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Mohinder Singh Vs The State of Punjab and Others

C.W.P. No. 9866 of 1993

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 24, 1994

Acts Referred:

Constitution of India, 1950 â€" Article 226, 227#Punjab Town Improvement Act, 1922 â€"

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petitioner got this writ petition dismissed as withdrawn and the same was dismissed as such by the Division Bench on 8.6.1991.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

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 Puniab

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 bought 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.