
(1981) 01 P&H CK 0055
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1427 of 1977

Bakshi Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-01-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 16

Punjab Town Improvement Act, 1922 — Section 11, 24, 28(2), 36, 42

Citation : (1981) 3 ILR (P&H) 306

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : Sushil Kumar Goyal, for the Appellant; Bhoop Singh, Additional A.G. and A.S. Nehra, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mital, J.—The Improvement Trust, Yamunanagar had framed a scheme u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter called the Act) which was approved by the State Government and was notified on 28th of March, 1972 u/s 42 of the Act. The scheme was known as scheme No. 9 under Sections 24 and 28(2) of the Act in respect of 4.67 acres of land situate in the town of Yamuna Nagar. Since the scheme was not executed within the period of five years and possession was sought to be taken from the Petitioners, they filed the present writ petition on 11th of May, 1977 in this Court to impugn the action of the Respondents to take possession from them or to implement the scheme as the same had elapsed in view of Section 44-A of the Act. After notice, written statement has been filed by the State as also by the Chairman of the Improvement Trust. In the written statement, it is admitted that the scheme could not be implemented as the Petitioners had challenged the validity of the scheme. As regards possession, it was stated that it remained with the mortgagees of the Petitioners and therefore the Respondents could implement the scheme only after taking possession. It was also averred that the Improvement Trust was now taking active steps to implement the scheme.

2. Shri A.S. Nehra, counsel appearing for the Improvement Trust has fairly conceded that the matter is covered in favour of the petitions in View of two Division Bench judgments of this Court Surat Ram and Ors. v. The State of Haryana and Ors. 1979 P.L.J. 430 and Brij Lal and Ors. v. Sirsa Improvement Trust and Ors. 1980 P.L.J. 436. However, Mr. Bhoop Singh, Additional Advocate general, appearing for the State as opposed the writ petition.

3. After hearing the learned Counsel for the parties, I am of the view that the writ petition deserves to succeed. The argument of the Additional Advocate General is that the award was given on 18th of March, 1977 which was within five years of the publication of the notification u/s 42 of the Act and therefore, it should be deemed that the land vested in the State Government/Improvement Trust free from any encumbrance and thereafter the Improvement Trust was at liberty to execute the scheme without the impediment of any time limit. Assuming the argument to be of some merit, a look at Section 16 of the Land Acquisition Act, 1894, shows that the acquired land vests in the State Government after the award is announced u/s 11 of the Act and possession of the land is taken thereafter. In the present case, it is admitted that the State Government Improvement Trust did not take possession of the land after the award was announced and even on the date of filing of the written statement in July, 1977, the possession was of the mortgagees of the Petitioners which is clear from the reading of paragraph 6 of the preliminary objections and para 16 on merits of the written statement of the Improvement Trust. Therefore, it cannot be held that the State Government/Improvement Trust became owner of the acquired property or that the same vests in them.

4. According to the written statements no other step in pursuance of the scheme was taken and therefore, it is patent that the scheme was not executed within the period of five years. Hence the present case is fully covered by the aforesaid two Division Bench judgments of this Court in favour of the Petitioners and therefore, the stand of the counsel for the Improvement Trust was correct.

5. For the reasons recorded above, this petition is allowed and all steps taken in furtherance of the scheme after 28th of March, 1977, are hereby quashed. The Respondents would not be entitled to execute any part of the scheme which had not been fully executed by that date. However, there will be no order as to costs.