
(1994) 11 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 8983 of 1994

Mrs. Tara Paul

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Nov. 29, 1994

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 6
- Punjab Town Improvement Act, 1922 - Section 36, 41(2), 42

Citation: (1995) 110 PLR 129

Hon'ble Judges: S.S. Grewal, J; M.L. Koul, J

Bench: Division Bench

Advocate: A.P.S. Deol and Daldeep Singh, for the Appellant; H.S. Sidhu, A.A.G. and Jasbir Singh, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Grewal, J.

This writ petition relates to quashment of acquisition proceedings for the development scheme of Patiala Improvement Trust known as Shaheed Sewa Singh Thikriwala Nagar Scheme which also cover Sunder Nagar colony and includes the plot of the petitioner which has been purchased by her, vide, registered sale deed dated 4th of November, 1969. The said scheme was notified u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act) vide notification dated 21st December, 1973. The aforesaid scheme was sanctioned by the State of Punjab and notification u/s 42 of the Act was published in the Punjab Government Gazette dated 30th of December, 1976. The land Acquisition Collector gave his award in respect of the said scheme on 28th July, 1978 and compensation payable to the petitioner was assessed at the rate of Rs. 6.60 paise per square yard plus solatium at the rate of 15 percent, over and above the total compensation. It was pleaded that no award was given in respect of the houses which had been constructed in Sunder Nagar Colony, Patiala. Supplementary award in respect of the

houses already constructed was given by the Land Acquisition Collector on 18/19th March, 1990. According to the petitioner no notice was issued to her, nor, she is aware of the proceedings conducted by the Land Acquisition Collector for assessing the compensation to be paid by way of award dated 28th July, 1978. In the year 1979, the petitioner enquired from respondent No. 3 and was informed that compensation as per award dated 28th July, 1978 has been assessed at the rate of Rs. 6.60 paise per square yard, whereupon, the petitioner informed respondent No. 3 that he had purchased the plot on 4th November, 1969 at the rate of Rs. 9.16 per square yard and that compensation has been assessed without issuing any notice, or, giving any opportunity of hearing to the petitioner. It was further pleaded that even though respondent No. 3 had assured the petitioner that she would be allotted another plot in the same scheme in lieu of plot of the petitioner, and, the petitioner also deposited Rs. 500/as earnest money for allotment of such plot, no plot in the said scheme had been allotted to the petitioner. It was also pleaded that the possession of the plot of the petitioner was not taken by the respondents within three years of the publication of the notification u/s 42 of the Act on 30th December, 1976, and, that possession of the said plot has not been taken over by the respondent Improvement Trust till date, and, that acquisition qua her plot had lapsed on 28th December, 1979, in view of the government instructions of even date issued in this regard. It was next pleaded that the respondent Improvement Trust in other proceedings before this Court and before the apex Court had given an undertaking that houses already constructed in Sunder Nagar Colony shall be exempted from the Scheme. It was further pleaded that vide resolution No. 462 dated 27th January, 1988 the respondent Improvement Trust resolved to exempt 207 houses which stood constructed in Sunder Nagar Colony from the operation of the aforesaid Scheme, and, in pursuance thereof 90 more residents of Sunder Nagar Colony deposited development and exemption charges for exemption of their houses from the Scheme, that the Executive Officer of the respondent Improvement Trust vide letter dated 26th May, 1988 requested the Director, Local Bodies, Punjab, Chandigarh to accord the necessary approval u/s 56 of the Act to adjust the Sunder Nagar Colony in the Development Scheme, and, grant exemption so that letters could be issued to the house owners in view of the statement made before this Court in 1978, and, before the Supreme Court in the year 1987. Since no exemption was granted some of the owners of the houses in Sunder Nagar Colony filed Civil Writ Petition No. 175 of 1991 before this Court for directing the State of Punjab to grant exemption to the Colony from the operation of the aforesaid Scheme prepared by the Improvement Trust and for restraining the respondents from demolishing their houses. Demolition of the houses was stayed and the said writ petition stands admitted. It was next pleaded that since no compensation has been paid to the petitioner till date, nor, development work, or, any improvement has been made in Sunder Nagar Colony by the Improvement Trust, Patiala, the petitioner presumed that in view of the letter dated 28th December, 1979 her plot had been exempt from the operation of the aforesaid Scheme prepared by the

respondent Improvement Trust. However, after obtaining copy of Khasra Girdawari for the year 1992-93 the petitioner learnt that though the plot stood in her name as owner, yet the cultivating possession was shown in the name of the Improvement Trust. On further enquiry from the revenue authorities the petitioner learnt that vide roznamcha Waqati Rapat No. 525 dated 10th April, 1992, the respondent Improvement Trust took over possession of the plot belonging to the petitioner, without issuing, or, serving any notice to the petitioner before delivery of possession and changes made in the name of the cultivator in the revenue record; that the Rapat Roznamacha Waquati was damaged in the floods in the year 1993 and that the said rapat is not legible and the copy of the same was not given to the petitioner by the revenue authorities; that no further notification u/s 6 of the Land Acquisition Act has been published after notification dated 30th December, 1976 and the acquisition proceedings would be deemed to have been lapsed, in view of the instructions dated 28th December, 1979 and, the aforesaid action of the respondents was illegal, arbitrary, in violation of the Government instructions, unconstitutional and was liable to be quashed.

2. Respondent No. 3 in its written statement took up preliminary objection that the writ petition has been filed after 20 years of the issuance of the notification of the land in dispute, and, the same was hopelessly time barred. The possession of the land in dispute has already been taken by the respondent Improvement Trust on 10th of April, 1992 after issuing a valid notice Annexure R3/1 to the petitioner; that the acquisition is complete, and, that original proceedings cannot be challenged. or, quashed. It was denied that Sundar Nagar Colony was demarcated and planned for the purpose of development. It was only haphazard growth and some houses virtually came into existence in the year 1980, and, till that time no construction has been raised on the plot of the petitioner so far. During all this period petitioner never made any construction which shows that she has sufficient accommodation to live. It was specifically pleaded that the possession of the land in dispute was taken by the respondent Improvement Trust vide Rapat No. 525 dated 10th April, 1992. It was also pleaded that so far as the award regarding houses is concerned, it has no relevancy about the facts of the present case, because the petitioner has not raised any construction over the land in dispute. Nor any award regarding construction has been given so far. It was further pleaded that the petitioner never approached the respondent Improvement Trust for allotment of the plot in the aforesaid development scheme. It was next pleaded that the Government instructions dated 28th December, 1979 only relate to proceedings under the Land Acquisition Act and not under the Town Improvement Act and that these instructions were immediately withdrawn in the year 1980 and would have no effect so far as the present acquisition is concerned. It was denied that the petitioner was still in possession of the land in dispute. It was, however, admitted that the resolution was passed by the respondent Improvement Trust and the persons who had constructed their houses were asked to pay the development charges. The said resolution is not applicable as

far as the present writ petitioner is concerned, and, the petitioner is not entitled to get any benefit from the said resolution. It was further asserted that the revenue authorities have completed all formalities for changing the revenue record. It was further pleaded that the compensation was deposited with the Collector before taking possession on 10th April, 1992 and that respondent Improvement Trust has already constructed roads, sewerage work and water work and other development works are in progress. It was next pleaded that it is not necessary to exempt the plot of the petitioner from acquisition. Other averments made in the petition, were, denied.

3. The learned counsel for the parties were heard.

4. The learned counsel for the petitioner contended that during the pendency of the acquisition proceedings the State Government issued instructions on 28th December, 1979, whereby, it was obligatory to take possession of the land intended to be acquired within one year of the notification u/s 6 of the Land Acquisition Act and even if such instructions which were later on withdrawn by subsequent notification dated 3rd March, 1980 such withdrawals would be prospective in its operation. It was further submitted that since the possession of the acquired land was not taken by the respondents within one year of the issuance of notification u/s 42 of the Act, the acquisition proceedings in respect of development scheme, prepared by the Improvement Trust had lapsed.

5. Reliance in his respect was placed on the Single Bench authority of this Court in [Jagjit Singh and Others Vs. State of Punjab and Others](#), wherein relying upon the authorities of this Court in Parkash Singh v. The State of Punjab and Anr. 1983 P.L.J. 259 and Iqbal Singh and Ors. v. The State of Punjab and Ors. (1988) 93 P.L.R. 575 it was held that in cases where possession of the land is not taken within one year after issuance of notification u/s 6 of the Act, the notification would be deemed to have lapsed. As regards the effect of subsequent instructions dated 3rd March, 1980, it was held that "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.

6. It was further observed in Jagjit Singh's case (supra) that the State had not taken possession within one year of the issuance of notification under Sections 4 and 6 of the Land Acquisition Act, the acquisition proceedings initiated by the authorities under Sections 4 and 6 of the Act stood withdrawn.

7. The authority in Iqbal Singh's case (supra) relates to issuance of notification under Sections 36,41(2) and 42 of the Act and it was held therein that in view of the

instruction by the Government Punjab, since the possession was not taken within one year after the issuance of notification u/s 42 of the Act, the acquisition proceedings having already come to an end, could not be revived subsequently by the Land Acquisition (Amendment) Act No. 68 of 1984.

8. In Parkash Singh's case (supra) admittedly the possession of the acquired land has not been taken in pursuance of the award of the Land Acquisition Collector. In view of these admitted facts, it was held that the acquisition proceedings initiated by the respondent authorities in pursuance of the respective notifications issued under Sections 4 and 6 of the Act stood withdrawn or abandoned with the issuance of the instructions dated December 28, 1979.

9. It is quite obvious that once Collector makes his award u/s 11 of the Land Acquisition Act and takes possession of the land, the acquired land absolutely vests in the government free from all encumbrances and title of the acquired land completely passes to the State of view of the Full Bench authority of this Court in *Narinjan Singh and Anr. v. The State of Punjab and Ors.* (1985) 87 P.L.R. 358 (F.B.).

10. In the instant case the possession of the acquired land which was lying vacant was taken on the spot by the respondents through the revenue authorities vide *rapat in roznamcha Waquati* No. 525 dated 10th April, 1992 much before the present writ petition was filed. The acquired land had thus completely vested in the State and ownership free from all encumbrances have vested in the State from the said date, notwithstanding the issuance of departmental instructions dated 28th December, 1979 which were subsequently withdrawn by the State on 3rd March, 1980. Merely because possession of the acquired land has not been taken within one year of the making of the award by the Land Acquisition Collector, the entire acquisition proceedings, in the instant case, would not legally lapse as contended by the learned counsel for the petitioner. On this aspect, we find support from the Full Bench of this Court in *Radhey Shyam Gupta and Ors. v. State of Haryana and Ors.* (1982) 84 P.L.R. 743 (F.B.) wherein it was observed as follows:-

"Plainly enough, therefore, there is neither a statutory mandate to complete the acquisition proceedings within a time prescribed, nor, is there a corresponding inflexible right on the power of the claimant to such enforcement with any precision."

11. Careful perusal of Section 6 of the Land Acquisition Act including the relevant proviso shows that it relates to prohibition 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 u/s 36 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 28th December, 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 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 overruled.

12. The learned counsel for the petitioner half heartedly argued that notification u/s 6 was not duly published as contemplated under sub-section (2) of Section 6 of the Land Acquisition Act. After lapse of over 20 years, this contention is hardly tenable in view of the fact that the said notification was published over 20 years back and during all this period no such objection has ever been raised by the petitioner.

13. No other point has been urged.

14. For the foregoing reasons, we do not find any merit in this writ petition and the same is hereby dismissed.