

(2011) 01 P&H CK 0435

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 2570 of 2004

Arun Kumar and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 19, 2011

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 9, 9(3)
- Punjab Town Improvement Act, 1922 - Section 101(E), 24, 25, 28(2), 36

Citation: (2011) 162 PLR 419 : (2011) 5 RCR(Civil) 222

Hon'ble Judges: Rakesh Kumar Garg, J; Jasbir Singh, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

By way of these writ petitions i.e. CWP No. 2570, 4272, 10823, 12439, 15187 all of 2004 and CWP No. 19700 of 2006, challenge has been laid to notifications dated 05.1.2001 (Annexure P8), issued u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act), dated 17.1.2002 issued u/s 42 of the Act (Annexure P14) and award dated 16.1.2004 (Annexure P22) whereby land/plots/houses of the Petitioners were acquired for a development scheme known as Ring Road Phase-I Development Scheme. Since common questions of law on similar facts have been raised in all these writ petitions, the same are being decided by one common judgment. However, the facts are taken from CWP No. 2570 of 2004.

2. As per the averments made in this petition, the Petitioners who are 129 in number, own small pieces of lands which they had purchased. The aforesaid plots fall within the municipal limits of Bathinda and all the civic amenities such as electricity, sewerage and telephone etc. are available in these localities. As per averments, many of the Petitioners are residing in their houses, built on these plots,

after getting their building plans sanctioned by the Municipal Council/Municipal Corporation, and many Petitioners raised construction of their buildings after depositing development charges with Municipal Council/Corporation. It was further averred that some of the Petitioners have raised A-class construction on their respective plots.

3. Respondent No. 2 i.e. Improvement Trust, Bathinda, passed resolution No. 103 dated 12.12.2000 giving approval for framing a scheme for residential and commercial use on an area of 45.57 acres as per schedule of boundaries of the scheme. Thereafter, first notice u/s 36 of the Act was published on 5.1.2001 of the scheme framed under Sections 24,25,28(2) of the Act, giving the boundaries of the scheme. The objections to the scheme were also invited from the affected persons. The objections were heard by the Chairman of the Trust on 9/10.7.2001. Thereafter, vide notification dated 17.1.2002 (Annexure P14) the development scheme which was sanctioned by the government was notified u/s 42 of the Act, with the condition that no such vacant plots are to be adjusted which are included in the boundaries at the time of notification u/s 36 of the Act and the layout plan drawing of this scheme bearing No. 41/STP9(S) BTI/2001 dated 24.12.2001 was amended accordingly.

4. In pursuance of the aforesaid declaration issued u/s 42 of the Act, the land acquisition Collector, Improvement Trust, Bathinda pronounced Award No. 1 of 2004 dated 16.1.2004 determining compensation of the acquired land in favour of the landowners/ Petitioners. Petitioners thereafter, approached this Court by way of these writ petitions challenging the aforesaid proceedings on the ground that the impugned award was passed by Respondent No. 2 without issuing any notice u/s 9 of the Land Acquisition Act, 1894, the Petitioners were deprived from having any opportunity to file their claim for compensation and that the impugned award was passed hurriedly on the last date and with a mala fide intention. Moreover, the said award was an incomplete award and Respondents have treated similarly placed persons differently while releasing some of the buildings which were in existence at the time of publication of the notice u/s 36 of the Act and even not releasing built up houses of the Petitioners. It was also stated that the layout plan was not prepared correctly as all the A-class buildings which were in existence at the time of publication of notice u/s 36 of the Act, were not shown. By placing reliance upon Annexure P12, it was submitted that all the A-Class buildings were not depicted in the layout plan as a result thereof decision of Respondent No. 2 covered only a few individuals whereas many others were ignored. It was also submitted that while sanctioning the scheme the State Government rejected the recommendations of Respondent No. 2 for adjusting the small plot-holders i.e. vacant plots without giving any reasons and the same cannot be sustained.

5. However, the writ petitions were contested by the Respondents stating that the development scheme has been framed in accordance with law and the Petitioners' land/plots could not be exempted as the same were lying vacant. It was also stated

that at the time of survey, 46 constructions in all i.e. 34 A-class constructions and 12-C class constructions were found in existence. All the 34 A-class constructions were exempted whereas the claim of others were rejected. It was also stated that the objections filed by the claimants were heard and disposed of after giving them proper opportunity of hearing. A specific stand was taken in the written statement that after sanctioning of the scheme notices u/s 9 of the Land Acquisition Act, 1894, were issued to landowners/interested persons and the award was passed in accordance with law and, therefore, the writ petitions deserve to be dismissed.

6. Shri M.L. Sarin, Senior Advocate, appearing on behalf of the Petitioners in CWP No. 2570 of 2004, has vehemently argued that the award passed by the Collector was an incomplete award and, therefore, the same was not having any force of law, as in spite of the fact that it has been submitted that the A-class constructions were adjusted, there is no detail given. It was further argued that the trust vide its resolution Annexure P10 has resolved to adjust all the small plot-holders. However, the same was annulled by the Government partially, suo motu, and without giving an opportunity of hearing to the Petitioners exercising its powers u/s 72(E) of the Act and, thus, vitiating the proceedings, as the same has taken away a valuable right of the Petitioners to substantiate their objections and the same was not justified in view of the law laid down in the case of The Mahajan Cooperative House Building Society through its [The Mahajan Co-operative House Building Society Vs. State of Punjab and Others](#). Learned Senior Advocate, has further argued that action of the Respondents in releasing only A-class constructions and not releasing the other constructions and the small vacant plots, was discriminatory and thus liable to be set aside in view of the judgment of the Supreme Court in the case of [B.E.M.L. Employees House Building Co-operative Society Ltd. Vs. State of Karnataka and Others](#). Shri Sarin further argued that there were factual errors in the layout plan Annexure P7 which was approved by the Respondents and the same has vitiated the whole of the scheme. In support of his argument counsel for the Petitioners has referred to letter Annexure P13 written by the District Town Planner raising various points. It was also argued that the award was passed hurriedly and malafidely on the last date of limitation and was incomplete. To substantiate, counsel for the Petitioners has stated that the Respondent-Trust has not produced any record from which it could be proved that notices u/s 9 of the Land Acquisition Act, were issued to the landowners. It was further argued that no rehabilitation scheme was framed to rehabilitate the oustees and, therefore, the impugned acquisition proceedings were liable to be set aside.

7. The other counsel appearing on behalf of the Petitioners in other writ petitions have adopted the arguments raised by the learned Counsel appearing on behalf of the Petitioners in this case. On the basis of the aforesaid judgment, learned Counsel for the Petitioners have vehemently argued that, the rule, when a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with the authority to adjudicate

upon matters involving civil consequences and it is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Thus, even if Section 72 (E) of the Act does not expressly requires giving of notice, rules of natural justice were to be followed and since no such hearing was provided by the Respondents before annulling the resolution of the trust, the acquisition proceedings stood vitiated and are liable to be quashed.

8. The argument raised by Shri Sarin on the basis of Section 72(E) of the Act, is also without any substance. Admittedly, the Petitioners have not filed any objections in pursuance to the notification issued u/s 36 of the Act and, therefore, even if no opportunity was given to them while annulling the resolution by the Government, no prejudice has been caused to them as mere was no stage/occasion for the Petitioners to substantiate their objections which were never raised. Even the judgment cited by the learned Counsel for the Petitioners in support of his argument, is of no help to him, as the facts of the same are distinguishable. The argument, that there were factual errors in the layout plan Annexure PI 1, as pointed out by the District town Planner, Annexure P13, is again without any merit as the aforesaid objection has been met by submitting as under:

That it is necessary to bring to the notice of this Hon"ble Court that facts stated in the report are not relevant for the decision of the civil writ petition. At the outset, it is stated that Sh. Jagroop Singh Gill, the then Chairman of the Respondent No. 2 has written this letter out of his own personal interest, as his niece is married to son of Pritam Singh, main Petitioner in CWP No. 4272 of 2004. Sh. Jagroop Singh has tried to twist the case in such a way that the area except the land under ring road be exempted and his relatives may be benefited due to that, as the price of the land adjoining to the ring road if exempted will enhance manifold.

9. It may may also be pointed out here at this stage that in fact in the pleadings of the parties, it is not their case that they have built their houses on the plots before issuance of notification u/s 36 of the Act, neither there is any material to support the case of the Petitioners that they built houses after getting sanction of the authorities. Even mere is no material on record to substantiate the plea of the Petitioners, that they have been discriminated vis-a-vis other plot holders whose houses have been exempted/adjusted in the scheme.

10. The argument of the learned Counsel for the Petitioners, that an incomplete award has been filed is also again without any basis as along with the written statement the Respondents have placed on record a complete copy of the award with an annexure giving the details of the 34 A-class constructions, which were found at the time of survey and which were adjusted. In fact this annexure is part of award. Thus, an attempt has been made by the Petitioners to raise an argument on the basis of incomplete copy of award attached by themselves with the writ petitions. It is also relevant to mention at this stage that during the course of

hearing the Respondents have produced before this Court the record showing the dispatch of notices u/s 9 of the Act to the landowners. Moreover, the Hon"ble Supreme Court in [May George Vs. Special Tahsildar and Others,](#) , observed as under:

Section 9(3) of the Act reads as under:

The Collector shall also serve notice to the same effect on the occupier (if any) of such land and all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate". Section of the Act provides for an opportunity to the "person interested" to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim u/s 9 even after receiving the notice, he still has a right to make an application for making a reference u/s 18 of the Act. Therefore, scheme of the Act is such that it does not cause any prejudicial consequence in case the notice u/s 9(3) is not served upon the person interested.

11. The Hon"ble Supreme Court in the case of [Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal and Others, etc.,](#) , held that absence of notice u/s 9 of the does not render the award invalid. Thus, it is not open to the Petitioners to dispute the acquisition proceedings on the aforesaid ground. It may also be relevant to notice that a Division Bench of this Court in the case of [Baldev Singh and Another Vs. The State of Punjab and Others,](#) , has laid down that once notice u/s 36 of the Punjab Town Improvement Trust Act, 1922, is published and objections, if any, were considered and disposed of including the claims of exemption as well as framing of re-housing scheme, the acquisition proceedings cannot be quashed on the allegation that the landowners were not given reasonable opportunity of hearing. (In the aforesaid judgment, the Division Bench also observed that it is not necessary that the entire body of the trust should sit and hear the objections. Hearing of the objections by the Committee cannot be, and is also not stated to have prejudiced the rights of the landowners in any manner. Therefore, even if it be considered an irregularity, that by itself cannot prejudice the rights of the landowners. This Court further held that development scheme cannot be declared invalid only because it does not talk of housing scheme framed for accommodating displaced persons). The Petitioners have failed to establish existence of their houses in the acquired area prior to the notification and class of construction, failing which they cannot claim re-housing or discrimination on that count.

12. It may also be useful to refer to the observations of a Full Bench of this Court in the case of Jodh Singh v. Jullundur Improvement Trust 6 1984 RRR 36, which reads as follows:

... There is no scope for any doubt that so long it is held that the notification under Sub-section (1) of Section 42 of the Act Was not vitiated the effect of the provisions of Sub-section (2) of Section 42 can be not less than this that after the issuance of

notification under Sub-section (1) of Section 42 of the Act, the Court would take it that there has been full compliance with the relevant provisions pertaining to the framing and sanction of the scheme, with only one exception, which again is spelled out by their Lordships in Somawanti's case (supra) that is, when the colourable exercise of power is established to the satisfaction of the Court. Colourable exercise of power in relation to the provisions pertaining to the framing and sanction of the scheme would arise where, for instance, there had not been even substantial compliance of provisions that are considered directory nor there had been requisite compliance of the provisions which are considered mandatory....

13. In the present case, we have already found that there is no colourable exercise of powers while acquiring the land of the Petitioners.

14. Thus, the effect of the sanctioning of scheme and publishing of the same u/s 42 of the Act is, that, there has been full compliance with the relevant provisions pertaining to the framing and sanction of the scheme and the same cannot be found faulted with. It may also be seen that after considering all the circumstances the State Government has taken the view that land of the Petitioners which was lying vacant at the time of notification u/s 36 of the Act, could not be released. It is not possible for this Court to interfere with the said satisfaction of the authorities concerned. Moreover, we see no ground on which the Petitioners can maintain that their land should be exempted from acquisition. Not only this, the Petitioners have approached this Court after passing of the award i.e. after considerable delay and therefore in view of the judgment of the Supreme Court in May George's case (supra), the petitions are liable to be dismissed.

15. It may be pointed out at this stage that in CWP Nos. 4272 and 15187 of 2004, an additional point has been raised that the award (Annexure P22) is no award in the eyes of law as the same has been anti dated, and has been passed by the Chairman of the Trust alone who was not competent to pass the same under the provisions of the Act. It has also been argued that objections raised by the landowners were heard by the Chairman of the trust alone who cannot be treated as "trust" and law envisages the disposal of objections filed by the landowners by the trust. A reference was made by the learned Counsel to the various provisions of the Act, which reads as under:

12. Meeting of trust: (1)(a) The trust shall ordinarily meet for the transaction of business at least once in every month at such time as it may fix, provided that the chairman may, whenever he thinks fit, and shall, upon the written request of not less than two trustees; call a special meeting;

(b) The quorum necessary for the transaction of business at an ordinary or special meeting shall not be less than three,

(c) At every meeting the chairman, if he be present, or in his absence such one of the trustees present as may be chosen by the meeting; shall preside.

(d) All questions which come before any meeting shall be decided by a majority of the votes of the trustees present; the president of the meeting in case of an equality of votes having a second or casting vote.

(e) Minutes of the names of trustees present and of the proceedings at each meeting shall be drawn up and recorded in a book to be kept for the purpose, shall be signed by the person presiding at the meeting or at the next ensuing meeting and shall at all reasonable times and without charge be open to inspection by any trustee.

(2) No trustee shall be entitled to object to the minutes of any meeting unless he was present at the meeting to which they relate.

14. Constitution and Junctions of committees;- (1) The trust may from time to time appoint committees of the trust consisting of such persons of any of the following classes as it may deem fit, namely:

(i) trustees:

(ii) persons associated with the trust u/s 13;

(iii) other persons whose services, assistance or advice the trust may desire as members of such committees; Provided that no such committees shall consist of less than three persons, and that at least one trustee shall be a member thereof.

(2) The trust may-

(a) refer to such committees, for inquiry and report, and matter relating to any of the purposes of this Act, and (b) delegate to such committees by resolution, and subject to any rules made u/s 74, any of the powers or duties of the trust.

(3) The trust may at any time, dissolve, or subject to the provisions of Sub-section (1) after the constitution of, any such committees.

(4) Every such committee shall conform to any instructions from time to time given to it by the trust.

(5) All proceedings of any such committee shall be subject to confirmation by the trust.

(6) Any person associated with the trust u/s 13 or appointed a member of a committee of the trust under Clause (iii) or Sub-section (1) shall be entitled to receive such remuneration either by way of monthly salary or by way of fees or partly in one of these ways and partly in the other as the State Government may prescribe.

15. Meetings of the committees.- (1) Committees appointed u/s 14 may meet and adjourn as they think proper; but the chairman of the trust may, whenever he deems fit, call a special meeting of any such committee, and shall do so upon the written request of not less than two members thereof.

(2) The Chairman may attend any meeting of a committee appointed u/s 14 whether he is a member of such committee or not, and shall preside at every such meeting at which he is present; if he be absent, any trustee present and being a member of such committee as may be chosen by the meeting, shall preside: provided in this case that if only one trustee is present, shall preside.

(3) All question which come before any meeting of such committee shall be decided by a majority of the votes of the members present, the person presiding in the case of an equality of votes having a second or casting vote.

(4) No business shall be transacted at any meeting of such committee when less than 2 members, or, when the committee consists of more than eight members, when less than one-form of such members are present.

16. On the basis of the aforesaid provisions, an argument has been raised that for passing a resolution the quorum for the meeting of a trust is three members and no committee of the trust shall consist of less than three persons and, therefore, in the instant case the Chairman of the trust alone, was not competent to consider the objections filed by the Petitioners. It may be relevant to point out at this stage that though it was argued by Mr. Punchhi that the award was anti dated the aforesaid argument could not be substantiated by pointing out any relevant material on the record.

17. On the other hand, Shri Arvind Mittal, learned Counsel appearing on behalf of the Trust, has vehemently argued that me arguments raised by the learned Counsel for the Petitioners are without any substances and are liable to be rejected. He has pointed out that it is wrong to say that the objections were disposed of by the Chairman alone and, therefore, the acquisition is vitiated. It was pointed out that the Chairman was duly authorised by resolution No. 103 of 12.12.2000 to hear the objections filed by the landowners. It was also pointed out that after hearing the objections the report of the Chairman was put up before the Trust and the same was approved by the trust in its meeting dated 1.1.2002 (Annexure P10). The objections filed by the landowners were duly considered by the Trust itself and not by the Chairman alone, and thus, the argument raised by Shri Punchhi was without merit The said argument raised by the learned Counsel for the Respondent could not be refuted by the Petitioners in any manner Not only this, any irregularity committed by any committee of the Trust while disposing of the functions of the trust cannot be said to be vitiated by virtue of Section 101(E) of the Act, which reads as under:

101. Validation of acts and proceedings - (1) No act done or proceedings taken under this Act shall be questioned on the ground merely of-

(a) to (d) xxx xxx xxx

(e) any omission defect or irregularity not affecting the merits of the case.

18. Thus, keeping in view the cumulative effect of the aforesaid provisions of the Act and the fact that the Chairman of the Trust was duly authorised to hear the objections and his report was duly approved by the trust, the argument raised by the learned Counsel for the Petitioners, has no merit and is, therefore, rejected.

19. In view of the discussions in the foregoing paragraphs, we find no merit in all these writ petitions and the same are dismissed.