(1981) 02 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 2167, 2211, 2215 to 2218 and 2262 of 1976

Kartar Kaur and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 06-02-1981

Acts Referred:

General Clauses Act, 1897 — Section 4, 4(1), 5
Land Acquisition Act, 1894 — Section 48
Punjab Town Improvement Act, 1922 — Section 24, 28(2), 36, 41, 42

Citation : AIR 1981 P&H 146

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Judgement

1. This judgment will dispose of seven Writ Petitions Nos 2262, 2167, 2211 and 2215 to 2218 of 1976, as identical question of law and fact have bee raised in these all. The learned counsel for the parties are agreed that the decision in Civil Writ No. 2262 of 1976, would govern the merit of the other cases and in this view of the matter I propose to make a reference, whenever necessary, to the facts and records of this case only.

2. The improvement Trust, Ludhiana, (hereinafter referred to as the Trust) framed a development scheme u/s 24 read with Section 28(2) of the Punjab Town Improvement Act, 1922, (hereinafter referred to as the Act), regarding 17 acres of land near the Jawahar Camp and in this regard published a notice under S. 36 of t he Act on November 1, 1963. Later this scheme was sanctioned by the Government in terms of Section 41 of the Act and was duly notified on January 28, 1968. as required by Section 42 of the Act. Instead of implementing this scheme as sanctioned, the Trust, as per the allegation of the petitioner modified it and converted it into a housing scheme without complying with the procedure necessitated by such an alteration or change in the scheme Some of the landowners, namely. Kartar Singh and others, filed Civil Writ Petition No. 2725 of 1971, in this Court challenging the conversion of the scheme from ''development scheme'' to ''housing scheme'' and the said petition was allowed by a learned

single Judge of this court on April 27, 1973. Though there is a little controversy between the parties with regard to the exact effect of this judgment, yet that being not material for the purpose of the present controversy, I need not make a detailed reference to the contents of the said judgments. As a sequel to this pronouncement, the Trust passed are solution No. 30 dated May 23, 1973. Annexure P. 1 resolving to abandon the scheme altogether. Since the whole controversy revolves around the interpretation and effect of this resolution, it is but proper to reproduce the same in extenso:--

"Taking into consideration of the Orders of The High Court, the present sanctioned development scheme of the Jawahar Nagar, is hereby abandoned and accordingly the Land Acquisition Collector be informed that he should refund the amount paid by the trust."

3. At a later stage, as a result of some correspondence between the Government and the Trust, the State Government advised the Trust with reference to the above noted resolution f the Trust, vide Annexure R-1 to the written statement that while the order of the High Court in the above noted writ petition may be complied with, but the scheme as a whole may not be abandoned as it did not appear necessary. As per the return of the Trust it felt bound by the above noted advice of the Government and thus on a reconsideration of the entire matter superseded its resolution Annexure P. 1 ad decided to proceed with the implementation of the scheme as originally sanctioned by the Government on Jan 28, 1968. This led to the issuance of the impugned notice Annexure P.3 to the petitioner asking her to surrender the possession of the land with her.

4. The case of the petitioner now is that after the passing of the resolution Annexure P. 1 by the Trust on May 23, 1973, she purchased the property in her possession on July 9, 1973. from one ''Madhok family" on the belief that the Trust had abandoned the scheme and thus the Trust is now estopped from reviving the scheme and executing the same. The contention raised further is that the Trust has not jurisdiction to rescind the abandonment of the scheme and the resolution dated April 23, 1974. Annexure P. 2, and all steps or proceedings subsequent thereto are wholly without jurisdiction. The petitioner further maintains that incase the Trust wants to frame a scheme afresh then it may do so it accordance with the provision of the Act.

5. The State respondent has not chosen to contest this petition and thus has filed no return. The Trust on the other hand pleads that in law it had no jurisdiction to abandon the scheme as was done vide resolution Annexure P. 1 and in case it had, it is wholly competent to rescind that resolution and to implement the scheme as sanctioned by the government. Thus its case is that resolution Annexure P.2 is perfectly legal and as a necessary consequence the legal and as a necessary thereof are wholly justified and lawful.

6. Thus the short question which calls for determination is as to whether the Trust, in law could abandon the scheme and if it could, can it revive it as has

been done vide resolution Annexure P. 2 ? though to me appears patent as is also being contended by Mr. Kuldip Singh, learned counsel for the petitioners, that the power to make a scheme or a order or rule or bylaw includes the power to add amend or vary or rescind the same, yet Mr. R. K. Aggarwal, learned counsel for the Trust Forcefully maintains that under the Act the Trust could not abandon the scheme. The reasoning advanced in support of this stand is that by virtue of Section 59 of the Act, the Land Acquisition Act, 1894 as modified by the Schedule to the Act. is applicable for acquiring the property for the implementation of the scheme framed and notified under the Act. According to the counsel the acquisition is made by the State on behalf of the Trust and under S. 48 of the Land Acquisition Act only the state can withdraw or abandon the acquisition proceedings. He, therefore, maintains that the Trust could not abandon the scheme and the resolution Annexure P. 1 is wholly meaningless and ineffective. In any case his stand further is that the Trust could revive the Scheme as has been done by passing resolution Annexure P. 2 The above noted stand is wholly fallacious and appears to be based on two assumption (I) framing or implementation of the scheme under the Act is the same thing as acquisition of the land for the implementation thereof and(ii) it is only u/s 48 of the Land Acquisition Act. that the State can withdraw the acquisition.

7. So far as the second assumption of the learned counsel is concerned, the matter stands squarely settled by an authoritative pronouncement of the supreme Court in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , Wherein it has been observed As follows:--

"The argument that Section 48(1) is the only method in which the government can withdraw from

the acquisition has no force because the Government u/s 4 and 6 by the virtue of its power u/s 21 of the general Clauses Act and this power can be exercised before the Government directs the collector to take action direct the Collector to take action u/s 7. "

Thus if the government can withdraw the acquisition by rescinding the notification published u/s 4 of the Land Acquisition Act, then to my mind, the trust can certainly rescind the scheme as notified u/s 36 of the Act. It is not in dispute that by virtue of paragraph 2 of the Schedule to the Act the publication of notice of the scheme u/s 36 of the act is equivalent or has the same effect as the publication of notification u/s 4 of the Land Acquisition Act. It is also not in dispute that u/s 36 of the Act if is the Trust which notifies the scheme prepared under the proceeding section of the Act. It is thus clear that the Trust by abandoning the scheme and thereby withdrawing the notice u/s 36 of the Act, can bring about the withdrawal or the abandonment of the acquisition proceedings.Further it is not denied by the trust that in pursuance of the resolution. Annexure P. 1 the amount which it had entrusted to the Collector Land Acquisition for payment by way of compensation had bee withdrawn by it from the said Collector. Thus to my mind now it does not lie in the mouth of the trust to say that it had not abandoned the scheme as notified by the Government. Further the learned counsel concedes that prior to the coming into force of the Punjab Town Improvement (Amendment) Act, 1974, (Punjab Act No. 7 of 1974) which brought about a proviso to section 40 with effect from April 3, 1974, to the following effect:--

"Provided that no scheme shall be abandoned by the Trust without the prior approval of the State Government". There was no other provision in the Act which in any way debarred the Trust from abandoning any scheme. If a reference to the Statement of object and Reasons of this Act, that is, Punjab Act No. 7 of 1974, is made, it becomes crystal clear that in the absence of this proviso, the Government felt that there was no specific power with the Government to exercise administrative control over the working of the Trust. It was thus with a view to seek administrative jurisdiction over the working of the Trust that this proviso was brought about. A reading of this Act further shows that this is the only provision which can possibly said to relate to the administrative control of the Government. Thus in the light of the above discussion I find that there was nothing in law which debarred the Trust from abandoning the scheme as it did vide Annexure P. 1.

8. So far as the first assumption o which the learned counsel has based his argument is concerned, I again find no warrant for the same. Chapter 4(Section 22 to 44) of the Act deals with the framing, processing and sanctioning of the various scheme such as Improvement, Re-building, Development or Extension and Housing Accommodation. etc. These provisions have nothing to do with the acquisition of the land for the fulfillment of these scheme. In fact the learned counsel himself ha pointed out in the light of the Supreme Court judgment in Nagpur Improvement Trust v. Vithal Rao N AIR 1973 SC 689, that it is the Government which acquired the land under the provision of the Land Acquisition Act as modified by the Act though it is doe for the purposes of the Trust. So far as the framing of the scheme is concerned it is the Trust which does this. It is a different matter that the scheme are ultimately put up to the Government for according sanction to the same. Thus the framing or implementation of the Scheme is entirely different from the acquisition of land for the said purpose. If the Trust is the maker of the scheme as it is, then I do not see any reason or logic in holding that it cannot abandon the same.

9. The learned counsel for Trust has not brought to my notice any provision under which the Trust can revive or put life into a scheme which has been abandoned or became non-existent. All that the Trust can do under these circumstances is to frame a new scheme and finalise the same or get the same sanctioned after complying with the various provision of the Act.

10. There is yet another aspect of the matter which has been emphasised by learned counsel for the petitioners, i. e., with the abandonment of the schemes vide Annexure P. 1, these petitioners have altered their position to their detriment by either purchasing the property which formed part of the scheme or

by raising construction etc. on the same. According to the counsel, if the Trust is allowed to implement the abandoned scheme as it proposes to do and thereby becomes entitled to acquire the land on the market price as it was prevalent on Nov. 1, 1963, that is, the date on which the notice under S. 36 of the Act (equivalent to s. 4 of the Land Acquisition Act) was issued, then the process of acquisition or the determination of the compensation would be nothing but a ''legalised fraud''. I feel the submission is not without merit. The Trust because of its indecisiveness or wrong decision, cannot be allowed to take away the property of the petitioners at the price which was prevalent in that area more than 17 years ago. In a Division Bench Judgment of this Court in Civil Writ No. 3766 of 1979, Man Singh v. State of Punjab decided on Feb 25, 1080.* which also related to the acquisition of land in the suburb of Ludhiana town for the setting up of a residential Urban Estate, the principle of awarding compensation was considered and this is what was observed:--

"The principle of awarding compensation is based on the right of the owner to be indemnified by the community for whose benefit he is being deprived of the property against his will. ''Compensation'' would essentially mean a just equivalent of what the owner has been deprived of. In other words, the owner who is deprived of his property should be enabled by the compensation awarded to him, to place himself in substantially the same position in which he was before the acquisition. Now if that is the principle of concept of compensating such a landowner, then can it possibly be said in the present case that the landowner petitioner who would be paid the compensation of the market value of their acquired lands at the rate as it existed on December 10, 1973, that is, the date on which the notification u/s 4 of the Act Annexure P. 1 was published, would be placed in reasonably the same position in which they were before acquisition ? Can these petitioners now or in future, when the compensation is to be paid to them on the basis of the prevalent market price about seven years earlier Purchase identical or similar land to the same extent with that compensation amount? Keeping in view that present spiral in prices of land more particularly in the suburb of big towns like Ludhiana, this appears to be an impossible situation. It requires no great argument to say that the price of land near about the cities have multiplied as many times during the last seven or eight years."

Keeping in view these observations and the following observations of the Supreme Court in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, I feel the Trust cannot be allowed to acquire the property of the petitioners at the price which was the market price of the acquired land on November 1, 1963:--

"Two things must be borne in mind while construing Section 4, 5A and 6. The first is that the Act

provides for acquisition of land of persons without their consent and in such case the provision of the Statute must be strictly construed. Secondly, in interpreting these provisions the Court must keep in view in the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is open to the appropriate Government to issue as many notification as it deems fit u/s 4(1) even with respect to the same locality followed by a proper notification u/s 6 so that the power of the appropriate government to acquired in any locality is not exhausted by the issue of one notification u/s 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification u/s 4(1) the person whose land is to be acquired may stand to lost if there is a great delay between the notification under S. 4(1) and the notification u/s 6 in case prices have risen in the meantime.This delay is likely to be greater if successive notification u/s 6 can be issued with respect to land comprised in the notification u/s 4 with greater consequential loss to the person h whose land is being acquired if prices have risen in the meantime."

11. Thus I Conclude that the Trust was fully competent to abandon the scheme as it did vide Annexure P. 1 and it cannot be allowed neither in law not in equity to revive the same as it proposes to do vide Annexure P. 2 As a necessary consequence the issuance of notice possession has to be quashed. I, therefore, allow these petitions with costs and quash all the proceedings which the Trust has taken subsequent to the passing of the resolution, Annexure P. 1, so far as these relate to the properties of the petitioners covered by that scheme.

Petition allowed.

