

(1991) 03 P&H CK 0120

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 102 of 1986

Jai Gopal Gupta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 26, 1991

Citation: (1991) PLJ 733 : (1991) 2 PLR 50 : (1992) 1 RRR 205

Hon'ble Judges: R.S.Mongia, J

Advocate: Karminster Singh, Advocate, Hemant Kumar, Advocate., Advocates for appearing Parties

Judgement

R.S. Mongia, J.

Jai Gopal and Asha Devi, petitioners before me were the owners of the land within the revenue estate of Khanna Town. Petitioner No. 1 owned 14 marlas of land and petitioner No. 2 owned 15 marlas of land separately, whereas they also jointly owned 6 marlas of land. This land falls within Khasra Nos. 2210 and 2211.

2. Khanna Improvement Trust, Khanna, respondent No. 2 (hereinafter referred to as the Trust) framed a scheme under the Punjab Town Improvement Act, 1922 and a notification in that respect under Section 36 was issued on 14.9.1973. Vide this notification, intention of the Trust to acquire 176 kanals and 5 marlas of land situated within the local area of the town was indicated for development of residentialcumcommercial centre. This included the land owned by the petitioners. After bearing the objections etc., finally the notification under Section 42 was published on 17.10.1975 and the award for compensation of the land was given by the Land Acquisition Collector on November 25, 1981,

3. The State Government exercising powers under Section 73(i)(xiii) of the Act framed Rules known as Utilisation of Land and Allotment of Plots by improvement Trust Rules, 1975 (hereinafter called as 1975 Rules). These rules came into force with effect from September 18, 1975. Under the 1975 Rules, provisions were made for allotting plots at the reserved price to the displaced persons whose land had been acquired. Rule 2(a) of the 1975 Rules defines the local displaced persons in the

following terms :

2(a) "Local displaced person" means a person who is the owner of a property acquired by the Trust for the execution of a Scheme and has been such owner for a continuous period of two years immediately before the first publication of the Scheme by the Trust under Section 36 of the Punjab Town Improvement Act, 1922. "

Rule 7 talks of the reservation of plots and tenements. Rule 7(b) (ii) is reproduced below for ready reference :

7(b) (ii) " A local displaced person may be allotted a plot upto the size of 500 sq. yds., on freehold basis on reserve price calculated on the basis of the formula in the Annexure, if the area of the land owned by him and acquired by the Trust is more than 500 sq. yds. If the area of the acquired land is less than 500 sq. yds. the local displaced person shall be entitled to allotment of plot which is nearest in size, next below the area of his land, which has come under acquisition."

Since according to the petitioners, they were entitled to the allotment of plots under the 1975 Rules, they applied to the Trust. The Improvement Trust conveyed the decision on the point vide letter dated July 16, 1976 (Annexure P1) intimating to the petitioners that decision had been taken to allot one plot each to the petitioners. Letter dated July 16, 1976 reads as under :

Subject : Exemption of two plots measuring 11 7x8l.

Reference your letter dated 18.6.1976 and telegram.

2. It is for your information that the decision taken in the meeting held on 5.4.1976 at Chandigarh under the Chairmanship of Sh. Hans Raj Sharma Honourable Minister for Local Govt. Punjab Chandigarh is binding upon the Trust and you. In the light of the above decision taken, you will be provided two plots, from Kothi of Sh. M.M. Toki, towards Janj Ghar after leaving one plot from Kothi of Sh. M.M. Toki. This is for your necessary information.

Sd/ Chairman,

Improvement Trust,

Khanna. "

In spite of the above said decision, the petitioners were not delivered the plots and further representations were made to the Trust. The executive officer of the Trust wrote to petitioner No. 1 on January 25, 1982 (Annexure P2) that in view of the letter dated July 16, 1976, it had already been decided to allot two plots to the petitioners and the said decision was binding on the Trust as well as on the petitioners. Further it was mentioned that the reserved price of the plots would be recovered from the petitioners before physical possession of the plots was handed over to them,

4. In spite of the communications dated July 16, 1976 (Annexure P1) and January 25, 1982 (Annexure P2), possession of the plots was not delivered to the petitioners; rather an advertisement was issued in the newspaper for disposing of the plots by draw of lot. Advertisement was issued on September 29, 1985. Petitioners filed the present writ petition and when notice of motion was issued on January 10, 1986 by motion Bench, it was ordered that two plots shall be reserved for the petitioners till further orders.

5. The State government promulgated the Punjab Town Improvement (Utilisation of Land and Allotment of plots) Rules, 1983 which came into force with effect from December 22, 1983. These 1983 Rules repealed the 1975 Rules. Rule 4(2) of the 1983 Rules is in the following terms :

"4(2) A local displaced person shall be allotted a residential plot on reserve sale price in accordance with the following criteria; provided he applies for such allotment in Form "A" within a period of three years from" the date of taking over the possession of his land acquired by the Trust."

6. On one hand the petitioners, as stated above, were not allotted plots as per the decision conveyed vide letter dated July 16, 1976 and January 25, 1982 (Annexure P1 and P2) but on the other hand an advertisement was issued by the Trust on September 29, 1985 proposing to dispose of the plots by draw, meaning thereby that if the applicants for allotment of the plots were more than the plots available then draw of lots will take place. Petitioners filed the present writ petition in this Court claiming the allotment of two plots on the reserve price as per the decision of respondents which had been referred to above. The objection which was taken in the written statement by the respondents was that the petitioners' case for allotment of plots can be considered only in case the petitioners' make applications in Form "A" as provided in 1983 Rules. As the petitioners had not moved applications on the prescribed form, as such their case could not be considered for allotment of plots as local displaced persons. As then advised, the petitioners' counsel sought adjournment to make an application to the Trust and get the decision. The application having been made to the Trust for allotment of plots, the same was considered by the Trust and was rejected vide order dated 11.8.1986 (Annexure P10) on the ground that since the area of petitioners land which had been acquired was less than half an acre, they were not entitled to allotment under Rule 4(2) of 1983 Rules quoted above. Consequently, the petitioners amended the petition and challenged order Annexure P10 rejecting their application for allotment of plots.

7. Learned counsel for the petitioners has submitted that there was no reason to reject the application of the petitioner inasmuch as they had earlier moved an application for allotment of plots and the Trust had decided to allot plots to the petitioners and that decision had been conveyed on July 16, 1976 which has already been quoted above. This was yet followed by a letter from the executive officer of

the Trust dated January 25, 1982 to the effect that the petitioners would be allotted plots. The counsel submits that under these circumstances, there was no need to move any fresh application under the 1983 Rules. The counsel further contended that in fact the case of the petitioners is covered by 1975 Rules which had come into force on September 18, 1975 prior to the finalisation of the scheme by the Trust on October 17, 1975. Under the 1975 Rules, there was no prescribed form under which an application for allotment of a plot had to be given. According to the counsel, a right had come to vest in the petitioners under the 1975 Rules to get allotment of plots and that could, not be taken away by the 1983 Rules which limited the allotment of the plots only to those displaced persons whose acquired land measured half an acre or more. The case of the respondents is that since the case of the petitioners is not covered under the 1983 Rules, they are not entitled to the allotment of plots.

8. After giving my thoughtful consideration to the matter, I am of the view that this petition must succeed. Petitioner's case had to be considered under the 1975 Rules and in fact it had earlier been rightly considered by the Trust and a decision had been taken in its meeting held on April 5, 1976 and the same had been conveyed on July 16, 1976 that the petitioners would be allotted plots. No fresh application was required to be made by them under the 1983 Rules as the case of the petitioners was covered under the 1975 Rules and a decision had already been taken. In this view of the matter to say that since the petitioners' land which had been acquired was less than half acre, they are not entitled to the allotment under the 1983 Rules, is incorrect.

9. For the foregoing reasons, the writ petition is allowed. Order of the Trust dated August 11, 1986 (Annexure P10), is hereby quashed and respondent Trust is directed to deliver the possession of the plots, as mentioned in the decision conveyed on July 16, 1976, to the petitioners within one month of the receipt of this order subject to the petitioners' depositing necessary dues as required by the Trust. There will be no order as to costs.