Hotel and Sirhind Canal on Goniana Road within the Municipal Limits of Bhatinda. The boundaries given in the said notice comprised land owned by the petitioner-society. The 1st respondent also issued another notice u/s 36 of the Act vide Annexure P-4 and a sub-subsequent notice was also issued u/s 36 of the Act vide Annexure P-5. Thereafter another notice u/s 36 of the Act was issued on 10.2.1984 vide Annexure P-8. Under Annexure P-10 dated 8.3.1987 the Governor of Punjab accorded sanction u/s 41 of the Improvement Trust. The petitioner being affected by the said scheme as their plots have also been covered by the scheme filed the present writ petition. This writ petition has been filed in the year 1981. After the sanction was accorded by the Governor in the year 1987 the amended writ petition was filed on 16.5.1989.

3. The main contention of the learned counsel for the petitioner is that the sanction u/s 41 of the Act was accorded by the Governor on 5.3.1987 i.e. after the expiry of three years from the first publication of the notice u/s 36 of the Act. Therefore, the same is invalid. According to him, no sanction was accorded within the period of 3 years. Therefore the notification also stands automatically elapsed. He further stated that the scheme was originally framed in the year 1976 and that there was no new scheme thereafter and in the scheme there was no provision to rehabilitate the owners of plots. The Counsel also denied the fact that the scheme was prepared in 1984. He further contended that simply because some of the plot owners participated in the award proceedings is not a bar to challenge the framing of the scheme and the acquisition proceedings.

4. The learned counsel for the Improvement Trust contended that the 1st respondent passed a resolution on 6.1.1984 framing a scheme afresh and the society as well as the individual members also filed applications u/s 18 of the Land Acquisition Act and the possession of the land has been taken on 5.5.1989 and that there are laches on the part of the petitioners and the award has been passed on 17.2.1989. In the objections filed by the petitioners and the individual members, they did not object to the validity or existence of the scheme on the ground that no sanction was accorded within three years. Therefore, the learned counsel for the respondents contended that the writ petition is liable to be dismissed.

5. There is no dispute that the 1st petitioner which is a co-operative society is the owner of the land in Khasra No. 1988, 1989, 1984, 1986, 1987 and 1988 and the members of the co-operative society namely 106 members hold small residential plots in the said khasra numbers. There is also no dispute that the 1st respondent the Trust framed a scheme in the year 1976 to develop the said area u/s 24 read with Section 28(2) of the Act. Notices u/s 36 of the Act have been issued and they were published in newspapers.

6. According to the learned counsel for the petitioners the acquisition started with the framing of the scheme in 1976 and no sanction was accorded within 3 years

therefrom. Therefore, the proceedings are liable to be quashed. According to the learned counsel for the respondents a fresh resolution was passed by the Board on 31.1.1984 to renotify all the 14 schemes which had elapsed due to expiry of 3 year"s" tune. Therefore, it was decided to revise all the said scheme. Accordingly, a notice was published u/s 24 read with Section 28(2) of the Act on 9.3.1984 and the Governor of Punjab accorded sanction u/s 41 of the Act on 5.3.1987 i.e. within 3 years from the date of the notification. Therefore, it cannot be said that the scheme which was published on 9.3.1984 had elapsed due to expiry of three years" period.

7. It is also contended by the learned counsel for the respondents that notice u/s 38 of the Act was issued by the 1st Respondent on 6.12.1984 informing the Petitioner-society that the scheme has been framed by Bhatinda Improvement Trust u/s 24 read with Section 28(2) of the Act, and calling for objections against the same. The Khasra Nos. mentioned in the said notice are 1984, 1985, 1987, 1986, 1988 and 1989. Thus, it is clear that the sanction was accorded within three years from the date of the publication of the revised scheme in 1984. Therefore the contention of the learned counsel for the petitioner that the sanction was accorded by the Governor after expiry of 3 years- cannot be accepted. Further it appears from the record that on issuing of Notification by the Government the objections have been filed by the petitioner-society but it does not appear that the petitioner-society has raised any objection to the sanction of the scheme on the ground that the sanction was not accorded within a period of three years.

8. The record also indicates that an award has been passed and the members of the society had received the amount of compensation and they also filed applications u/s 18 of the Land Acquisition Act for claiming enhanced compensation. It also shows that the amount of compensation as determined by the Land Acquisition Officer amounting to Rs. 54,18,097.36 Ps. has also been deposited and the possession of the land has been taken on 9.5.1989. The award was passed on 17.2.1989 and the applications for enhancement of compensation have been filed u/s 18 of the Land Acquisition Act on 29.3.1989. It is only thereafter the petitioner-society filed an application to amend the writ petition in the year 1989. Thus the challenge to the acquisition proceedings was made after a long delay. On this ground also, the writ petition is liable to be dismissed.

9. It is also borne out by the record that the Improvement Trust developed the land and invited applications for allotment of the plots after taking possession of the land. After perusing the record, I do not find any merit in the writ petition. Therefore, in my/opinion the writ petition is liable to be dismissed and is accordingly dismissed. No order as to costs.