
(1995) 02 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16469 of 1994

Gian Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 110 PLR 92

Hon'ble Judges : M.L. Koul, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : P.K. Gupta, for the Appellant; Satya Parkash Jain and B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This writ petition is directed against the allotment of a piece of land by respondent No. 2 to respondent No. 3 at Ropar for construction of its building. Petitioner has prayed for quashing of Annexure P-16 and for restraining the respondents for changing the user of the land meant for green belt in Giani Zail Singh Nagar, Ropar. "Petitioner has alleged that he has constructed a house on Plot No. 192 in Scheme No. 1 in Giani Zail Singh Nagar, Ropar, after the same was allotted to him by the Ropar Improvement Trust from the Government Employees Quota. The petitioner has constructed residential house over the said plot on the basis of the sanctioned site plan (Annexure P-5). Petitioner has claimed that on the Eastern side of his plot, there exists a green belt and this has been indicated in the site plan of Scheme No. 1 prepared by the Ropar Improvement Trust. This green belt, according to the petitioner, has been left out for the benefits of residents of the locality and is not subject to any change by the respondent-Trust. However, in total violation of the provisions contained in the Punjab Town Improvement Act, 1922, and the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983, respondent No. 2 has allotted that piece of land to respondent No. 3 for commercial use. Petitioner

says that though he had applied for supply of copy of the resolution by which the land was allotted to respondent No. 3, such resolution has not been made available to him.

2. The writ petition has been opposed by the respondents. In its reply, respondent No. 2 has pleaded that it has framed a scheme for the development of the area. This scheme is known as Giani Zail Singh Nagar and it was duly approved by the Government in the year 1976. At the time of demarcation, it was found that the dimensions given in the drawing prepared in 1976 did not tally with the actual site conditions. Due to this a modified drawing of layout of land was prepared containing change of land use and allotment of plot to Life Insurance Corporation for construction of office-cum-residential quarters. The Government approved and sanctioned the modified drawing of the land use. Respondent No. 2 has pleaded that land measuring 1316.67 sq. yards has been allotted to the Life Insurance Corporation and the open space which exists between the plot of the petitioner and the land allotted to the Life Insurance Corporation continues to be available as open space. It has also been pleaded by respondent No. 2 that the petitioner seems to have already transferred the plot by executing a power-of-attorney and, therefore, he does not have the locus standi to file this writ petition. Respondent No. 2 has contested the petitioner's statement that the open space available on the Eastern side of the petitioner's plot is green belt or is meant for a public park. The respondent has also denied the petitioner's allegation that layout plan of the area is being changed or that green belt/park is being utilised for residential-cum-commercial construction. Respondent No. 2 has also alleged that in a suit filed by the Giani Zail Singh Nagar Welfare Association, the District Judge, Ropar, refused to grant in- junction and Civil Revision No. 430 of 1993 filed by the Association before the High Court was dismissed. Similarly, in a suit filed by Dilawar Singh and others against the Ropar Improvement Trust, injunction application was dismissed by the learned Additional Senior Sub Judge, Ropar, on 12.6.1993 and the appeal was also dismissed by the District Judge, Ropar, vide his order dated 15.6.1993.

3. In its separate reply, the life Insurance Corporation has stated that in addition to the two suits of which reference has been made in the reply filed by respondent No. 2 owner of the Plot No. 193 had filed civil suit against the contractor of the Improvement Trust for restraining him from raising any construction. In that case also the trial Court had not granted any ad-interim injunction. Respondent No. 3 (Life Insurance Corporation) has stated that vide resolution No. 26 dated 17.3.1991, respondent No. 2 allotted land to respondent No. 3 by charging price at the rate of Rs. 800/- per square yard and sale price of over Rs. 10,55,000/- has been paid by the Life Insurance Corporation vide cheque dated 25.10.1991. Thereafter, the Trust issued allotment letter dated 19.11.1991 (Annexure R-3/5). An agreement to sell has also been signed between respondent No. 2 and respondent No. 3 on 11.5.1992 (Annexure R-3/6). Thereafter, the Corporation submitted plan for raising construction of branch office and officers quarters. The same has been duly sanctioned by the

Trust and then the construction work was started in November, 1994. Respondent No. 3 has also contested the claim of the petitioner that the area in dispute is a part of the green belt of is a park.

4. Separate replications have been filed by the petitioner to the replies of respondent Nos. 2 and 3. In these replications, the petitioner has reiterated his statement that respondent No. 2 has changed the user of the land without any notification having been issued by the State Government or sanction having been granted by the Government.

5. Main argument of Shri Gupta, learned counsel for the petitioner, is that in the layout plan of the scheme prepared by respondent No. 2 for Giani Zail Singh Nagar, the disputed area has been shown as green belt and in the absence of any order by a competent authority permitting change in the user of the land, respondent No. 2 could not have made allotment of the land in favour of respondent No. 3 and respondent No. 3 has no right to take possession of the plot of land allotted to it or to raise construction thereon. Shri Gupta argued that action of respondent No. 2 in converting the green belt and allotting the same for raising commercial premises will seriously injure the rights of the petitioner and other neighbours of the area. He argued that once a scheme is finalised under the Improvement Act, the Improvement Trust and all other functionaries of the Trust as well as the Government are bound by the user of the land indicated in the Scheme. Any change in the Scheme can be done by the Government only after inviting objections from the affected persons and after hearing the aggrieved parties and as no such procedure was adopted by respondents 2 and 3, allotment of land in favour of respondent No. 3 should be declared as null and void. Learned counsel appearing for respondent Nos. 2 and 3 vehemently argued that in the original Scheme approved by the Government, the disputed piece of land has not been shown as green belt or park. Instead, it has been shown as an open space and, therefore, the argument of Shri Gupta about the change of user of land should be rejected. Learned counsel argued that open space on the Eastern side of the plot of the petitioner still exists. They submitted that no encroachment has been made on the plot belonging to the petitioner and none of his legal or fundamental rights has been infringed by respondent No. 2 on account of allotment of extra land to the Life Insurance Company. Learned counsel argued that raising of office-cum-residential building cannot be treated as a change in the user of the land.

6. We have thoughtfully considered the rival contentions in the context of facts, which have been placed before the Court. We have also looked into the original plans prepared by respondent No. 2 which was duly sanctioned by the Government of Punjab. Perusal of the various plans produced before the Court clearly shows that wherever the area has been earmarked as green belt, the competent authority has specifically given an indication to that effect. Similarly, the land reserved for park and other public amenities have been specifically earmarked in those plans. The land which the petitioner claims to be the land

falling on the Eastern side of the plot of the petitioner has not been earmarked as green belt or park. Therefore, it is not possible to uphold the contention of Shri Gupta that the piece of land on the Eastern side of the plot of the petitioner is a green belt or a park. We find sufficient justification to accept the contention of the learned counsel appearing for respondents 2 and 3 that the area lying on the Eastern side of the petitioner's plot is a vacant land and there is no reason to treat the open space as green belt or park. Allotment of a portion of the open space to the Life Insurance Corporation cannot amount to change in the user of the land. Sanction for change in the user of land is required only when the land is already earmarked for a particular use and the competent authority seeks to effect change. Permission to raise construction on a portion of land, which is open space or which becomes available on account of shifting of roads etc. cannot be treated as a change in the user of the land. Thus, we do not find any substance in the contention of Shri Gupta that respondent No. 2 had acted illegally by bringing about a change in the user of the land without prior sanction of the Government. We are further of the view that the petitioner does not deserve any indulgence of the Court on account of abnormal delay in filing the writ petition. The land was allotted to the Life Insurance Corporation more than two years prior to the filing of the writ petition. Since the petitioner has claimed that he has a house in the vicinity of the land, which has been allotted to the Life Insurance Corporation, it is reasonable to presume that the petitioner was aware and had the knowledge of allotment of land to the Life Insurance Corporation. He had slept over the matter for a period of over two years before filing this writ petition. In the background of facts, which has been incorporated in the reply of respondent No. 3, the delay of more than two years is fatal to the prayer of the petitioner to quash the allotment of land made in favour of respondent No. 3.

7. Moreover, it cannot altogether be ignored by us that a number of suits have been filed in the civil court seeking injunction against the Ropar Improvement Trust as well as respondent No. 3 and in none of those cases the plaintiffs could successfully persuade the Court of competent jurisdiction to grant injunction in their favour. The petitioner cannot plead innocent ignorance about the litigation in the civil Courts. Apparently, he was waiting in the wings and watching the result of the litigations in the civil Courts. He cannot plead ignorance of the suit filed by his neighbour (owner of Plot No. 193). Only after the civil Court declined to exercise its discretionary jurisdiction under Order 39, Rules 1 and 2 of the CPC then the petitioner filed this petition. Therefore, we do not find any justification for exercise of extraordinary jurisdiction in favour of the petitioner.

8. For the reasons, mentioned above, the Writ Petition fails and is, therefore, dismissed. Parties to bear their own costs.