(2008) 08 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Arvind Nohria APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:
Land Acquisition Act, 1894 — Section 11A, 18, 9

Citation : (2008) 151 PLR 791 : (2009) 1 RCR(Civil) 177

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has sought a writ of certiorari seeking quashing of the notification dated 21.6.1974 (Annexure P.1) u/s 36 of the Punjab Town Improvement Trust Act, 1922 (for short ''the Act''); notification dated 16.4.1976 issued u/s 42 of the Act and also the order dated 11.5.2001 (Annexure P.13), whereby the resolution of the Improvement Trust was annulled by the State Government.

2. The brief facts out of which the present writ petition arises are that the petitioner purchased an area measuring 3S00 square yards by two separate registered sale deeds dated 22.8.1973 and 2.11.1973. The petitioner constructed a petrol pump, which was commissioned on 20.5.1974. The petitioner alleged that he built the boundary wall around the entire land and two rooms at the two rear corners of the plot and that two steel gates were fitted in the boundary wall and a tubewell was dug for providing water for the service station. It is pointed out that the Improvement Trust Patiala, framed a development scheme for an area measuring 40.25 acres known as Truck Stand and Booking Agency Scheme under the Act. A notification u/s 36 of the Act was first published on 21.6.1974, whereas the notification u/s 42 of the Act was published on 16.4.1976. On 2.3.1978, the Land Acquisition Collector announced the Award in respect of the land except one bigha of land purportedly left for the petrol pump which was likely to be exempted. No compensation was assessed for the alleged

constructions standing on the land, whereas compensation of Rs. 17,250/- was assessed by the Collector for acquisition of the land.

3. Aggrieved against the said determination of the compensation, the petitioner sought, a reference to the Court u/s 18 of the Land Acquisition Act, 1894 on 10.4.1978. It was thereafter on 19.5.1978, the State Government exempted the petrol pump set up by the petitioner from acquisition subject to payment of development charges and exemption fee etc. and that the other area of the petitioner around the petrol pump shall be acquired. On 6.2.1979, the petitioner filed a civil suit for injunction restraining the Improvement Trust from dispossessing the petitioner. The Civil Suit filed by the petitioner was dismissed as withdrawn on 28.7.1980. The petitioner filed an application before the Tribunal for stay of dispossession of the petitioner as no compensation was assessed for the kothas: tubewell; boundary wall etc. The stand taken up by the Improvement Trust in the reply dated 15.1.1980 was to the effect that if any construction or tubewell is found on the site acquired, the same will be got assessed under the supplementary award and the payment will be made to the petitioner. The petitioner relies upon a report dated 7.2.1980 prepared by the Improvement Trust''s Engineer (Annexure P.6) as per the directions of the Tribunal dated 23.1.1980.

4. Still further the petitioner sold the leasehold rights of 1500 square yards area i.e. the land underneath the petrol pump, thereby retaining lease hold rights in respect of the remaining area. It was also pointed out that the Supplementary Award has not been given within a period of two years and, therefore, in terms of the provisions of Section 11-A of the Land Acquisition Act, 1894, as inserted by the Central Act No. 68 of 1984, the acquisition proceedings stand lapsed. The petitioner made a representation for release of his land from acquisition on 27.1.1988 on the said grounds. A resolution was passed by the Improvement Trust agreeing to release the land in dispute from acquisition under the provisions of Section 56 of the Act. The petitioner deposited a sum of Rs. 3,570/- as development charges. In pursuance of the said resolution, an agreement was also executed. But, the notification, as contemplated u/s 56 of the Act, was not issued. It was almost 11 years later, the petitioner submitted a representation on 19.1.1999 for release of his land. It was thereafter, an order was passed by the State Government on 11.5.2001 u/s 72-E of the Act annulling the resolution dated 27.1.1988. Thus, the petitioner has sought to challenge the notification dated 21.6.1974 (Annexure P.1) and 16.4.1976 (Annexure P.2) as well as the order dated 11.5.2001 (Annexure P.13).

5. The State Government in its short reply averred that the representation of the petitioner regarding the exemption was considered at couple of occasions in consultation with the Chief Town Planner of the Government of Punjab and Department of Local Government. It was observed that the land sought to be exempted did not quality for exemption as per the policy of the Government dated 8.9.1976. The prerequisites for exemption of any land stipulate that no

vacant plot shall be exempted and in respect of the built up property, the exemption is permissible only if the building is constructed before the preliminary notification of the scheme, subject to its fitting in overall layout of the Scheme and standard of the construction should be ''A'' class.

The Improvement Trust in its separate reply denied that construction of a boundary wall around the entire land and two rooms at the two rear corners of the rooms. It was denied that there was any construction other than the petrol pump at the time of the publication of the notification. Reliance was placed upon a letter Annexure R.1 written by the petitioner on 21.10.1975 in respect of the construction, namely, petrol pump alone. Reference is also made to another letter of the petitioner issued on 27.11.1976 (Annexure R-3), wherein it has been pointed out that the adjoining site to petrol pump has not been developed as it was left by the Company for preparing the workshop to facilitate repairing of the trucks and other automobiles and that if the Improvement Trust cannot leave adjoining land, the petitioner communicated that he will have no objection in handing over the same to the Improvement Trust against the due compensation for the land and construction. In another communication (Annexure R.4) dated 8.11.1978, the petitioner had communicated that the area around the petrol pump is fixed for putting up ancillary industry and such area is situated at very low lying area and it has to be filled up and raised by at least 9 feet. As such, it would not be economical for the Improvement Trust to acquire the said land. It is, thus, averred that there was no other construction on the land acquired and in any case, even the report of the Engineer of the Improvement Trust is not indicative of any ''A'' Class construction.

6. Learned Counsel for the petitioner has vehemently argued that in the written statement before the Civil Court, it was stand of the Improvement Trust that the construction other than the petrol pump is also in existence. Since no compensation has been paid by the Improvement Trust in respect of such construction, therefore, the acquisition of the remaining land is not sustainable. It is also argued that the reason for annulling the resolution is the policy instructions of the State Government dated 8.9.1976, whereas in terms of Section 72-E read with Section 72-B of the Act, such Instructions cannot form the basis for annulling the Resolution as it is not part of the Statute or the Rules framed thereunder, the violation of which alone empowers the State Government to annul the resolution of the Improvement Trust. It is further contended that the public interest, the reason for annulling the resolution, is not a ground for annulment in terms of Section 72-E read with Section 72-B of the Act. It is also pointed out that the State Government has decided to annul the resolution in the year 2001 ''i.e. more than 13 years after the Improvement Trust resolved to exempt the land of the petitioner. Therefore, the decision of the State Government annulling the resolution suffers from gross delay and laches and affects the rights of the petitioners adversely and, therefore, such decision taken by the State Government cannot be sustained. It was also argued that the order (Annexure P.13) has been passed without granting any opportunity of hearing or

a show cause notice to the petitioner. Reliance is placed upon a Division bench judgment of this Court reported as The Mahajan Co-operative House Building Society Vs. State of Punjab and Others, .

7. In reply, learned Counsel for the respondents has pointed out that there is no admission by the respondents in respect of the construction over the land acquired other than the land underneath the petrol pump. The reply filed before the Civil Court or before the Tribunal has to be read in the context of averments made in the application. Therefore, the contentions of the petitioner are not tenable.

8. Before proceeding farther, it would be just and proper to reproduce certain provisions of the Act:

42. Notification of sanction of scheme.- (1) The State Government shall notify sanction of every scheme under this Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of Section 27 have been fulfilled.

(2) A notification under Sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Provided tat no notification in respect of sanction of scheme shall be issued after the expiry of three years from the date of first publication of notice relating to that scheme u/s 36.

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43. Alteration of scheme after sanction.- A scheme under this Act may be altered by the Trust at any time with the prior approval of the Government between its sanction by the State Government and its execution.

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56. Abandonment of acquisition in consideration of special payment.- (1) wherever in any locality comprised in any scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme the owner of such land, or any person having an interest therein, may make an application to the Trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

Provided that no land shall be deemed to be unnecessary for the execution of the scheme, unless the State Government, after making such enquiry as it may deem fit, declares it to be so by a notification in the Official Gazette.

(2) The Trust shall admit every such application if it:

(a) reaches it before the time fixed by the Collector, u/s 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and xxx xxx xxx

72-B. Power to suspend any resolution or order of Trust.- The Deputy Commissioner may by order in writing, suspend the execution of any resolution or order of a Trust or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act or in pursuance of any sanction or permission granted by the trust in the exercise of its power under the Act, if, in his opinion, the resolution, order or act is in excess of the power conferred by law or contrary to the interests of the public or likely to cause waste or damage of trust funds or property or the execution of the resolution or order of the doing of the act, is likely to lead to a breach of peace to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons.

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73-E. Powers of State Government and its officers over trust.- (1) The State Government and Deputy Commissioners acting under the orders of the State Government, shall be bound to require that the proceedings of trusts shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the trusts have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceedings which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner u/s 72-B.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rules made in this behalf by the State Government.

9. The entire case of the petitioner is based upon two facts, namely, firstly, the resolution was passed by the Improvement Trust on 27.1.1988 resolving to exempt the land of the petitioner from acquisition and secondly that the land subject matter of acquisition has constructed area over it and thus, in view of the averments made in the written statement filed before the Tribunal as also before the Civil Court, the same cannot be acquired.

10. A scheme as published u/s 42 of the Act, is conclusive evidence in respect of framing and sanctioning of the scheme. The said scheme can be altered by the Improvement Trust at any time with the prior approval of the Government. Still further, no land shall be deemed to be unnecessary for the execution of the scheme unless the State Government after making such inquiries declare it to be so by the Notification in the Official Gazette. Admittedly, no such notification has been issued by the State Government. In fact, after the resolution was passed by the Improvement Trust in the year 1988, the petitioner made representation only

in the year 1999 to the State Government to seek abandonment of the Scheme. In the absence of notification under Sections 43 and 56 of the Act, no right accrues to the petitioner to seek abandonment of the Scheme in respect of the land of the petitioner.

11. Still further u/s 43 of the Act, the Scheme can be altered by the Improvement Trust with the prior approval of the Government. The policy decision dated 8.7.1976 are the broad parameters, which have been fixed by the State Government for alternation of the scheme even after the same was finally published u/s 42 of the Act. The instructions dated 8.7.1976 have been issued in exercise of the executive powers of the State. The same is not shown to be inconsistent with any of the provisions of the Statute or the Rules framed thereunder. Therefore, it is open to the State Government to frame guidelines to exercise its power for alteration of the Scheme u/s 43 of the Act. Thus, I do not find that such instructions cannot be taken into consideration by the State Government for the purpose of alternations in the Scheme. Still further u/s 56 of the Act, the land if it is found to be unnecessary for the execution of the scheme, the same can be abandoned. Where the land is unnecessary for execution, the State Government has to declare its intention by way of a notification in the Official Gazette. Admittedly, the State Government has not issued any notification abandoning the scheme u/s 56 of the Act. In the absence of the notification issued by the State Government abandoning the Scheme, the petitioner cannot claim any right in the land.

12. An order has been passed by the State Government u/s 73-E of the Act, annulling the resolution passed by the Improvement Trust in the year 1988. Section 73-E of the Act empowers the State Government to exercise all powers necessary to ensure that the proceedings of the Improvement Trust are in conformity with the law and Rules enforced under any enactment for the time being applicable in the Punjab. The State Government can exercise such powers "the reasons" which in its opinion justify the passing of the order by the Deputy Commissioner u/s 72-B of the Act. When the State Government has been empowered to require that the proceedings of the Improvement Trust have to be in conformity with the law and with the Rules framed under any enactment for the time being applicable, that will also include the policy instructions of the State Government dated 8.7.1976 framed in exercise of the Executive Powers of the State. u/s 72-B of the Act, the Deputy Commissioner has been given power to suspend any resolution or order of the Improvement Trust, if the Deputy Commissioner is of the opinion that the resolution, order or an act is in excess of powers conferred by the law or contrary to the interest of the public or likely to cause damage to the Improvement Trust''s funds or property. Therefore, non compliance of such instructions is a reason which would justify a command of the State Government in respect of a resolution passed by the Improvement Trust.

13. The judgment in Mahajan Co-operative House Building Society''s case (supra), relied upon by the learned Counsel for the petitioner is distinguishable.

In the said case, the counsel for the Improvement Trust had made a statement before this Court that the allotment of the plots to the members of the Society will be considered at the next draw. Such statement was made in pursuance of a resolution passed by the Improvement Trust. But such resolution was annulled subsequently by the State Government. Since the right of allotment of plot was created by virtue of a resolution passed by the Improvement Trust, which has formed part of the order passed by this Court as well, therefore, the finding recorded by the Court that the failure to grant opportunity of hearing violates the principles of natural justice and thus, the order annulling the resolution stands vitiated. In the present case, the land of the petitioner was acquired by virtue of a notification published under Sections 36 and 42 of the Act. Even the Award has been announced by the Land Acquisition Collector. It is the petitioner, who is asking for abandonment of the Scheme. Since the petitioner is asking for a concession, therefore, it cannot be said that he is entitled to an opportunity of hearing before declining such concession. Even otherwise, the order annulling the resolution does not substantially change the nature of the claim of the petitioner. Admittedly, there is no notification issued in respect of abandoning the scheme or alteration of the scheme in terms of Section 43 and 56 of the Act. In the absence of any effective notification to alter the scheme, the petitioner could not claim any benefit on the basis of the resolution passed by the Improvement Trust alone.

In view of the above, I do not find any merit in the present writ petition. Hence, the same is dismissed.