
(2009) 07 P&H CK 0113
In the Punjab And Haryana At Chandigarh

Kamaljit Kaur

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Punjab Development of Damaged Areas Act, 1951 — Section 12(2)

Citation : (2010) 5 RCR(Civil) 219

Hon'ble Judges : S.D. Anand, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.D. Anand, J.—The challenge herein, at the hands of the petitioner, is to the impugned action of the official respondents in having demolished her construction on the announced premise that the land thereunder had been "acquired so as to give effect to the Revitalization Plan of the Jallianwala Bagh of 2007" and also a similar announcement that "the petitioner and others will be suitably compensated for the acquisition". In fact, the allegation proceeds, the announced acquisition was a facade and the respondents No. 3 and 5 did not supply the copies of any of the notification or award in spite of the repeated request of the petitioner. The year of acquisition was given out to be 1968.

2. As per averments in the petition, the petitioner purchased the impugned commercial building bearing Municipal No. 1500/3 situated at Bazar Bagh Jallianwala at Amritsar "adjoining to the main entrance of the Jallianwala Bagh" on 21.6.2004. There is a Gali (about 3.4 feet wide) intervening "the boundary wall of the petitioner"s building and the adjoining building bearing No. 1499/3, this is one of the historical Gali"s (besides others), which leads to the Jallianwala Bagh."

3. It was on the above allegations that the petitioner applied for a declaration that the respondents had "illegally taken the possession of demolished the commercial building of the petitioner without making any acquisition as per law

and without paying any compensation.". The petitioner also applied for "the possession of the building" and "suitable damages qua construction, besides suitable compensation". Also applied for is a declaration that that the property aforementioned does not form a part of the scheme, notified vide notification dated 17.7.1968, and that the award dated 4.12.1979 does not relate to it.

4. The contesting respondents averred that the petition deserves to be dismissed on account of delay and laches inasmuch as the impugned acquisition had been notified vide notification dated 17.7.1968 (Annexure P-6); whereas the challenge herein had been filed only in the year 2008. The further averment is that this land belonged to one Vijay Kumar whose father Rattan Chand had entered appearance before the authorized (Land Acquisition) Collector at the time of award proceedings and further that the assessed compensation (Rs. 5920/-) had been deposited in terms of the award dated 4.12.1979 (Annexure P-10). The further averment, in the context, is that the land aforementioned having been acquired in the year 1968 and the relevant award having been granted on 4.12.1979, Vijay Kumar ceased to have any title in that land thereafter which he could have validly transferred to the petitioner herein on 21.6.2004.

5. In a short affidavit filed on behalf of respondent No. 1, the averments made by the petitioner were denied and the pleas raised by respondents No. 3 to 5 were reiterated. It was, otherwise, averred that the Government of Punjab (respondent No. 1) "has no direct role with regard to the claim of the petitioner."

6. The grievances presently canvassed before us to obtain invalidation of the impugned act of official respondents, are as under:

i) The property of the petitioner is not a part of the plan acquisition as set out vide notification dated 17.7.1968 (Annexure P-6)".

ii) The impugned scheme had not been executed within the period of three years envisioned under Sub Clause (2) of Section 12 of the Punjab Development of Damaged Areas Act, 1951.

iii) An oral assurance for the allotment of alternative site has not been honoured by the official respondents till date.

7. In the context of the grievance canvassed in the form of item No. (i), the learned Counsel for the petitioner was confronted with the relevant site plan, a perusal where of convincingly proves that land comprised in Municipal No. 1500/3 was indeed included in the impugned acquisition notification (Annexure P-6). Faced with the predicament aforementioned, the learned Counsel concedes before us that the averment with regard to subject of the aforesaid item of grievance has been found to be factually incorrect.

8. Insofar as the grievance indicated at item No. (ii) is concerned, there also the petitioner is not on a firmer footing. For appropriate adjudication of the relevant controversy, we would quote hereunder the provisions of Section 12 of the Punjab Development of Damaged Areas Act, 1951 (hereinafter referred to as

"the Act"):

12. Execution of scheme by the Trust : (1) On possession of the land comprised in any sanctioned scheme been delivered to the Trust it shall proceed to execute the said scheme.

(2) The Trust shall, as soon after but not later than three years from the date of sanction of the scheme, submit for the scrutiny of the State Government an accurate statement which shall contain the following particulars:

(a) The actual cost of the scheme

(b) The income derived from the scheme

(c) The particulars and the estimated value of the plots and any material thereon that remain to be sold; and

(d) The estimated valued of the other sources of incomes from the scheme which remain outstanding.

(3) The State Government shall after such scrutiny as it may deem necessary, notify the details of the aforesaid statement.

9. It would be evident from a perusal of the above quoted provisions that there was no compulsive requirement for the Improvement Trust/respondents to execute that scheme within three years from the date of sanction thereof. We find that all that Sub Clause (2) of Section 12 of the Act quoted above provides is that Improvement Trust has to compulsively submit relevant particulars to the State for the scrutiny of the State Government within three years "from the date of sanction of the scheme". It is thereafter the responsibility of the State Government to notify the details of the statement aforementioned. The averred/ argued delay on the part of the State Government in the execution thereof does not affect the validity of the impugned acquisition. We do not, thus, find any force in the grievance.

10. Insofar as the last advocated grievance is concerned, it too is denuded of merit. It was a case of pure and simple acquisition under a duly notified scheme. For want of any documentation, we are not in a position to persuade ourselves to find any force in the averment made by the petitioner that there was any promise of allotment of an alternative site to her. Even otherwise, the grievance does not merit cognizance in the absence of any pleadings to that effect. It is to state the obvious that the official respondents would have responded to only those averments, factual or otherwise, which are pleaded in the petition. It is, thus, apparent that the grievance merits to be discarded for want of pleadings to that effect too.

11. We would also like to notice here that the petitioner, in her own discretion, opted to refrain from filing a rejoinder. It would be appropriate to point out here that the contesting respondents had made fact based averment in the counter to the effect that purported predecessor-in-interest of the petitioner had ceased to

have any title to the property under reference with the acquisition thereof vide notification dated 17.7.1968 (Annexure P6) and grant of the award dated 4.12.1979 (Annexure P-10). Obviously, he just was not in a position to pass on to the petitioner a title which himself ceased to have on account of the acquisition of the property aforementioned. There is also a precise averment by the contesting respondents that father of Vijay Kumar aforementioned had participated in the award proceedings and further that the compensation assessed by the competent authority had been deposited in the Treasury. If the claimant/land owner, at that point of time, did not opt to withdraw the deposited compensation, he cannot be heard to draw any benefit therefrom. The same would, obviously, apply with equal force to whosoever claims to have acquired title from him. This is, ofcourse, subject to our finding that Vijay Kumar ceased to have title in the property under reference and he was not competent to transfer any title therein to the petitioner on 21.6.2004.

12. In the light of the foregoing observations, we dismiss the writ petition. There will, however, be no order qua the costs of the cause.