

(2012) 11 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2782 of 2011

Bipan Sharma Advocate

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Punjab Municipal Act, 1911 — Section 18, 192, 192(1), 3(18)(B), 4(1)

Citation : (2013) 1 RCR(Civil) 418

Hon'ble Judges : Rakesh Kumar Jain, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Bipan Sharma, Party in Person, Mr. G.N. Malik in CWP Nos. 8803 and 8812 of 2012 and Mr. Arun Nehra, for the Appellant; Anil Sharma, Advocate for Respondent No. 7 and 8, Mr. S.D. Sharma, Ms. Bindu Goel, Advocate for Respondent No. 9, 10 and 11, Mr. M.L. Sarin, Ms. Alka Sarin, Advocate for Respondent No. 11, Mr. Vijay Sharma, Advocate for Respondent No. 12, Mr. Anand Chhibber, Mr. Vaibhav Saini, Advocate and Mr. Alok Jain, Addl. A.G., Punjab, for the Respondent

Judgement

Rakesh Kumar Jain, J.—By way of this order, CWP Nos. 2782 & 10823 of 2011 and CWP Nos. 3475, 4238, 4684, 8803, 8812 & 8867 of 2012 are being disposed of together as they involve adjudication of similar question of law and facts. CWP No. 2782 of 2011 is, however, filed as a Public Interest Litigation, whereas all the other writ petitions are filed by the petitioners in their personal capacity. The prayer in CWP No. 2782 of 2011 is for quashing of notification dated 26.02.2010 (Annexure P-7) and consequential proceedings, unauthorized construction of school, sale of land by carving out plots and for issuance of a mandamus for ordering an inquiry as to how the land belonging to poor land owners, acquired for public purpose, with public funds, has been put to private use to earn huge profits and for issuance of a writ of prohibition to restrain the respondents from changing the use of land for which it was acquired.

2. In all the other writ petitions, besides the aforesaid prayers, resolution No.

110 dated 12.12.2009 passed by the Municipal Council, Malerkotla, has also been sought to be quashed and a prayer is made for mandamus directing the respondents to restore the land of the petitioners, acquired for the particular purpose, which has admittedly, not been achieved.

3. Though the facts of all the cases are somewhat similar, yet they are being extracted from CWP No. 2782 of 2011, in which replies and rejoinders have been filed and the pleadings are complete.

4. As per notification dated 22.08.1980 (Annexure P-1), issued u/s 4 of the Land Acquisition Act, 1894, 92 Kanals 18 Marlas of land of village Malerkotla, Hadbast No. 58, District Sangrur was proposed to be acquired, at public expense, for public purpose, namely, expansion of paper making plant at Malerkotla. Out of the aforesaid land, 78 Kanals 8 Marlas of land was transferred to M/s. Vinod Paper Mills Ltd. [for short "the company"] by the State of Punjab through conveyance deed dated 12.04.1984 (Annexure P-2) for a consideration of Rs. 4,32,768/- with an explicit condition that the company shall not, except with the previous sanction of the Government, use the land for any other purpose for which it has been granted. It was mentioned in the conveyance deed that the land measuring 78 Kanals 08 Marlas has been given to the company on its request for setting up of an industry for expansion of paper making plant.

5. The company suffered losses, resulting into a winding up petition before the Delhi High Court, where it was found that the company is to pay to its creditors for various liabilities. In this regard, the company obtained a "No Objection Certificate", to dispose of the acquired land, from the Department of Industries & Commerce, Punjab, which was granted, inter alia, subject to the condition that "this land is only used for industry purposes after sale proceedings". It is alleged that M/s. Parsvnath Developers Limited (respondent No. 10) undertook to pay off a sum of Rs. 7,15,00,000/- for the land of the company and accordingly the aforesaid land measuring 78 Kanals 8 Marlas was disposed of. Besides the aforesaid land measuring 78 Kanals 8 Marlas, land measuring 374 Kanals 10 Marlas, which was earlier acquired for the company, was also transferred by the company, by way of registered sale deed, with respondent No. 10 as a confirming party, to M/s. Tara Health Food Limited (respondent No. 11). The sale deed came into being on 08.07.2009 (Annexure P-14) in which the company is shown as seller, respondent No. 10 as confirming party and respondent No. 11 as the purchaser of 462 Kanals 10 Marlas (about 57.81 Acres) in the Industrial Focal Point, Malerkotla, purchased by the company vide 3 sale deeds i.e. dated 31.08.1979 for land measuring 234 Kanals 11 Marlas, dated 15.12.1979 for land measuring 149 Kanals 12 Marlas and dated 24.05.1984 for land measuring 78 Kanals 08 Marlas.

6. It is alleged that as per Clause (F) of the sale deed Annexure P-14, the sale of the land was effected after the "No Objection" for sale was given by the State of Punjab vide letter dated 06.05.2003 (Annexure P-11). Further the case of the petitioner is that after the purchase, respondent No. 11 filed an application dated

11.12.2009 (Annexure P-3) to respondent No. 8 for seeking permission for construction of Town Planning Scheme on land measuring 374 Kanals 10 Marlas. On the very next day, vide resolution dated 12.12.2009 (Annexure P-4), Municipal Council, Malerkotla granted approval that the land measuring 374 Kanals 10 Marlas be declared as un-built area and the case was sent for approval of the Government. On 16.12.2009, respondent No. 8 wrote a letter to respondent No. 6 that resolution has been passed by the Municipal Council, Malerkotla and has been sanctioned for declaration of the land measuring 374 Kanals 10 Marlas as un-built area and requested that the said area be declared as un-built area in the light of the resolution No. 110 dated 12.12.2009 (Annexure P-4).

7. On 31.12.2009, respondent No. 6 wrote a letter to respondent No. 8 that various discrepancies have been found in the documents supplied by it in connection with the Town Planning Scheme and asked for its rectification. Thereafter, vide notification dated 26.02.2010 (Annexure P-7), 374 Kanals 10 Marlas of land, which was declared as un-built area vide resolution No. 110 dated 12.12.2009, was notified in terms of Sections 192(1), 3(18)(B) of the Punjab Municipal Act, 1911 [for short "the Act"]. Thereafter, respondent No. 6 wrote a letter to respondent No. 8 regarding technical approval of the Town Planning Scheme subject to certain conditions and it was also mentioned that the scheme should be sent to the Government for approval after taking necessary action as per Rules.

8. Counsel for the petitioner has urged that at no point of time, the Government had ordered the change of land use and in the absence of any such permission, respondent No. 11 had constructed school building and has raised some other construction for the purpose of selling the land for residential purposes by carving out plots. He has submitted that once the entire land, which was purchased by the company, after its acquisition by the Government, for the industrial purposes at the Industrial Focal Points, Malerkotla, has been permitted to be sold by the company with "No Objection" certificate with a stipulation that it could be used only for the industrial purposes, the use of the said land for any other purposes much-less for constructing a school or for constructing a residential colony, is illegal and as a matter of fact fraud upon the poor farmers who have been duped in the name of acquisition of their land for industrial purposes, way back in the year 1980.

9. In the other writ petitions, filed by the land owners, somewhat similar plea has been raised, but with an additional prayer that as their land is not being put to industrial use for which it was acquired, it may be ordered to be returned to them on payment of amount of compensation which was received by them. In this regard, the petitioners have relied upon a decision of the Supreme Court in the case of Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, Recent Apex Judgments (R.A.J.) 354.

10. Separate replies have been filed by respondent Nos. 1, 3 & 5, 2 & 4, 6, 7 &

8, 9, 10 & 12, 11 and 13. Replication has been filed to the written statement filed by respondent Nos. 1, 3, 5, 6, 7 and 8.

11. In reply filed by respondent Nos. 2 and 4 on behalf of the Department of Industries and commerce, Punjab, by the Collector, Land Acquisition, it has been averred that land measuring 374 Kanals 10 Marlas was acquired for the company. In the No Objection certificate issued to the company by the department, it was mentioned that the land will be used only for industrial purposes after sale proceedings. It was admitted that the land measuring 98 Kanals 18 Marlas was also acquired for the company and a conveyance deed was executed mentioning that it is for expansion of the paper mill, which would not, except with the previous permission of the Government, use the said land for any purpose other than for which it has been given. It was also admitted that No Objection Certificate dated 06.05.2003 (Annexure P-11) was granted on a specific condition that the land will be used for industrial purpose after sale proceedings.

12. In the written statement filed by respondent Nos. 1, 3 & 5 on behalf of the State of Punjab, it has been averred that only a proposal is under consideration by the Municipal Council, Malerkotla to sanction town Planning Scheme for an area measuring 374 Kanals 10 Marlas, which has been notified as an un-built area vide notification dated 26.02.2010 (Annexure P-7).

13. Nothing material has been said by respondent No. 6 in his reply, whereas in the reply filed by respondent Nos. 7 & 8, it has been averred that the Scheme was technically approved by the Government and a public notice was given on 08.04.2010 for inviting objections.

14. In the reply filed by respondent Nos. 9, 10 & 12 by the company, the confirming party and Chairman of respondent No. 11, it has been averred that the petitioner has no right to file the Public Interest Litigation. The land has been purchased in the winding up proceedings initiated before the Delhi High Court on account of the fact that the company failed to discharge its huge liabilities. After acquisition of land, it vested in the Government and the owners have no right, title or interest attached to it. It is also alleged that the land in dispute has been declared to be un-built area in terms of Sections 192(1), 3(18)(B) of the Act. Similar writ filed by one Mohd. Anwar, Advocate, has been withdrawn by him and the present petition is, thus, not maintainable.

15. In the written statement filed by respondent No. 13, similar objections have been raised as has been raised by respondent Nos. 9, 10 and 12 and it is alleged that the answering respondent is not doing any commercial activity but it is engaged in imparting education. It is also alleged that the land underneath school is though part of the acquired land but it is not part of the Town Planning Scheme, as out of 78 Kanals 18 Marlas of land, except for 22 Kanals of land which is part of the Scheme, rest of the land has been consumed for construction of the school.

16. In the written statement filed by respondent No. 11, it is averred that school has been constructed after due permission and it is being run in the name of Pioneer Public Senior Secondary School. The purchase of land by 3 sale deeds has not been denied and it has been alleged that since the company became sick and was wound up in the proceedings before the Delhi High Court, its land, building and machinery were put to sale to discharge its liability, which was purchased by respondent No. 10 and, thereafter, it has been purchased by respondent No. 11, after due permission by the Delhi High Court and by way of registered deeds. It is alleged that condition of usage of the land in question in the conveyance deed is not binding upon it as no rider in the title of respondent No. 9 was ever brought to the notice of the Delhi High Court when the permission for sale was granted.

17. The petitioner has also filed rejoinders to the written statements filed by respondent Nos. 1, 3, 5 & 6 and attached photographs Annexures P-15 in order to show that some development work has been carried out by respondent No. 11 at the spot.

18. It is argued by counsel for the petitioners that 92 Kanals 18 Marlas of land was acquired vide notification dated 22.08.1980 (P-1) for expansion of the paper making plant at Malerkotla and in the conveyance deed dated 12.04.1984 (P-2), entered into between the State of Punjab and the company, it was agreed that "the company hereby covenants with the Government that it shall not, except with the previous sanction of the government use the land for any other purpose other than that for which it has been granted". When the company was in doldrums due to its financial crisis, it went into liquidation and decided to dispose of the land acquired vide notification Annexure P-1. It sought approval of the Department of Industries in this regard which was granted on 06.05.2003 (Annexure P-11) with the condition that "this land is only used for industrial purpose after sale proceedings". He further submitted that in the sale deed (Annexure P-14), it has been specifically mentioned that "the Land Acquisition Branch of Industries and Commerce Department, Government of Punjab gave its No Objection for the sale of the aforementioned Land and issued letter No. 06.05.2003 to the Seller Company".

19. Counsel for the petitioners has further argued that there has been an unholy haste on the part of the Municipal Council, Malerkotla to whom an application was filed by respondent No. 11 for construction of Town Planning Scheme on 11.12.2009 (Annexure P-3), upon which, on the very next day i.e. 12.12.2009, resolution No. 110 (Annexure P-4) was passed and the matter was sent for approval of the Government. The Chief Town Planner, in its letter dated 31.12.2009 (Annexure P-6), raised number of objections in regard to the discrepancies and vide Annexure P-7, the impugned notification was issued approving resolution Annexure P-4.

20. Counsel for the petitioners has further submitted that once the land was acquired for the company for industrial purposes and Department of Industries

and Commerce had granted permission to dispose of the said land with categorical condition that it can be used only for industrial purpose after sale proceedings, it could not have been used for any other purpose by the company or the subsequent purchasers and the impugned notification (Annexure P-7) declaring it to be an "un-built area" exercising powers u/s 192(1), 3(18) (B) of the Punjab Municipal Act, 1911 [for short "the Act"] is patently illegal.

21. In reply, counsel for the respondents have argued that the land in dispute has been sold under the orders of the Delhi High Court during liquidation proceedings. There was no such condition that it can be used only for the industrial purposes and as the land was not constructed, it has been rightly declared as "un-built area" after resolution Annexure P-4 has been passed by the Municipal Council, Malerkotla.

22. In the reply filed by respondent Nos. 1, 3 and 5, it has been averred that respondent Nos. 7 and 8 are yet to decide the objections regarding use of land and to finally adopt the Town Planning Scheme measuring 374 Kanals 10 marlas and, thereafter, the Government would examine the Scheme and take a conscious decision.

23. The dispute in this case is basically with regard to use of land acquired vide notification Annexure P-1 for expansion of paper making plant at Malerkotla for the benefit of the company. At the time of execution of conveyance deed (Annexure P-2), it has been categorically agreed between the parties that the acquired land will not be used for any other purpose except with the prior sanction of the Government and when it was sold under the orders of Delhi High Court, "No Objection" was taken from the Department of Industries and Commerce which was granted vide Annexure P-11 in which it was specifically mentioned that the approval is subject to the condition that the land would be used for industrial purpose after the sale proceedings and when it was sold vide Annexure P-14, it has been pointedly referred that the Land Acquisition Branch of the Industrial Department has given "No Objection" for the sale of the aforesaid land vide its letter dated 06.05.2003 to the company, meaning thereby that the letter dated 06.05.2003 (Annexure P-11) was brought to the notice of the purchasing company in which condition was imposed that the land in dispute can be used only and only for the industrial purpose and not for any other purpose.

24. After purchasing the land, with a view to earn profits, it has been sought to be sold by carving out residential plots for which application was moved to the Municipal Council, Malerkotla on 11.12.2009, on which resolution Annexure P-4 was passed on the very next day i.e. on 12.12.2009 and a letter was written to the Chief Town Planner of the Local Government, Punjab after 4 days i.e. on 16.12.2009 (Annexure P-5) to declare the land as "un-built area" which was ultimately declared by the Government vide impugned notification as an "un-built area".

25. The "un-built area" is defined u/s 3(18)(B) of the Act as an area within the

municipal limits which is declared to be such at a special meeting of the committee by a resolution confirmed by the State Government, or which is notified as such by the State Government. Section 192 of the Act provides a building scheme with regard to the built areas and town planning scheme regarding un-built areas. According to this provision, when a scheme is drawn in terms of Section 192(1) of the Act, the committee concerned shall give public notice of such scheme seeking objections/suggestions in this regard and after considering the objections/suggestions can modify the scheme or forward the same as originally drawn to the Deputy Commissioner, who may, if he thinks fit, return it to the committee for reconsideration and resubmission and then the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it.

26. However, the stand of respondent Nos. 1, 3 and 5 in their written statement is that only a proposal is under consideration by the Municipal Council, Malerkotla to sanction Town Planning Scheme for an area measuring 374 Kanals 10 Marlas which has been notified as an un-built area vide notification dated 26.02.2010 (Annexure P-7).

27. In respect of the core question, learned counsel for the petitioners has relied upon a decision of the Supreme Court in the case of M/s. Royal Orchid Hotels Limited and another's case (supra) in which the land was acquired for public purpose but sold to the private persons. The acquisition was set aside and the land was restored to the original owners after ignoring delay of 12 years in filing of the writ petition. It was observed that the land owners may not be having any serious objection to the acquisition of their land for a public purpose and, therefore, some of them have not only accepted the compensation, but also filed applications u/s 18 of the Act for determination of market value by the Court. However, when it was discovered that the acquired land has been transferred to private persons, the intervention of the Court has been sought. It was also observed that "the Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act". It was also observed that "the diversification of the purpose for which land was acquired u/s 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain".

28. Similarly, in the present case as well, the land was acquired for the company for expansion of paper making plant. At that time, there was no contest to the acquisition but as the land has been sold by the company to respondent No. 10 who had further sold it to respondent No. 11 who is now using the said land for

running the school as well as carving out a residential colony despite the fact that No Objection was granted by the State with a categorical stipulation that it can be used only for the industrial purposes. In our view, this act of respondent No. 11 tantamounts to a fraud on the power of eminent domain whereby the land of poor farmers have been acquired in the name of expansion of paper making plant much-less for the industrial purpose and has been disposed of by it to pay off its liabilities during the proceedings of the liquidation. Respondent No. 11, in no case, can be allowed to use the land in question for any other purpose then the industrial for which the No Objection Certificate was issued by the Department of Industries. Thus, the writ petitions are disposed of with the observation that in case the respondent No. 11 files an undertaking, within three months from the date of receipt of certified copy of this order, that it shall use the land in dispute only for the industrial purposes, then it shall be entitled to retain the said land but if they failed to give an undertaking in writing within the period stipulated here-in CWP above, the land shall be ordered to be restored to the original owners who would return the amount of compensation along with 15% per annum interest from the date of compensation was received by them.