
(2014) 01 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18139 of 2002

Dr. Balbir Singh Sidhu

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : (2014) 2 RCR(Civil) 351

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Sarwan Singh, Senior Advocate and Mr. N.S. Rapri, Advocate for the Appellant; Amit Prashar, Mr. Arjun Sheoran, Advocates-Local Commissioners, Mr. Alok Jain, Additional Advocate General, Punjab for the Respondent No. 1, Mr. Ashok Kumar Bazaz, Advocate for M.C Ludhiana for the Respondent No. 2, Mr. Atul Lakhanpal, Senior Advocate, Mr. Arjun Lakhanpal, Advocate for the Respondent No. 3, Mr. Sumeet Mahajan, Senior Advocate, Mr. Amit Kohar, Advocate for the Respondents No. 4 and 5, Mr. Amit Rawal, Senior Advocate, Mr. B.B.S. Sobti, Sunil Chadha, Harpreet Sandhu, Manvinder Dalal, Namit Gautam, Vishal Sharma, H.S. Ghumman, Suhail Chhabra, Advocates for the Interveners, Mr. O.P. Goyal, Senior Advocate and Mr. R.S. Mander, Advocate for the Ludhiana Stock Exchange, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to circulars issued by the Punjab Government on 28th July, 1994 (Annexure P/11); 13th December, 1994 (Annexure P/12) and 24th November, 1995 (Annexure P/13), whereby, the change of land use from residential to commercial and other non-residential uses was permitted on the entire length of Ferozepur road, Ludhiana on the terms and conditions mentioned in the said communications. The grievance of the petitioner is that respondents No. 4 and 5 have purchased property in Kartar Singh Sarabha Nagar, in respect of which the town planning scheme has been prepared. The petitioner relies upon resolution dated 28th November 1961 (Annexure P/2) passed by Ludhiana Improvement Trust, resolving that area of

the Kartar Singh Sarabha Nagar is wholly reserved for residential purpose and no part of it shall be used for purposes other than residential. Since the land was reserved for residential purpose, the Improvement Trust, Municipal Corporation and State Government have no right to change the user of the land except after complying with the procedure contemplated in Section 43 of the Punjab Town Improvement, Act 1922. It is contended that the scheme is sought to be amended by circular, whereas, no notification amending the scheme was published. It has also been contended that the scheme stands executed when the scheme was transferred to Municipal Corporation in the year 1985 for maintenance purposes. Therefore, circular issued in the years 1994-95 are after the execution of the scheme and does not fall within the jurisdiction of the State Government, so as to, modify any part of the scheme published.

2. In reply filed by the Municipal Corporation it is stated that the scheme was transferred to Municipal Corporation Ludhiana in the year 1985 for maintenance and that the Government has ordered the change of land use of all properties situated/abutting on Ferozepur Road from residential to commercial and that no fresh sanction was required u/s 43 of the Punjab Town Improvement Act, 1922.

3. We have heard learned counsel for the parties.

4. The question to be examined is whether the scheme has been executed in terms of Section 43 of the Act, so as to empower the Improvement Trust/Municipal Corporation or State Government to modify the scheme framed. The second question is whether such scheme can be modified by way of circulars as submitted by learned counsel for the petitioner. Section 43 of the Act reads as under:--

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

Provided as follows:--

[(a) if any alteration is estimated to increase the estimated cost of executing a scheme by more than Rs. 501,000/- or twenty percent of such cost such alteration shall not be made without the previous sanction of the State Government.

(b) if any alteration involves the acquisition, otherwise than by agreement of any land the acquisition of which has not been sanctioned by the State Government the procedure prescribed in the foregoing sections of this chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

5. The stand in the written statement is that scheme was transferred to the Municipal Corporation for the purpose of maintenance. In the absence of any indication in the Statute, the transfer of scheme for the maintenance will not lead to a conclusion that the scheme stands executed. Therefore, the State Government on the recommendations of Municipal Corporation or Improvement

Trust will have power to amend the scheme from time to time.

6. The argument of learned counsel for the petitioner is that once the scheme is transferred to the Municipal Corporation, it shows that the scheme is executed. We do not find any provision of any statute to draw such inference by mere fact of transfer of the scheme to the Municipal Corporation. In fact none could be pointed out by the Learned Counsel for the Petitioner. Section 55 of the Punjab Town Improvement Act, 1922 contemplates that whenever the Municipal committee is satisfied that any street laid out or altered by the trust has been duly levelled, paved, metalled, flagged, channelled, smeared and drained in the manner provided in the plans sanctioned by the Government under this Act, it shall declare the street to be a public street and then it shall vest in the Municipal Committee. There is no provision in the statute to determine the period when the scheme is to be executed or as to when it can be said that the scheme shall be deemed to be executed.

7. The circulars Annexures P/11, P/12 and P/13 are result of communications from the Municipal Corporation from time to time in respect of the constructions carried out in violation of buildings bye-laws around Ferozepur road. The decision of the State Government to permit the change of land use on the Ferozepur road is part of the consultation process undertaken by the State Government. Therefore, it satisfies the parameters of change of scheme contemplated by Section 43 of the Act.

8. The argument that scheme can be modified only by way of notification is not tenable. Section 43 of the Act does not provide that the modification in the scheme shall be by way of notification only. In the absence of any indication in the statute, the scheme can be modified even by circulars. We cannot accept the argument that the scheme is required to be modified only by way of notification.

9. Thus, we do not find any merit in the claim of the petitioner. Consequently, the present writ petition is dismissed qua the claim of the petitioner.

10. But during the pendency of the writ petition many other issues have come up as parking on the Ferozepur road and consequent congestion, misuse of the buildings constructed on the said road etc.

11. This Court has issued directions from time to time but most comprehensive directions were issued on 29.05.2013. After hearing learned counsel for the parties at length and keeping in view the report of the Court Commissioners, we find that all such directions need to be confirmed except directions No. (iv), (v) and (x) which are required to be modified in the manner detailed hereinafter. It is pointed out by Mr. Bajaj that in terms of the directions of this Court as contained in the aforesaid order, the parking lots have been auctioned. Such parking lots are meant for the use of the general public and that no part of such public parking lots can be reserved for any commercial or non commercial institution such as Shop, Malls, Restaurants, Resorts or Marriage palaces. Therefore, all such parking on Ferozepur road shall be made available for use of

general public without permitting earmarking of any parking for any particular commercial or non-commercial establishment subject to payment of the parking charges which may be levied on hourly basis. In view of the said fact, the directions No. (iv), (v) and (x) shall read as under:--

(iv) The maximum parking time for a vehicle shall not be exceeded 4 hours in a day. While the charges for one hour shall be the normal charges fixed by the Corporation whereas in respect of each subsequent hour, the charges payable shall be double, triple and 4 times of the charges fixed for normal parking hour.

(v) If the vehicle is parked beyond 4 hours, the Traffic Police shall impound such vehicle and shall not release the same without having been paid the impounding fee of Rs. 5000/- per vehicle besides other penal consequences.

(x) The paid parking spaces/lots shall be open to use by the visitors, customers of the multiplexes, malls, restaurants, resorts or marriage palaces or any commercial establishment without any restriction but subject to payment of parking charges which may be fixed in accordance with the directions contained herein on hourly basis. It is made clear that no contractor or the commercial or non-commercial establishment shall earmark any part of the public parking for its customers. The entire parking shall be available for the use of the general public without any restriction whatsoever.

With the above modifications in the directions contained in the order dated 29.5.2013, the respondents shall remain bound by such directions.

The writ petition stand disposed of accordingly.