(1996) 12 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8770 of 1987

Ashok Kumar APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Town Improvement Act, 1922 — Section 36

Citation : (1997) 1 CivCC 543 : (1997) 116 PLR 675 : (1997) 3 RCR(Civil) 110 : (1997) 2 RCR(Criminal) 223

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Sarjit Singh and G.S. Punia and Munishwar Puri and R.K. Gupta, for the Appellant; T.S. Gujral and Tarunjit Singh Gujral and P.S. Chhinna, D.A.G. (P), for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—By this judgment I dispose of two writ petitions bearing No. 8770 of 1987 titled ''Ashok Kumar v. The State of Punjab and Ors.'', and No. 1105 of 1989 titled ''Ravinder Singh and Ors. v. State of Punjab and Ors. as common question of law and facts is involved in both these writ petitions.

2. Writ petition No. 8770 of 1987 has been filed by Ashbk Kumar and others, against the State of Punjab. The Chairman, Improvement Trust, Nabha, the Land Acquisition Collector, Nabha Improvement Trust and the Municipal Committee, Nabha, under Articles 226/227 of the Constitution of India praying for the quashment of scheme relating to Sarai Shadiat, Duladi Gate Nabha, sanctioned by the Govt. under Sub-section (1) of Section 41 of the Punjab Town Improvement Act, 1922,''dated 31.3.86 and for setting aside the proceedings taken Under Sections 36, 38 and 40(l) of the said Act and for setting aside the notice of the Land Acquisition Collector, Nabha dated 27.10.1987 and directions have also been sought by the petitioners against respondent No. 3 i.e. the Land

Acquisition Collector, Nabha, not to dispossess them from their shops situated in Sarai Shadiat, Duladi Gate, Nabha.

3. The case set up by the petitioner in this writ petition is that a huge building known as Sarai Shadiat Duladi Gate, Nabha, was constructed under the orders of the Ruler of Erstwhile Nabha State about 60 years back and building was being used by the residents of Nabha at the time of marriages and other ceremonies and about 60 shops were constructed on the ground floor which fetched rent to the Nabha State. After the partition of the country in 1947, this building vested in the Municipal Committee, Nabha and it started leasing out the shops to different persons and the main two-storeyed building was being used for the purposes of marriages and other religious ceremonies. The Municipal Committee, Nabha leased out some of the shops more than 20 years back to the petitioners and their ancestors and the petitioners are at present in possession of these shops and this Sarai Shadiat is being leased out by the Municipal Committee and the petitioners have been paying the rent to the Committee. In the year 1980-81, the petitioners were asked by the Committee to increase the rent of these shops ''according to the market value or to vacate the shops as the Committee wanted to rent out these shops on much higher rates. That when the petitioner and others did not agree to vacate the shops, respondent No. 4 Municipal Committee, passed some resolution to demolish the building along with the shops, on the ground that the building along with shops had become dangerous for human life. In the year 1982 the Committee started to demolish the upper storey of the Sarai Shadiat and gave the contract to Romesh Kumar and Amar Nath for the demolition of the whole building along with the shops. Four petitioners namely Inderjit, Ashok Kumar, Pritam Singh and Mohinder Singh filed a suit for injunction in the Court of Sub-Judge 1st Class, Nabha, against the Municipal Committee and two contractors restraining them from demolishing the shops. In the said suit, the Committee admitted that the plaintiffs are the lessees. After contest, the suit was decreed and the Committee was restrained from causing any damage to the shops in question vide judgment dated 12.6.1984. The petitioners allege that in order to gain their purpose and in order to harass the petitioners, the Improvement Trust Nabha framed a scheme u/s 24 read with Section 28 of the Town Improvement Act for the demolition of the shops. While framing the scheme, the Improvement Trust, Nabha did not comply with the provisions of Section 36(1) of the Town Improvement Act as it failed to give notice as required u/s 36(2) of the said Act for three consecutive weeks in the official Gazette and in newspapers with the statement of the period within which the objections would be received. No proper publication of the scheme was made and the petitioners and others were kept in dark, as required u/s 36 of the Act. The petitioners further allege that some notices u/s 38 of the Act were issued to some of the petitioners on 30.5.1985 and they were asked to inform other partners and co-sharers and in these notices it was only mentioned that the property under their possession would be taken over by the Trust. It was not specified by the Trust that objections could be filed within a period of 60 days

and as such notices u/s 38 of the Act are, bad. Some of the petitioners raised objections before the Chairman, Improvement Trust that they are the old tenants of the Committee and that they are paying rent regularly and that the earlier Committee wanted to evict them from those shops and they filed a suit. It was also represented to the Chairman, Improvement Trust that alternative accommodation be provided to the petitioners and till that accommodation is provided, they cannot be evicted from the shops. However, the Improvement Trust Nabha after the expiry of the notice Under Sections 36 and 38 of the Act and without considering the objections and representations made by the petitioners proceeded with the scheme by submitting it to the State Government. Nothing has been mentioned in the scheme about the rehabilitation of those persons who are likely to be affected on account of the implementations of the scheme. The State Govt. sanctioned the scheme without ensuring the compliance of the provisions of Sections 36, 38 and 40(1) of the Town Improvement Act. The scheme framed by the Trust and sanctioned by the Govt. is liable to be quashed on the grounds that the provisions of Sections 36, 38 and 40 of the Town Improvement Act have not been complied with. Moreover, the framing of the scheme and its sanction by the State Govt. is discharge of a colourable exercise of powers. With the above main averments, the petitioners have prayed for the appropriate reliefs as mentioned in the earlier portion of this judgment.

4. Notice of the writ petition was given to the respondents. The State of Punjab, respondent No. 1 filed written statement and denied the averments. Some preliminary objections, were taken and it was submitted that development scheme for the area known as Sarai Shadiat near Duladi Gate Nabha was framed by the Trust Nabha vide resolution No. 3 dated 15.3.1986. The petition suffers from vice of delay and laches and deserves to be dismissed. That the finality is attached to the scheme when notification regarding its having been sanctioned u/s 41 of the Punjab Town Improvement Act, 1922 is published in the official gazette u/s 42 of the Act and it is conclusive evidence of the fact that scheme has been duly framed and sanctioned and as such the claim cannot be impugned on the grounds taken in the writ petition: It was also pleaded that the petitioners are fully guilty of wilful suppression of truth inasmuch as most of them have earlier filed civil suits wherein the Addl. Senior Sub Judge, Nabha came to the conclusion that no relationship of landlord and tenant existed between the petitioners and the Municipal Committee, Nabha. The Civil Court declined to grant injunction prayed for by the Improvement Trust, Nabha. On merits, the stand of respondent No. 1 is that the building in question is 95 years old and it had become unsafe and unfit for human habitation which the passage of time and it was on the verge of collapse when the scheme was framed. It was only in performance of its moral and civic duties that respondent No. 4 got the building declared as unsafe, dangerous and unfit for human habitation as the building was likely to collapse at any moment on account of normal wear and tear. It has also been submitted that the Trust framed the scheme with the sole purpose of developing the area and not to harass the petitioners. The provisions of Section

36 of the Act have been duly complied with. Notice regarding framing of scheme was published in Punjab Govt. Gazette dated 12.4.1985, 19.4.1985 and 26.4.1985 and also published in the Punjabi Tribune on 2.4.1985, 9.4.1985 and 16.4.1985. Due publicity of the scheme was also given in accordance with the law. Notice u/s 38 of the proposed acquisition of land were issued to all the owners of land, immovable property and to the occupiers comprised in the scheme as also to all such occupants of the building who appeared as tenants in the registers maintained by respondent No. 4. Notices were also issued to petitioners No. 3 to 19, although they were not the tenants but sub-tenants of original tenants who had abandoned the premises. It was duly intimated that the objections could be filed within 60 days from the receipt of the notices. The provisions of Section 38 of the Town improvement Act were duly complied with. Only petitioner No. 1 filed objections before the Trust u/s 36 of the Act. None of the other petitioners filed any objections in response to the notices u/s 36. The objections were duly considered and objectors were called for personal hearing on 19.7.1985 but none of the petitioners appeared and objections were disposed of being devoid of merit and in resolution No. 22 dated 19.7.1985, the proceedings were briefly recorded and Trust resolved to submit the scheme to the Govt. for sanction. By their wilful absence on 19.7.85, the petitioners have waived their rights for personal hearing and now they are estopped from making unjustified grievances, at this inordinately belated stage. Provisions of Section 40 of the Act were also duly complied with. The scheme was sanctioned after due consideration and after certifying that all statutory requirements have been complied with. The Trust did not prevail upon the State Govt. for the sanction of the scheme. After denying other material averments of the writ petition, this respondent has prayed for the dismissal of the writ petition.

5. A separate written statement was filed on behalf of respondents No. 2 and 3 in which it was pleaded that the writ petition is liable to be dismissed on the ground of delay and laches. The impugned scheme was initiated on 15.2.1984 and notices were served upon the petitioners as far back as 3.5.1985. Some of the writ petitioners have concealed the fact that they filed civil suit before the Additional Senior Sub Judge, Nabha. Petitioners No. 3, 5, 7, 13, 15, 18 and 24 filed separate suit before the Additional Senior Sub Judge, Nabha in the year 1985 praying that respondents be restrained from dispossessing them. In those suits, the petitioners alleged that they were the tenants of the Municipal Committee and the Improvement Trust was trying to dispossess them forcibly. In all those suits, the Civil Court came to the conclusion that no relationship of landlord and tenant existed between the petitioners and Municipal Committee and the Civil Court declined to grant injunction in view of the scheme, which had been sanctioned by the State Govt. u/s 42 of the Punjab Town Improvement Act, 1922. These respondents denied that the petitioners are the lessees of the Municipal Committee. Their leases have been cancelled by the Committee. They are unauthorised occupants. Even the petitioners No. 2, 8, 10, 13, 16, 17, 19 and 24 were never held to be lessees of the Municipal Committee. Only

petitioners No. 1, 3, 5 and 15 are running the shops in the disputed premises which are likely to collapse at any moment. It is further averred in the written statement by these respondents that Improvement Trust, Nabha framed the impugned scheme with the sole purpose of development and not to harass the petitioners. Provisions of Section 36(1) and (2) have been complied with. Notices were duly published in Punjab Govt. Gazette on 12.4.85, 19.4.85 and 26.4.85 and also in Punjabi Tribune on 2.4.85, 9.4.85 and 16.4.85. Notices u/s 38 were issued to such occupants of the building who appeared as tenants in the registers maintained by the Municipal Committee. Notices were issued u/s 38 of the Act, to the petitioners No. 1 to 7, 9, 11, 12, 15, 18-23 and 24 and notices were also issued to petitioners No. 3 and 19 despite the fact that they were not tenants but were sub-tenants of the original tenants who had abandoned the premises. It was duly intimated to the persons that they can file the objections within 60 days. Objectors were summoned for personal hearing for 19.7.85 but none of the petitioners appeared and objections were disposed of after the resolution dated 19.7.85 having no merit.

6. Additional affidavit was also filed on behalf of the Improvement Trust, Nabha under the signatures of Shri G. S. Khan, Executive Officer, dated 31.8.1994, who further stated in para No. 6 of the affidavit that the Improvement Trust in its letter dated 13.11.1985 which was sent to the Govt. u/s 40(1) of the Act, that oustee of the Scheme i.e. owner/occupier would be treated according to the provisions of Land Disposal Rules of the Trust, in force at the time of the execution of the scheme. As per provisions of Section 27 of the Punjab Town Improvement Act only resident house-owner who is likely to be displaced by the Improvement scheme and who has applied to the Trust is to be re-housed. With the above main defence, these respondents also prayed for the dismissal of the writ petition.

7. Respondent No. 4 filed separate written statement and they have supported the material averments of the affidavit filed by respondents No. 1, 2 and 3.

8. Writ petition No. 1105 of 1989 has been filed by Ravinder Singh and others against the same set of respondents and their prayer is also common as that of the writ petitioners of civil writ petition No. 8770 of 1987 and I need not. to incorporate their pleadings in the present judgment as they have agitated the same reasons in giving challenge to the scheme as well as the other provisions of Town Improvement Act on the same ground as incorporated in writ petition No. 8770 of 1987. Even the stand of the official respondents is the same as enunciated above while narrating the facts of Writ petition of Ashok Kumar and others.

9. I have heard Shri Sarjit Singh, Sr. Advocate and Shri Munishwar Puri, Advocate, on behalf of the petitioners and Sarvshri T. S. Gujral, and Shri P. S. Chhinna, Sr. D.A.G. (P), on behalf of the respondents and with their assistance have gone through the record of this case.

10. It may be mentioned here that earlier these writ petitions came up for hearing before the learned Single Judge on 16.12.1991 who after going through the provisions of Section 40 of the Punjab Town Improvement Act and after perusing the citation reported as 1984 PLJ 413 F.B. Prof Jodh Singh and Ors. v. Jullundur Improvement Trust, Jullundur and Ors., came to the conclusion that the matters with regard to the interpretation of Clause 2 of Section 40 requires consideration by a larger Bench. Accordingly, the learned Single Judge, directed that the papers be placed before the Division Bench for appropriate orders. However, the Division Bench vide orders dated 24.1.1996 came to the conclusion that the proposition posed by the learned Single Judge has already been answered in Piara Singh Uttam Singh v. State of Punjab 1974 PLJ 260, and Dhingra Radio Service v. State of Haryana 1993 (14) PLR 400. In this view of the matter the proposition proposed by the learned Single Judge was not answered and the case was sent back to the learned Single Judge for disposal according to law.

11. The above pleadings of the parties would show that the case of the present petitioners is that they are the occupants/lessees of the shops forming part of the building known as Sarai Shadiat and they could not be evicted under the garb of the scheme prepared by the Improvement Trust, Nabha and sanctioned by the State Government. It was also the case of the petitioners that before sanctioning the scheme, the State Govt. or the Improvement Trust, Nabha did not comply with the mandatory provisions of Sections 36 and 40 of the Punjab Town Improvement Act. On the contrary the case of the official respondents is that all the provisions of law have been duly complied with.

12. Chapter IV of the Punjab Town Improvement Act is the relevant chapter which would deal with the controversy involved in the present writ petition. A perusal of the written statement filed by the respondents would show that the Improvement Trust wanted to develop the scheme in view of the fact that the building and its surrounding area had become unsafe and unfit for human habitation. Though it is alleged by the petitioners that Improvement Trust saw interest of the Municipal Committee in the preparation of the scheme this Court is not impressed with the argument raised by the learned counsel for the petitioners that the framing of the scheme was exercise of a colourable jurisdiction on the part of the Trust so as to evict the present petitioners from the shops which are in their possession either authorisedly or unauthorisedly. Even the Civil Court decrees in favour of some of the petitioners would not vest in them any legal right to stay over the shops with the sanctioning of the scheme. Section 36 of the Punjab Town Improvement Act lays down that when a scheme under this Act has been framed the Trust shall prepare a notice stating the fact that the scheme had been framed, the boundaries of the locality comprised in the scheme and the place at which the details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours. Section 36(2) further lays down that Trust shall notwithstanding anything contained in Section

78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and send a copy of the notice to the President of the Municipal Committee, and to the medical officer of health. Sub-section (3) further lays down that the Chairman shall cause copies of all documents referred to in clause (iii) of Sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule u/s 74.

13. A perusal of the above provisions would show that compliance of Section 36(1) and 36(2) are mandatory when a scheme has been framed by the Trust. A reference to the written statement of the official respondents categorically show that compliance was made of the provisions of Section 36(1) and 36(2) of the Act. It is the consistent stand of the Trust as well as of the State Govt. that notices in the Punjab Gazette were published on 12.4.85, 19.4.85 and 26.4.85 and notices were also published in Punjabi Tribune on 2.4.85, 9.4.85 and 16.4.85.

14. Section 38 of the Act further lays down that Trust shall serve a notice on every person whom the Trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme; the occupier who need not be named of such premises as the Trust proposes to acquire in executing the scheme. Again the averments of the official respondents would show that due compliance of Section 38 has also been done. Notices u/s 38 were issued to the petitioners No. 1 to 7, 9, 11, 12, 15, 18 to 23 and 24. So much so notices were also issued to petitioners No. 3 and 4 despite the fact that they were not the tenants but were the sub-tenants of original tenants who had abandoned the premises. It was also mentioned in the notices that they could file objections within 60 days. The Trust gave opportunity to the objectors. Nobody came forward with the objections except Ashok Kumar. He was summoned for 19.7.1985 but he did not appear and the objections were disposed of vide resolution dated 19.7.1985 considering that those objections had no force. Thus the provisions of Section 38 in the present case were also duly complied with. Section 40 of the Town Improvement Act lays down that after the expiry of the periods respectively prescribed under clause (a) of Sub-section (2) of Section 36, by Section 37 and by clause (b) of subsection (2) of Section 38, in respect of any scheme under this Act the Trust shall consider any objection or representation received thereunder and after hearing all persons or their representatives making any such objection, or representation, who may desire to be heard, the Trust may either abandon the scheme or apply to the State Government for sanction to the scheme with such modifications if any as the Trust may deem necessary.

15. Again the provisions of Section 40 in this case has been duly complied with as I have just stated above, when the Trust called for the objections which were filed only by Ashok Kumar and he too did not appear when he was called upon on 19.7.85. After considering the pros and cons the scheme was duly approved by the State Govt. as per provisions of Section 41 of the Town Improvement Act.

16. Section 42 of the Act further lays down that State Govt. shall notify the 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. Sub-section (2) of Section 42 further lays down that 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 that 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. Again a reference to the written statement of official respondents would show that the provisions of Section 42 have also been complied with within limitation.

17. The last aspect of this case on merits which has to be seen is, whether the Improvement Trust made any provision with regard to the persons who are likely to be affected due to the execution of the scheme or not and in this regard I would like to refer to the additional affidavit filed by Mr. G. S. Khan, Executive Officer, Improvement Trust, Nabha who had categorically stated that in the scheme a specific reference was made that the oustee of the scheme i.e. owner/ occupier would be treated according to the provisions of Land Disposal Rules of the Trust in force at the time of the execution of the scheme. Though an effort has been made by the learned counsel appearing on behalf of the petitioners to show that this averment of the affidavit is vague, but I am not in a position to agree with their submission because the clause in the scheme sent to the Govt. for sanction fully complies with the provisions of law and in this regard my attention has also been invited to the resolution No. 101 dated 3.8.85 passed by the Improvement Trust wherein it was resolved that legal occupiers of the development scheme Sarai Shadiat would be accommodated in the Residential Development Scheme of the Trust, known as ''Luxmi Narain Mandar, Nabha Gate, Nabha", I am in agreement with the arguments raised by the counsel for the Trust that Section 36 of the Town Improvement Act is only enabling provision and it is for the Trust to decide in a particular case whether it deems necessary to prepare a scheme for accommodation of the tenants or any other persons likely to be displaced by the execution of any scheme. Re-housing scheme of ousted tenants was not necessary in the law. In the present case, the Trust has taken care of those persons who are likely to be affected in the execution of the scheme.

18. The learned counsel for the respondents has referred to Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others, . Harbans Singh and Others Vs. The State of Punjab and Others, and Hari Singh and Others Vs. State of U.P. and Others, , and submitted that the present writ petitions are liable to be dismissed as these suffer from laches, inordinate delay and have been filed by the present petitioners with the object of getting the enhanced compensation. Learned counsel further submitted that it

does not make a difference when the notice u/s 36(2) of the Town Improvement Act has been published in the newspaper prior to the publication of the notice in the official Gazette. I am in full agreement with the submissions raised by the learned counsel for the respondents. The petitioners did not approach the High Court when the Trust issued the notices for the framing of scheme and for inviting objections. Inspite of the notices served upon them none of the petitioners except one filed objections and that petitioner too did not appear before the authorities when personal hearing was given to him. In this case, the petitioners filed reference u/s 18 of the Land Acquisition Act for the enhancement of the compensation. Compensation was enhanced. Award regarding the acquisition was passed on 21.10.1987. During the course of arguments, it was also addressed to this Court that the Trust deposited the price of the land with the Land Acquisition Collector. Even the Tribunal also decided reference u/s 18 of the Land Acquisition Act. The petitioners were not satisfied with the award by the Collector and the decision of the Tribunal. They have filed writ petition in the High Court for enhancement of compensation. In view of all this, it is not open for the petitioners now to say that the scheme framed by the Trust is bad especially when the petitioners have not been able to show that the Trust or the State Govt. at any time had violated the provisions of Sections 36, and 40 of the Town Improvement Act or that of 37 of the said Act.

19. In this view of the matter, this Court is of the opinion that there is no merit in any of the writ petitions filed by the two petitioners which are hereby dismissed leaving the parties to bear their own costs.

