
(1996) 05 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16713 of 1994

Harbhajan Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Land Acquisition Act, 1894 — Section 4

Punjab Municipal Act, 1911 — Section 107

Punjab Town Improvement Act, 1922 — Section 101, 24, 36(2), 40, 40(2)

Citation : (1996) 114 PLR 101

Hon'ble Judges : T.H.B. Chalapathi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.S. Rakkar and J.S. Virk, for the Appellant; Ravinder Chopra, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This is a petition for quashing of notice Annexure P-2 issued by the Improvement Trust, Gurdaspur (hereinafter referred to as the Trust") regarding development scheme and notification Annexure P-5 dated 16.3.1994 issued by the Government of Punjab u/s 42(1) of the Punjab Town Improvement Act, 1922 (for short, the Act").

2. Petitioners No. 1 to 15 are owners in possession of various parcels of land falling in the revenue estate of village Litter, District Gurdaspur and described in detail in para No. 1 of the writ petition. The Trust prepared development scheme No. 4 in the year 1989 covering an area of 35 acres of land. That scheme was not finalised in accordance with the provisions of the Act. Subsequently, vide resolution No. 17 dated 19.4.1993, respondent-Trust framed development scheme No. 5 covering 34 acres of land falling on Jail Road, Gurdaspur. Notice Annexure P-2 was issued by the "Trust u/s 36 of the Act. Final notification evidencing sanction of the scheme by the Government was issued on 16 3.1994. The petitioners have challenged the notice issued by the Trust u/s 36 of the Act

and the notification Annexure P-5 on the following counts :-

- (1) Notice u/s 36 was not published for three consecutive weeks in the official gazette and the newspapers.
- (2) Publication of the notice in the official gazette, if any, made after its publication in the newspaper (only once) is not sufficient for compliance of Section 36 of the Act.
- (3) Copy of the notice issued by the Trust was not sent to the President and the Medical Officer of the Municipal Committee, Gurdaspur as per the requirement of Section 36(2)(b) of the Act.
- (4) Notice u/s 38 was not issued or served on the petitioners and, thus, they were deprived of opportunity to file objections.
- (5) Opportunity of hearing was denied to the petitioners.
- (6) No Objection Certificates were not issued by the Chief Agriculture Officer and the Sub Divisional Officer (Civil) and even without No Objection Certificates, the Government has illegally sanctioned the scheme.
- (7) The Trust did not forward the complete details of the scheme to the Government and without applying its mind to the relevant circumstances, the Government could not have sanctioned the scheme.

3. On facts, the respondent-Trust has contested the writ petition by stating that development scheme No. 4 framed by it in the year 1989 was abandoned due to unfavourable circumstances and, later on, the development scheme No. 5 was framed. It has been stated by the Trust that few small houses, a school, a cremation ground and some religious places which fall within the area of the development scheme have been adjusted in the layout plan prepared by it. Regarding publication of the notice u/s 36 of the Act, it has been stated that the same was published in Punjabi Ajit and Punjab Kesari (Hindi) dated 25.4.1993, 2.5.1993 and 9.5.1993 and the Punjab Government Gazette dated May 7, 1993, May 14, 1993 and May 21, 1993. It has also been stated that notices of the scheme were sent to the President and the Medical Officer of the Municipal Committee, Gurdaspur on 20.4.1993 and the same were received in their offices on 21.4.1993. The Trust has also pleaded that No Objection Certificates were given by all the Departments and final No Objection Certificate has been given by the Land Acquisition Board, Punjab in its meeting held on 12.12.1994. It has also been stated that the land falling in Khasra Nos. 21, 12, 15 and 6 has been adjusted in the lay-out plan because it comprised of built-up area. On the issue of compliance of Section 38, the Trust has asserted that notices u/s 38 of the Act were issued to the petitioners on 21.5.1993, the same were duly served on them and most of them filed their written objections which were duly considered by the Trust and the Government before issue of final notification. It has further been stated that the final notices were published in Punjab Kesari (Hindi) and Punjabi Ajit on 28.12.1993 and 4.1. 1994 and were also published for two

consecutive weeks in the official gazette of Government of Punjab. The Trust has denied the allegation of the petitioners that no land plan has been submitted to the Government for rehabilitation of the oustees. According to it, the Trust has submitted complete plan and details of the scheme including the estimated costs of its execution and arrangement has also been made to allot plots to the oustees from the scheme of the area. Such allotment, according to the respondent-Trust, would be made as per the provisions of the Punjab Town Improvement (Utilisation of Land and Allotment of Plots) Rules, 1983.

4. During the course of hearing of the writ petition, Shri Ravinder Chopra, learned counsel for the respondent-Trust produced original record to show the publication of notices in the official gazette and the newspapers. Shri Chopra also pointed out that petitioner-Harbhajan Singh was served with notice u/s 38 on 24.5.1993 and he filed objections on 14.7.1993. Petitioner Kuldip Singh was served on 25.4.1993 and he filed his objections on 15.7.1993. Petitioner-Sulakhan Singh was served with the notice on 24.5.1993. Darshan Singh, Wassan Singh and Raghbir Singh (all sons of Dalip Singh) and Baldeep Kaur wife of Dalip Singh were served with the notice on 24.5.1993 and they filed objections on 18.7.1993. Kashmir Singh son of Man Singh, Dalbir Kaur widow of Jagir Singh, Bikram Singh Swaran Singly Pritpal Singh (all sons of Jagir Singh) were served with notice on 21.5.1993. Rachhpal Kaur was also served with notice on 21.5.1993. Gurbax Singh son of Jawahar Singh and Gurbux Kaur mother of Daljit Singh were served with notice on 24.5.1993.

5. In the background of the above facts, we shall deal with various contentions advanced by the learned counsel for the petitioners and respondent-Trust.

6. The first contention urged by learned counsel for the petitioners is that after dropping of scheme" No. 4, the Trust was left with no authority to frame a new scheme and acquire the land of the petitioners.

7. The second contention urged by the learned counsel for the petitioners is that notices have not been published in the official gazette prior to their publication in the newspapers and, therefore, the action taken by the Trust is contrary to Section 36 of the Act.

8. The third contention urged by the counsel is that the petitioners were not served with notices personally and, thus, they have been deprived of their right to file objections against the scheme.

9. The fourth contention urged by the learned counsel is that the entire acquisition proceedings are vitiated by mala fides and arbitrariness because there could be no rhyme or reason to acquire the land upon which there exists houses, temple, graveyard/cremation ground and school. Learned counsel pointed out as many as 16 acres of land is covered by existing construction and no development scheme could possibly be executed in the area. He then argued that no residential colony could be set up within one kilometre of the graveyard in view of Section 107 of the Punjab Municipal Act, 1911.

10. The fifth contention urged by the learned counsel is that the Trust has shown favour to a few persons by adjusting their existing constructions in the lay-out plan and there is no justification not to adjust the houses of other persons.

11. Lastly, the learned counsel argued that the Trust cannot implement the development scheme without framing a rehabilitation scheme as required by Section 40(2) (vi) of the Act.

12. The first contention of the learned counsel, which relates to the jurisdiction of the Trust to frame a new scheme after alleged abandonment of the earlier scheme is wholly without substance. A careful reading of the provisions of the Act shows that there is no prohibition against framing of a scheme by the Trust after an earlier scheme is given up or is not implemented. In the absence of any statutory bar against the framing of a particular scheme it is not possible for us to hold that the respondent-Trust has acted illegally in framing the impugned scheme. It is significant that the petitioners have not levelled allegation of mala fide against any particular functionary of the Trust. Therefore, it is not possible to hold that the development scheme No. 5 framed by the Trust is contrary to law or is malafide. Moreover, we find that according to the petitioners themselves, the previous scheme was known as "development scheme No. 4" covering 35 acres of land and the impugned scheme is known as development scheme No. 5" covering 34 acres of land. It is an admitted position that the lands covered by two schemes are different. It cannot, therefore, be said that the Trust has re-framed the development scheme after having dropped the previous one and this has been done with an object to favour a particular set of land holders.

13. The argument of the learned counsel that the publication of notice in the official gazette subsequent to its publication in the newspapers is illegal, has no force. Section 36(2) of the Act requires the Trust to cause publication of the notice for three consecutive weeks in the official gazette and in a newspaper or newspapers giving an indication of the period within which objections can be filed. There is nothing in the language of Section 36(2) to indicate that publication of the notice in the official gazette must precede to the publication of notice in the newspapers. The purpose of publication of notice is to give an opportunity to the aggrieved parties to file objections and the same can be achieved irrespective of the fact that notice has been published in the official gazette after its publication in the newspapers. The sequence of the publication of the notice has absolutely no impact on the validity of the same. At the best, it can be termed as a trivial irregularity not affecting the legality of the notice issued by the Trust.

14. The argument of the learned counsel that the petitioners have been denied opportunity to submit their objections is based on a factually incorrect premise. The record produced before the Court clearly shows that S/Shri Harbhajan Singh and Kuldeep Singh (sons of Moola Singh), Darshan Singh, Wassan Singh and Raghbir Singh (sons of Dalip Singh) and Smt. Baldeep Kaur wife of Dalip Singh had filed objections. Therefore, the learned counsel is not right in submitting that

opportunity to submit objections was denied to the petitioners. It could not have been possible for some of the petitioners to file written objections without having received notices u/s 38 of the Act. That apart, the record also shows that all the petitioners have been served with the notices issued by the Trust. Hence, the plea of the petitioners regarding contravention of Section 38 of the Act deserves to be rejected.

15. Equally untenable is the contention founded on the allegation of mala fides, namely, that the Trust is seeking to acquire land belonging to temple, school, graveyard/cremation ground etc. while other more suitable land is available for acquisition. In its reply, the respondent-Trust has made a categorical statement that land 1 falling under temple, school and grave-yard/cremation ground has been adjusted in the lay-out plan. Similarly, some of the built-up areas have also been adjusted in the lay-out plan. It cannot, therefore, be said that the Trust has acted arbitrarily while preparing development scheme. Moreover, when the Government has sanctioned the publication of the scheme u/s 42(1) of the Act, it will be presumed that the Government has sanctioned the scheme after considering the suitability of the land and the objections raised by some of the petitioners. Presumption contained in Section 42(1) of the Act about the regularity of the action taken in the framing of the scheme is rebuttable, but, the petitioners have failed to produce any evidence to support their plea of malafides or arbitrariness and, therefore, we do not find any reason to nullify the scheme on this ground.

16. Plea of discrimination raised by the learned counsel for the petitioners is also untenable. Allegation made in the petition to the effect that land falling in Khasra Nos. 21, 12, 15, 6 has been adjusted while land belonging to others has been acquired is too vague to constitute basis for recording a finding that respondent-Trust has arbitrarily singled out few land owners for favourable treatment. Burden to prima facie prove the charge of discrimination lay upon the petitioners and as they have failed to discharge this burden it is not possible for the Court to record a finding that the action of the Trust not to acquire some of the built-up areas is discriminatory and, therefore, the Trust should release every piece of land upon which there exists some structure. We cannot issue a writ of mandamus so as to frustrate the entire development scheme framed for larger public interest.

17. The argument of the learned counsel which is based on Section 107 of the Punjab Municipal Act, 1911 also merits rejection. Section 107(1) of the Act of 1911 prescribes the procedure for closing down of existing burial or burning ground situated within the municipal limits or within one mile thereof. Section 107(2) relates to private burial places. Section 107(3) imposes restriction on the formation of burial or burning ground. Primary object of these provisions is to protect the public health. That section does not contain any provision imposing restriction on the framing of development scheme merely because within such development scheme some are may fall under existing cremation ground/graveyard.

18. The last argument of the learned counsel relates to the alleged non-compliance of Section 40(2) (vi) of the Act. Learned counsel submitted that the Trust did not furnish a statement of the arrangements made or proposed by it for re-housing of the persons like the petitioners who are displaced in the execution of the scheme and, therefore, notification Annexure P-5 should be quashed. On the other hand, Shri Chopra argued that the Trust has already made provisions for allotment of plots to the persons whose land is being acquired and this would be done strictly in consonance with the provisions of 1983 Rules. In our opinion, the contention of the learned counsel does not merit acceptance because :

(i) No material has been placed before us to discard the specific statement made in the reply filed by the respondent-Trust that a provision has been made in the scheme for allotment of plots to those whose land is sought to be acquired. This shows that the respondent-Trust has made substantial compliance of Section 40(2)(vi) of the Act;

(ii) The Government has approved the scheme after considering the entire material before it and in view of Section 42(2) the publication of notification Annexure P-5 should be treated as conclusive of the fact that the scheme has been duly framed and sanctioned ; and

(iii) Even now the rights and interest of the petitioners can be protected by giving a direction to the respondent-Trust to make suitable provision for re-housing of the persons who are likely to be displaced by execution of the scheme because at the best violation of Section 40(2) (vi) can be described as an irregularity and in view of Section 101 of the Act such irregularity does not have the effect of vitiating the sanction by the Government.

19. For the reasons stated above, the writ petition is dismissed subject to a direction that if any of the petitioners makes an application for allotment of a plot of land for the purpose of re-housing, then, his/her application shall be considered by the Trust strictly in accordance with scheme and the provisions of the 1983 Rules.