

(1994) 05 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 9866 of 1993

Mohinder Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: May 24, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Town Improvement Act, 1922 - Section 72E

Citation: (1994) 107 PLR 692(1) : (1994) 107 PLR 692

Hon'ble Judges: V.K. Jhanji, J; R.S. Mongia, J

Bench: Division Bench

Advocate: M.L. Sarin and Alka Sarin, for the Appellant; R.K. Joshi, Addl. A.G. for Respondent Nos. 1 and 2 and N.B.S. Gujral, for the Respondent

Final Decision: Dismissed

Judgement

R.S.Mongia and V.K. Jhanji, JJ.

The Improvement Trust, Jalandhar, vide resolution No. 489 dated 21.9.1978 framed a development scheme for an area of 74.9 acres on G.T. Road Bye Pass, Jalandhar, for TRUCK STAND. Notification u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act) was published in the official gazette on 30.10.1987. Notification u/s 42 of the Act was published on 28.10.1988 within the statutory period of one year. Petitioner, who is running a workshop-cum-service station on an area measuring 3 K 11 M, filed Civil Writ Petition No. 30 of 1991 challenging the notification and also the Award. The acquisition was challenged inter-alia on the ground that the Award regarding land was given on 27.10.1990 whereas supplementary Award with regard to structures, trees (non-fruit bearing), trees (fruit bearing) etc. was given on 6.5.1991 i.e. on the expiry of two years" period as a result of which land acquisition proceedings stood elapsed. The petitioner got this writ petition dismissed as withdrawn and the same was dismissed as such by the Division Bench on 8.6.1991. In the present writ petition, the petitioner is seeking

a writ in the nature of certiorari for quashing order dated 4.1.1993, Annexure P/12 whereby the State Government, u/s 72-B of the Act annulled resolution No. 32 dated 13.5.1991 of the Improvement Trust vide which land of the petitioner had been decided to be exempted from acquisition.

2. Mr. Sarin, counsel for the petitioner contended that order dated 4.1.1993, Annexure P/12 cannot be sustained inasmuch as no reason whatsoever has been given to annul the resolution of the Improvement Trust. According to the counsel, u/s 72-E of the Act, resolution could be annulled only if the proceedings of the Trust were not in conformity with law and rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the Trusts have authority.

3. We find that there is no merit in this contention of learned counsel for the petitioner. In the written statement filed by Mr. Manmohan Kalia, I.A.S., Additional Secretary to Government of Punjab, Department of Local Government on behalf of respondent No. 1, it has been stated "that the resolution No. 31 dated 13.5.1991 of the Improvement Trust, Jalandhar to exempt the property of the petitioner from the development scheme for the Truck Stand covering an area measuring 74.9 acres on G.T. Road Bye-Pass was violative of the Punjab Scheduled Roads and Controlled Area Act, 1963, according to which no structures can be raised within 100 meters from the bye-pass. Moreover, the property of the petitioner fell within the area earmarked for parking, which is an important part of the scheme. Besides, advice of the Chief Town Planner, Punjab, was also obtained and he had not supported this resolution of the Improvement Trust, Jalandhar. As such, the State Government gave due consideration to this matter and decided to annul the resolution because it was violative of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated & Development) Act, 1963. Moreover, the State Government has full powers u/s 72-E of the Punjab Town Improvement Act, 1922 to cancel or annul such resolutions of the Trusts.

4. As noticed from the averments made in the written statement, resolution of the Trust exempting the property of the petitioner from acquisition was violative of the Punjab Scheduled Roads and Controlled Area Act, 1963 and no construction could be raised within 100 meters from the bye-pass. The Chief Town Planner, Punjab had also not supported the resolution of the Trust. In view of all these considerations, the State Government under Sub-section (2) of Section 72-E of the Act, had the power to annul the resolution as the same was not in conformity with the Punjab Scheduled Roads and Controlled Area Act, 1963.

5. Faced with this situation, learned counsel for the petitioner, on the strength of Section 11A of the Land Acquisition Act, contended that the acquisition itself is bad as the supplementary Award was not given within a period of two years from the date of the publication of notification u/s 42 of the Act. This contention too has no merit. Petitioner cannot be allowed to challenge the acquisition on this ground in

this petition as on this very ground he had filed Civil Writ Petition No. 30 of 1991 which was dismissed as withdrawn on the request of the petitioner. Mr. Sarin contended that the writ petition was withdrawn because the Trust had assured the petitioner that his land would be exempted from acquisition and acting on the assurance of the Trust, the writ petition was withdrawn. Order dated 8.6.1991 vide which the writ petition was dismissed as withdrawn does not support this contention of Mr. Sarin. The order only states that counsel for the petitioner has filed an affidavit stating that the petition be dismissed as withdrawn. Order accordingly. The petitioner had no grievance left after the passing of order in Civil writ petition No. 30 of 1991. If he had any such grievance, he would have brought the same to the notice of this Court at that very time and reserved his right to file any petition on the same cause of action. Otherwise too since the dismissal of the writ petition (CWP No. 30 of 1991) which was in the year 1991, the Trust has carried out the development work i.e. roads, parking street lighting etc., which have either been completed or are in progress. The site where the land of the petitioner is situated is ear-marked for parking. To quash the proceedings at such a belated stage would be setting at nought the scheme which is near completion.

6. Accordingly, the writ petition is dismissed. No costs.