(1982) 03 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 198 of 1979

Jullundur Improvement Trust, Jullundur — APPELLANT

Vs

Northern Carriers Private Ltd.and others — RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:

Citation : (1983) ILR (P&H) 82 : (1982) PLJ 505 : (1984) RRR 665

Hon'ble Judges : S.S.Sandhawalia;CJ., J and D.S.Tewatia, J

Advocate : Mr. Ajay Kumar Mittal, Advocate, Mr. Ashok Bhan, Mr. S. P. Jain, Advocate., Advocates for appearing Parties

Judgement

S. S. Sandhawalia, C.J.—Whether Sections 36, 38 and 42 and other relevant provisions of the Punjab Town Improvement Act, 1922 read with Schedule thereto would warrant the acquisition of land belonging to the Central Government is the somewhat significant question which has come to the fore in this appeal under Clause X of the Letters Patent.

2. The facts are not in dispute and lie within a narrow compass. Way back on November 4, 1966, the Jullundur Improvement Trust, duly notified a development scheme under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter called `the Act''). It is virtually the admitted position that the provisions of Section 38 of the said Act were complied with and vide annexure P/4, a notification under Section 41(1) of the Act was duly published with regard to the scheme aforesaid on May 30, 1968. This notification makes an express mention that under Section 41(1) of the Act, the Governor of Punjab was pleased to accord sanction to the acquisition of land comprised in the development scheme. It further specified the areas to which it was applicable.

3. Pursuant to the acquisition proceedings, the Land Acquisition Collector also gave his Award on March 11, 1970 vide annexure P/5.

4. Messrs Northern Carriers Private Limited, the writ petitioners, claimed that they had no knowledge of the aforesaid scheme and they purchased urban

evacuee property to the tune of 29 kanals 1 marla from the Central Government for Rs. 2,43,050/ vide transfer deed executed on June 25, 1971. However, the appellantImprovement Trust, started taking steps for the possession of land in pursuance of the acquisition proceedings of the scheme aforesaid. Later, the Land Acquisition Collector gave a supplementary award dated October 5, 1972, including the land of the writ petitioner which had been acquired by sale from the Central Government. Thereby the market value of the acquired land was sought to be fixed with regard to the date of the publication of the scheme under Section 36 of the Act; namely, in November, 1966. The writ petitioners did not accept the award and sought reference under Section 18 of the Land Acquisition Act before the Tribunal constituted for the said purpose, vide annexure P/7. However, on October 30, 1976 the respondents preferred the writ petition challenging inter alia the acquisition proceedings itself.

5. Before the learned Single Judge, the primary contention which was pressed was that at the time of the publication of the scheme under Section 36 and the subsequent notification under Section 42(1) of the Act, the land now owned by the writ petitioner vested in the Central Government and because of this reason, it could neither be acquired nor any notification with regard thereto could be issued. This contention, in terms, found favour with the learned Single Judge whilst holding the impugned notification as void qua the land of the writ petitioner. Inevitably also, he rejected the preliminary objection that the writ petition having been filed after 10 years of the original publication of the scheme was belated and suffered from gross laches. Consequently, the writ petition was allowed and the impugned notification, as also the award pertaining to the property of the writ petitioner, were quashed.

6. On behalf of the appellant, a frontal challenge is laid to the findings that the land of the Central Government could not be acquired. It has been forcefully contended that there is neither an express nor an implied bar in the statutory provisions of the Act, which could inhibit the acquisition of any land including that owned by the Central Government.

7. It is manifest that the controversy herein must revolve around the relevant provisions of the Act. It is, therefore, apt to read relevant parts of Sections 36, 38, 41 and 42 of the Act :

"36. (1) When a scheme under this Act has been framed, the trust shall prepare a notice stating

(i) the fact that the scheme has been framed,

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) The trust shall ... ...".

"38. (1) During the thirty days next following the first day on which any notice is published under Section 36 in respect of any scheme under this Act the trust shall serve a notice on

(i) every person whom the trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme;

(ii) the occupier (who need not be named) of such premises as the trust proposes to acquire in executing the scheme.

(2) Such notice shall ... ...".

"41. (1) The State Government may sanction, either with or without modification, or may refuse to sanction or may return for reconsideration, any scheme submitted to it under Section 40. (2)........ ...".

"42. (1) The State Government shall notify the sanction of every scheme under this Act, and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of Section 27 have been fulfilled.

(2) A notification under subsection (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

8. Now a bird'' eye view of Chapter IV, beginning with Section 22 of the Act, indicates that it provides for a vide variety of schemes, all directed to the purpose of town improvement. The primary procedural requirements therefor are spelt out upto Section 35 of the Act, which provides for matters to be considered before framing improvement schemes in general. Section 36 of the Act, with which we are particularly concerned, deals with the stage when any such scheme has been duly framed and the publication thereof is consequently warranted. The statutory notice requires that the fact of the scheme having been framed and the boundaries thereof as also the place at which it can be inspected in greater detail and reasonable hours, should be specified, and the modus of the publication of this notice is also prescribed. The aforesaid notice is apparently for inviting any objections or representations with regard to the scheme. Then comes Section 38 of the Act, which provides for a statutory notice and the proposed acquisition of land. After the expiry of the period prescribed, the trust is again obliged to consider any objection or representations received and after hearing all persons or their representatives, it may either abandon the scheme or apply to the State Government for its sanction. Section 41(1) of the Act empowers the State Government to sanction, reject or return such a scheme and in the event of ultimate sanction, Section 42 provides for the notification of such a sanctioned scheme enjoining the trust to forthwith proceed to execute the same. Such a notification is made conclusive evidence that the scheme has been duly framed and sanctioned.

8A. Now a plain look at these provisions leaves no manner of doubt that they provide a detailed, if not an altogether exhaustive code for the purpose of the execution of schemes for the improvement of the urban areas and inevitably the acquisition of land therefor.

9. What, however, calls for pointed attention here is the schedule to the Act which makes significant modifications in the Land Acquisition Act, 1894 for the purposes of acquisition under this Act. At the very outset, it may be noticed that by and large it provides for adaptation and modifications of the modus of acquisition provided under the Land Acquisition Act with suitable variations. Clauses 1 and 2 of this schedule first call for notice in extenso :

"1. After clause (e) of Section 3 of the said Act, the following shall be deemed to be inserted, namely:

(ee) the expression, "local authority" includes a trust constituted under the Punjab Town Improvement Act, 1922".

"2. (1) The first publication of a notice of any improvement scheme under Section 36 of this Act shall be substituted for and have the same effect as publication in the Official Gazette and in the locality of a notification under subsection (1) of Section 4 of the said Act, except where a declaration under Section 4 or Section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this schedule, the issue of a notice under subsection (1) of Section 32 in the case of land acquired under that subsection, and in any other case, the publication of a notification under Section 42 shall be substituted for and have the same effect as a declaration by the State Government under Section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force."

Now the obvious effect of the aforesaid provisions is that the notifications under Sections 36 and 42 would lead to the identical results as those under Sections 4 and 6 of the Land Acquisition Act. In a way, the pen and ink theory of construction is called in here and one has to read mutatis mutandis the provisions of the Land Acquisition Act into those of the Act itself by virtue of 15 clauses of the schedule. The true legal effect, therefore, is as if the corresponding provisions with the variations were written with pen and ink into the Act. In particular, in this context, clause 6 of the schedule may be noticed :

"After Section 17 of the said Act, the following shall be deemed to be inserted, namely :

17A. In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of acquisition make over charge of the land to the trust; and the land shall thereupon vest in the trust subject to the liability of the trust to pay any further costs which may be incurred on account of its acquisition."

It is plain from the above that if the necessary compliance is made with the law then the land acquired under the provisions of the Act shall vest in the Trust with the marginal condition that any further costs which may be incurred on account of acquisition would have to be paid. This, however, in no way affects the basic results of divesting the owner and vesting the property in the trust.

10. Once it is held as above, all that remains to be seen is whether the land belonging to the Central Government is in any way an exception to the mandate of the statute and is outside the scope and power of acquisition under the Act. It is the admitted position that there is no provision in the Act itself nor any other statutory provision could be brought to our notice which creates an express bar of this nature. Nor on a plain and even close analysis of the Act itself, are we able to detect any implied bar arising from its provisions. Mr. Ashok Bhan, the learned counsel for the respondent was fair enough to concede that no general or particular categories of land have been exempted from acquisition either expressly or by necessary implication. Therefore, even as regards the land owned by the Central Government, we are unable to find any impediment against its acquisition under the provisions of the Act which is general in nature. Indeed as is manifest, the purpose and the object of the Act is directed to the improvement of certain areas, particularly the urban ones. In terms it provides for the improvement and expansion of the towns in Punjab and has been enacted with the previous sanction of the Governor General under Section 80A(3) of the Government of India Act. Indeed the rights of ownership of land to be acquired for town improvement appear to be irrelevant against the power of acquisition vested by the Act when exercised in accordance therewith. The Act does not seem in any way to discriminate in the context of acquisition of lands whether they are under private, public or Central Government''s ownership.

11. On larger considerations as well, I am unable to see that such a bar against the acquisition of land owned by the Central Government should be read into the provisions of the Act. As already noticed, the Act provides for the framing and execution of a variety of schemes for urban renewal. This larger purpose indeed is to improve the existing towns and also the expansion thereof within the State. Inevitably, in the process of executing the schemes and the purposes of the Act, it might not only become necessary, but, indeed, imperative to acquire an area belonging to the Central Government in order to implement a particular scheme or the expansion of a town on a compact block of land. To say that any isolated pocket of ownership of land by the Central Government would involve a total impediment against its acquisition might well hamstring the execution of the particular scheme or the expansion of the town on that site and thus, frustrate the avowed objects and purposes of the Act. Therefore, unless a clear and a positive interdict is laid down by the statute, we cannot easily read any such limitation in a wide legislative power of acquisition under the Act. It is elementary and needs no highlighting that the law operates evenly and is no respecter of persons, whosoever be the owner of the land, a private person, or a public body, or the Central Government itself.

12. Apart from baldly asserting that the land of the Central Government (and by way of analogy of the State Government as well) cannot be acquired under the Act, Shri Ashok Bhan, learned counsel for the writ petitioners, was unable to cite either principle or precedent in support of his stand. Indeed, it was conceded by the learned counsel at the bar that despite deligent research, the matter appears to be resintegra and there was no judgment directly governing the point either way. Shri Ashok Bhan only expressed vague fears that conflict might arise betwixt governmental and public authorities and between the State and the Central Government wanting to acquire the land belonging to the other. In the present context this apprehension is more imaginary than real. Apart from the larger control over the constitution and working of the Improvement Trust, the State Government itself is the sanctioning authority of the scheme under Section 41 as also the notifying authority under Section 42 of the Act. It is only with the consent and concurrence of the State Government and under its authority that the acquisition proceedings for the scheme take place. In cases where the State Government may not agree to a particular acquisition of the property comprised therein it can refuse sanction to a scheme or modify it accordingly and in the ultimate analysis may not notify the same under Section 42. Consequently any fears of conflict any deadlock herein are not wellfounded and in any case if they do arise there is no reason to presume that these cannot be amicably resolved at mature levels. It deserves recalling that constitutional provisions themselves provide for the resolution of certain kind of interState and CentreState disputes and if the situation so demands, resort can equally be had to the legislative measures with the same end in view.

13. Now, a reference to the judgment under appeal leaves no manner of doubt that the pervading premise thereof is that the acquisition amounted in effect to acquiring one''s own land. With great respect, we find ourselves unable to subscribe to that view and to equate the Improvement Trust with the Central or the State Government. The Improvement Trust, the State Government and the Central Government are distinct and separate entities capable of holding property individually. Reference has already been made to clause 6 of the schedule to the Act which provides that after the acquisition, the land thereupon shall vest in the Improvement Trust. Chapter II of the Act deals with the constitution of the Trust and the relevant part of the opening Section 3 thereof calls for notice in extenso :

"The duty of carrying out of the provisions of this Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called "The (name of town) Improvement Trust" hereinafter referred to as "The Trust"; and every such board shall be a body corporate and have perpetual succession and common seal, and shall by the said name sue and be sued ... ...".

It is plain from the above that the Trust is a body corporate having perpetual succession and a common seal which can sue and be sued in its own name. Clearly it is a legal person and an entity distinct from either the State or the

Central Government. A reference to Sections 3 to 11 contained in Chapter II, dealing with the constitution of the Trust, appointment of its Chairman and its Trustees, the tenure of its office etc., leaves no manner of doubt about its independent entity. Therefore, it cannot be said that the acquisition and vesting of the land in the Trust which was earlier owned by the Central Government would be tantamount to acquiring one''s own land. The learned counsel for the appellant rightly highlighted that the publication of the notice under Section 36 of the Act (which is the legal equivalent of a notification under Section 4 of the Land Acquisition Act) was issued categorically by the Chairman of the Trust and in no way by the State or the Central Government. This notice and equally the subsequent notification under Section 42(1) of the Act (Annexure P4) included within its ambit the area earlier belonging to the Central Government and later on transferred to writ petitioners. There was, thus, no doubt about the intention to acquire that area and the taking of the requisite steps under the Act to do so. The same acquisition proceedings and notifications having been held to be good and valid qua the other areas, no exception can be made with regard to the land included in the same notification though owned by the Central Government. Having held that there is no bar under the Act to the acquisition of the land belonging to Central Government, it necessarily follows that the acquisition of its property by the relevant notifications is in no way devoid of legal sanction.

14. In fairness to the learned counsel for the respondents, we notice his primary reliance on The Government of Bombay v. Esufali Salebhai, (1910) V Indian Cases 621, and its subsequent affirmance in Collector of Bombay v. Nusserwanji Rattanji Mistri and others, AIR 1955 S.C. 298, and The Special Land Acquisition and Rehabilitation Officer v. M. S. Seshagiri Rao and another, AIR 1968 S.C. 1045. However, these authorities are only for the proposition that the State or the Central Government cannot acquire its properties, because there can be no question of the Government acquiring what is its very own. There is indeed and cannot be any quarrel with this proposition which is axiomatic subject to the qualifications where the ownership may not be absolute and other interests therein exist. Once it is held, as we have, (and indeed, it must be) that the Trust is a corporate body distinct and separate from the Central Government, no question of any acquisition of land belonging to one''s own self would arise. The decisions relied upon by the learned counsel for the respondents are, thus, not only distinguishable, but, indeed, seem to us rather wholly wide of the mark.

15. There is, however, no gainsaying that some observations of the learned Single Judge in paragraph 13 of the report in Hari Chand Bishna Ram and another v. State of Punjab and others, AIR 1972 Punjab and Haryana 25, would tend to lend some support to the stand taken on behalf of the respondents. Therein, while considering an ancillary contention in passing, it has been observed that the provisions of the Land Acquisition Act cannot be validly invoked by the State Government to acquire property belonging solely to the Central Government or vice versa. No reason or rationale whatsoever has been given for the observation which is entirely in the nature of a dictum. It is patent

that the issue was not at all seriously debated by the learned Single Judge. I am gravely spectical about any such proposition, but since the issue of acquisition by the State Government visavis the Central Government is not pointedly raised before us, I would refrain from finally pronouncing upon the matter in view of the canon that the Courts should eschew adjudication of issues not directly arising for determination.

16. Before parting with this aspect of the case, I must notice the somewhat ingenious stand of the learned counsel for the respondents that the aforementioned issue does not arise for consideration and in the Letters Patent jurisdiction we should not advert to it. This stance is only to be noticed and rejected. A reference to the judgment under appeal itself shows that this very issue was pointedly raised and was indeed the main plank of Shri Ashok Bhan himself before the learned Single Judge who has noticed the argument in the undermentioned terms :

"... ...He further submits that notification under Section 36 of the Act is equivalent to notification under Section 4 of the Land Acquisition Act, 1894. According to him, if the land vested in the Central Government, a notification under Section 36 of the Act could not be issued by the respondents ... ...".

It was the aforesaid contention which in terms found favour with the learned Single Judge and he held as under :

"... ...In view of the above provision, the notification under Section 36 of the Act amounts to a notification under Section 4 of the Land Acquisition Act. Such notifications are, therefore, to be treated as having been issued by the State Government. It cannot be disputed that a person cannot acquire his own property. That being so, no notification pertaining to the property in dispute could be issued under Section 36 of the Act ... ...".

In view of the above, it is patent that the aforesaid issue not only arises, but, indeed, lies at the heart of the controversy betwix the parties. It was inevitably the primary and virtually the sole basis for allowing the writ petition. The judgment of the learned Single Judge clearly rests on the same. I am, therefore, somewhat surprised on the stand of the learned counsel for the respondents that an issue which was raised by him and is, indeed, the core of the matter, is the one which cannot be adjudicated upon or that the appellant is in any way estopped from doing so.

17. In the light of the foregoing discussion, it must, therefore, be held that the relevant provisions of the Act clearly warrant the acquisition of land belonging to the Central Government. The answer to this question posed at the outset is, therefore, rendered in the affirmative.

18. Now, applying the above, it must be held that the impugned notifications were clearly within the four corners of the law and have to be upheld. Necessarily, the award consequent to the same is of equal validity. With respect,

the judgment of the learned Single Judge, has to be set aside and the writ petition dismissed. The appeal is, hence, allowed with costs.

19. Before closing the judgment, I would wish to notice that in view of our findings that the impugned notification and the acquisition proceedings are valid, the issue of delay would obviously be resuscitated. Admittedly, the publication under Section 36 of the Act was made way back in 1966 and it was only a decade thereafter on October 30, 1976 that the writ petition was preferred to quash the acquisition proceedings themselves. However, as we have already taken a view in favour of the appellant on merits, it seems unnecessary to advert to this aspect of laches.