

(2012) 04 P&H CK 0180

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 3117 of 2005 (O and M)

Rajesh Kumar and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: April 26, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Municipal Act, 1911 - Section 195A, 24, 25

Citation: (2012) 4 RCR(Civil) 201

Hon'ble Judges: M.M. Kumar, Acting C.J.; Alok Singh, J

Bench: Division Bench

Advocate: H.S. Sethi, for the Appellant; Sudeepti Sharma, DAG, Punjab for Respondent Nos. 1 and 4, Mr. S.C. Pathela, Advocate for Respondent No. 2 and Mr. Kanwaljit Singh, with Mr. Rohit Gupta, Advocate, for the Respondent

Judgement

M.M. Kumar, Acg. C.J.

The instant petition filed in public interest under Article 226 of the Constitution has brought to the forefront the issue concerning allotment of plots at Pathankot to dalit families in the year 1979 and the legality of their subsequent sale in the year 2004. The prayer made in the petition is that direction be issued in respect of such plots restraining the vendee-respondent No. 3 from raising construction of building on Plot Nos. 50, 59, 60 and 61, situated at Patel Chowk, Pathankot, by converting such plots into a shopping complex, alleging that the plots were given free of cost by the Improvement Trust, Pathankot-respondent No. 2 to the dalit families (weaker section of the people). Brief facts of the case are that on 13.3.1979 the respondent Improvement Trust framed a rehabilitation scheme for allotment of plots for dalit parivars, who were living in Jhuggis and kacha houses at Pathankot. The respondent Trust recommended to the Government that such dalit families be given plots measuring 2 marlas free of cost so that they could construct pakka houses and live a respectable life. The proposal made by the Trust was approved on 11.6.1979 and the

Government also released a sum of Rs. 4,2,400/-as the cost of the land. Accordingly, plots measuring 2 marlas were allotted to the dalit families by the respondent Trust.

2. The petitioners under some mistaken belief stated that there was a blanket ban on the sale of such plots/houses. Accordingly, they have alleged that respondent No. 3, who is a Municipal Councilor, purchased four vacant plots measuring 2 marlas each, from their allottees, vide transfer deeds executed on 18.8.2004 and 25.8.2004, namely, Plot Nos. 50, 59, 60 and 61, situated at Patel Chowk, Pathankot. On 2.11.2004, a complaint was made to the District Town Planner, Gurdaspur, alleging that in the residential area, commercial construction was being raised by respondent No. 3 after purchasing the plots in illegal manner and a request for holding an inquiry was made. The District Town Planner-respondent No. 4 visited the spot and submitted his report concluding that the plots which were allotted to dalit families free of cost in the year 1979 have been purchased by respondent No. 3 in a fraudulent manner and the transfer deeds have been registered in his name by virtue of withholding actual documents and vital information. The report further stated that the construction had been raised by clubbing four plots, which was commercial in nature. It has also been pointed out that in case the dalit families wanted to indulge in illegality of sale of plots then the plots in question should have been resumed and it should have been re-allotted to other deserving dalit families for rehabilitation (P-1).

3. In response to notice of motion, a joint written statement has been filed by respondent Nos. 1 and 2. In para 3 of the written statement it is conceded that in the letter of allotment a blanket condition, restraining the allottee from alienating the plot to anyone by way of sale, gift etc., has been incorporated. It has also been stated in para 1 that a Sub Committee headed by the Chairman of the Improvement Trust was constituted, vide Resolution No. 8/86, dated 30.11.2004 (R-2/1), which submitted its report on 24.1.2005. The report was placed before the Trust and it was decided to keep the matter pending vide resolution No. 13/100, dated 27.1.2005. On 4.3.2005, another resolution No. 111 was passed and it was decided to send the case to the District Town Planner, Gurdaspur, for technical opinion (R-2/2 and R-2/3). As the construction raised was commercial in nature whereas the area fell under the development scheme meant for residential purpose, the respondent Trust issued a notice dated 25.10.2004, u/s 195-A of the Punjab Municipal act, 1911 read with Section 49 of the Punjab Town Improvement Act, 1922 (for brevity, "the Act"), to respondent No. 3 asking him to stop construction failing which action was to be taken (R-2/4). Similar notices were also issued to the original allottees of the plots. On 29.10.2004, the respondent Trust issued another notice to Shri Anil Vij, father of respondent No. 3, requiring to demolish the construction raised by him in violation of the sanctioned plan (R-2/5).

4. A separate reply has been filed by respondent No. 3 alleging that the public interest litigation, in fact, is a recourse adopted for taking personal revenge by the

petitioners from his father who had refused to oblige anyone for any illegal favour. His father has been re-elected as Municipal Councillor by the residents of his ward in Pathankot. On this ground alone, a prayer has been made for dismissal of the writ petition. However, in para 2 of the preliminary submissions, it has been stated that the Scheme was approved by the State Government on 26.9.1978 (R-3/1) and there was a categorical clause to the effect that the allottee was not to sell the plot for 10 years. According to the averment made in the written statement the allotments were made in the year 1980 and the plots were purchased by respondent No. 3 vide sale deeds dated 18.8.2004 and 25.8.2004. In support of his claim, respondent No. 3 has placed on record the Scheme (R-3/1). The subject of the letter dated 26.9.1978 is "Allotment of plots to Harijans free of cost as per Government Scheme". According to clause (vii), the allottee was not permitted to alienate his or her rights in the plot for a period of 10 years except by succession in case of his or her death. The sale deeds pertaining to the aforesaid four plots of two marlas each have also been placed on record (R-3/3 to R-3/6), which shows that the land was purchased after a lapse of more than 24 years of the original allotment made in favour of the vendors. Respondent No. 3 has also asserted that the entire area has acquired commercial character and there were hardly any residential area left, inasmuch as, many shops have come up which included even branches of banks like ICICI and the hospital. A copy of the site plan showing shops, godowns, hospital etc. has been placed on record (R-3/7). It has been stated that every step has been taken in accordance with law and the construction cannot be regarded as invalid.

5. We have heard learned counsel for the parties and perused the record. According to the provisions of the Town Development Act, a "development and expansion scheme" u/s 24 and "Housing accommodation scheme" u/s 25 could be framed to facilitate the policies of the State. The respondent Trust had land available, measuring about 270 marlas in area No. 283 Part-I Scheme and another 283 marlas in the Development and Expansion Scheme of Timber Market and Truck Stand Scheme. According to the views of the Trust, the land could be utilised for free allotment to the Harijans as per Government policies. Eventually scheme was framed which was sanctioned by the State Government. In the sanctioned scheme (R-3/1), clause (vii) specifically reads as under:

vii) The allottee shall not be allowed to alienate his/her rights of the plot for a period of 10 years, except by succession in case of his/her death.

6. In para 7 of the additional affidavit, dated 15.8.2005, filed by the Chairman, Improvement Trust, Pathankot, the incorporation of the aforesaid condition has been conceded. It has been stated in para 7 that the condition of bar of alienation to the allottees mentioned in the allotment letter was in conflict with the project report approved by the State Government. In para 7, condition No. (vii) [supra] has been reproduced. It has also been stated in para 8 that the District Town Planner, Gurdaspur as well as the Chief Town Planner, Punjab, vide their letters dated

6.7.2005 and 26.6.2005 (R-2/10 & R-2/15 respectively) have proposed that the Trust may seek a lay out plan of the scheme area revised from the government u/s 43 of the Act, so as to regularise the violation made in the construction i.e. changing the nature of the land from residential area to commercial area, by charging reasonable conversion charges. Accordingly, on 19.7.2005 a request was sent to the Director, Local Government, Punjab, to accord formal approval for carrying out amendment u/s 43 of the Act and to permit the change of land use from residential to commercial in respect of the plots mentioned in the letter with a view to regularise the violations in the scheme area (R-2/11). The respondent Trust also unanimously passed a resolution No. 11/31, dated 25.7.2005, to accept the proposal of the District Town Planner and sent the request to the Government u/s 43 of the Act so as to permit the change of land use in respect of the plots including the plots in question from residential to commercial (R-2/12). A lay out of the plan of the scheme depicting violations in the construction made by the occupants in the scheme area, which were sought to be amended, has been placed on record (R-2/13). In pursuance of the aforesaid proposal, the State Government has issued a notification dated 25/26.9.2006, a copy of which is taken on record as Mark "A". The said notification reads as under:

In exercise of the powers conferred by section 43 of the Punjab Town Improvement Act, 1922 and all other powers enabling him in this behalf, the Governor of Punjab is pleased to accord sanction to the partial modification of the layout plan (bearing Drg. No. PIT/-sic dated 6.5.91) of sanctioned Development Scheme of 2 & 3 part-I of Improvement Trust, Pathankot, approved and notified vide Punjab Government notification No. 6/40/90-ILGII/5043 dated 21.4.94 to the extent as shown in the layout plan Drg. No. PIT/330-A/06 dated-sic-and Drg. No. PIT/330-B/06 dated 6.6.2006, subject to the levy of conversion charges @ Rs. 2000/- (Rs. Two Thousand) per sq. yd. each floor and compounding fee as applicable for the building violations committed by the plot holders if any. Wherever applicable, the schedule of clauses pertaining to the layout plan shall be the same as already sanctioned by the Govt. vide notification No. 6/40/90-II. GII/5043 dated 21.4.94.

The aforesaid discussion would show that there was no illegality in the sale of plots in question as the bar for sale of plots was only for a period of ten years and violation of conversion of residential area into commercial area has been permitted to be regularised by the Government by issuance of notification dated 25/26.9.2006 (Mark "A"). It is worthwhile to notice that change of land use from residential to commercial is permissible u/s 43 of the Town Improvement Act subject to the condition that scheme had not been completed. We have, therefore, proceeded on the assumption that the scheme floated by the Trust was not completed and, therefore, changes were allowed. However, the notification stipulated that such regularisation of violation is subject to the levy of conversion charges @ Rs. 2000/- per sq. yd. each floor and compounding fee as applicable for the building violations committed by the plot holders, if any. Accordingly, we find that the controversy

raised in the larger public interest by the petitioners would not survive any further because sale of plots after ten years was not illegal and there was no blanket ban. As the sale was after ten years it could not be regarded as illegal. Secondly the change of land use from residential to commercial has been permitted by notification dated 25/26.9.2006 (Mark "A"). Of course the charges as per the notification dated 25/26.9.2006 (Mark "A") have to be paid. The respondent Trust would be entitled to recover those charges, if already not recovered. The Chairman, Improvement Trust, Pathankot, shall file a report whether respondent No. 3 and other violators have paid the conversion charges and compounding fee for the violations. The status report be filed within two months i.e. on or before 31.7.2012. Accordingly, the instant public interest litigation is closed.