(1973) 04 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2725 of 1971

Kartar Singh and others APPELLANT

Vs

The State of Punjab and another RESPONDENT

Date of Decision : 27-04-1973

Acts Referred:
Punjab Town Improvement Act, 1922 — Section 36

Citation : (1973) 04 P&H CK 0005

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : K.S. Thapar and Mr. Deepak Thapar, for the Appellant; I.S. Tewana, D.A.G. Punjab and Mr. R.K. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—Some villages lying in the vicinity of Ludhiana city were populated by the Muslims who migrated to Pakistan as a result of the partition of this country. The land left by them formed a part of the evacuee pool and some of that was put to auction by the Rehabilitation Authorities on 5th of April, 1966. Kartar Singh petitioner acquired title to this land being the highest bidder at the auction. The other petitioners acquired some plots of land from him. On 27th of July, 1963, the Improvement Trust, Ludhiana, (hereinafter referred to as the Trust) framed a Scheme for the development of about 17 Acres of land including the land belonging to the petitioners, lying contiguous to Jawahar Nagar Camp. A Notification u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act) in respect of this land had been issued on 19th October, 1963. The petitioners were not in the picture then because they acquired title to the land sanctioned in their fovour on 5th of April 1966 only. Consequently, they had no opportunity of filing any objection within the period prescribed in the Notification, dated 19th October, 1963, Annexure "A1". A final Notification in respect of this land u/s 42 of the Act was issued on 28th of January, 1968 (Copy Annexure "B1".) In this Notification, the Scheme has been styled as, Development Scheme of 17 acres near Jawahar Nagar Camp," framed by Ludhiana Improvement Trust, Ludhiana, u/s 24 read with section 28 (2) of the Act.

2. The petitioners came to know that the Trust had submitted proposal to the State Government for sanctioning a Scheme which involved much greater expenditure The competence of the Trust to introduce a new Scheme is challenged in this petition, inter alia on the grounds that a Scheme could be altered under the Act if it did not involve an increased expenditure of Rs. 50,000/- or 20 per cent of the original Scheme, that the new Scheme is not an alteration of the Scheme but a complete abandonment of the Scheme and Notifications under sections 36 and 42 were no longer available to the Trust, that now approval of the State Government had to be obtained and new Notifications under sections 36 and 42 of the Act had to be issued and last of all that the Scheme to build the quarters for the squatters by ousting the owner refugees in this area tantamounts to unduly favouring those who took law into their own hands at the cost of honest citizens who had purchased plots from the Government.

3. The return in this case has been filed on behalf of the Trust and it has been denied that there is any change in the Scheme as sanctioned by the State Government. It was further averred that the Trust had made some modifications in the lay-out plan which it was competent to do under the law.

4. Shri K.S. Thapar, learned counsel for the petitioners has submitted that the land belonged to the Central Government and the same could not be acquired under the provisions of this Act. In support of this contention, he has placed reliance upon The The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, . The relevent observations read thus:--

When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own.

I may, however, add that this precise objection was not taken in the petition at all and after a lapse of four years I am not inclined to allow the learned counsel to raise this point.

5. The other point raised by the learned counsel for the petitioners is that the Act envisages various kinds of Schemes and it is not open to the Trust to give a complete go-by to the Scheme earlier introduced and adopt another Scheme without giving a notice to the land-owners concerned u/s 36 of the Act. This submission made by the learned counsel deserves a serious consideration. Chapter IV of the Act provides for the Scheme under the Act. There are Street Schemes, and the deferred street Schemes, development and expansion schemes as also the Housing Accommodation Schemes They are mentioned in sections 23, 24 and 25 of the Act, respectively, which run as under:--

23 (1) Whenever it appears to the trust that for the purpose of--

(i) providing building sites, or

(ii) remedying defective ventilation, or

(iii) creating new or improving existing means of communication and facilities for traffic, or

(iv) affording better facilities for conservancy, within its local area or part thereof it is expedient to lay out new streets, thoroughfares and open spaces, or alter existing streets, the trust may pass a resolution to that effect, and shall then proceed to frame "a street scheme" which shall prescribe improved alignments for streets, thoroughfares and open spaces for such local area or part as the trust may deem fit.

(2) Whenever it appears to such trust that for any of the purposes mentioned in sub-section (1) within its local areas or part thereof it is expedient to provide for the ultimate widening of any existing street by altering the existing alignments to improved alignments to be prescribed by the (sic), but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and forthwith proceed to frame a "deferred street scheme" prescribing an alignment on each side of such street.

24. (1) The trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a development scheme", and

(2) Such trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto within the local area of such trust prepare "an expansion scheme "

(3) "A development scheme" or "an expansion scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable.

25. If the trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the Inhabitants within its local area such trust may frame "a housing accommodation scheme" for the purpose aforesaid:

Provided that if the Central Government are satisfied that within the trust area it is necessary to provide housing accommodation for industrial labour, the Central Government, may by order require the trust to frame a scheme under this section and to do all things necessary under the Act for executing the scheme so made: and if the trust fail within such time as may be prescribed to frame a scheme to the satisfaction of the Central Government, and to execute it, the

Central Government may either by order require the municipal committee to frame and execute a scheme, or themselves frame a scheme and take such steps as are necessary to execute it. All expenses incurred by the Central Government, or by the municipal Committee in the exercise of the powers conferred upon them by this section shall, in the first Instance, be paid out of State revenues, but the amount so spent shall be recoverable from the trust as if it were a debt due to the Central Government and the Central Government may attach the rents and other income of the trust. The provisions of section 72 shall also apply to all moneys so paid.

A reading of these provisions shows that a scheme contemplated by each one of these sections is a distinct type of a scheme. The question which new falls to be determined is whether a development or expansion scheme as contemplated by section 24 of the Act remains the same if the characteristics which make it a development scheme are taken out of the plan and are substituted by those characteristics which make it a housing scheme within the meaning of section 25 of the Act. I am not unaware of the fact that a development scheme may also make a provision for some houses, but if such a scheme is converted into one the object of with is to provide small fiats to squatters, it cannot be said that the scheme as originally contemplated remains the same scheme. It becomes necessary to notice the nature of the scheme because the matter has to be considered in the light of the provisions of section 43 of the Act, which runs as under :--

43. A scheme under this Act may be altered by the trust at any time between its sanction by the Central Government and its execution:

Provided as follows :--

(a) if any alternation is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or twenty per cent of such cost such alteration shall not be made without the previous sanction of the Central Government;

(b) if any alteration involves the acquisition, otherwise than by agreement of any land the acquisition of which has not been sanctioned by the Central Government the procedure prescribed in the foregoing sections of this chapter shall, so far applicable, be followed as if the alteration were a separate scheme.

The learned counsel for the Trust has urged that a scheme even if originally contemplated as a development scheme could be altered into a housing scheme and vice versa It is submitted that the law only requires that the sanction of the State Government should be obtained for this purpose if the extra cost to be incurred comes to more than Rs. 50.000/- or 20 per cent of the cost of the original scheme. On a careful consideration of the entire matter I am of the view that section 43 of the Act cannot be interpreted in the manner as suggested by the learned counsel for the Trust. The use of the word ''scheme'' under this Act in section 43 shows that the scheme has to remain the same. The alterations contemplated by this section are of such a nature as do not obliterate the earlier scheme and substitute an entirely new scheme in its place Had it not been so, section 43 would have provided that one type of a scheme could be substituted by another type of scheme envisaged by the Act. The scheme of the Act shows that it is a measure designed to improve the conditions of the existing cities which are congested and suffer from haphazard growth. The Legislature for good reasons has provided that whenever a scheme for development under the Act is framed, it should be given wide publicity so that the landowners whose land is to be acquired may raise objections. These objections have to be considered by the trustees of the Trust, some of whom are elected members of the Municipal Committees It is conceivable that when good reasons are shown against a scheme, the Trust will not proceed to execute it. The date on which a Scheme is published is very material because compensation is payable to the land owners on the basis of the market-value of land prevalent on that date It is also understandable that if the scheme framed is such which is liked by the concerned landowners they may file no objections at all. I am told by Mr. Thapar and it is not disputed by the other side that in some cases the land owners whose land is acquired for a scheme are given preference in the allotment of new residential plots. Consequently, in a given case the land-owners may willingly agree to the framing and execution of development scheme in the hope that they would get residential plots in a developed area. If such a scheme were to be given up and a new scheme introduced under which no plots can be given to the land-owners whose land has been acquired, then it would really cause a great hardship to the land-owners. In such a situation the provisions of the publication of the scheme and the right of the land owners to file objections u/s 38 of the Act would become wholly meaningless, because the Trust in each case would initially frame and publish an attractive scheme and as a later stage give it up and introduce another type of scheme with the sanction of the State Government. In order to avoid this uncertainty it becomes necessary that a very strict interpretation as suggested above, should be placed on the word, "scheme" appearing in section 43 of the Act. Besides, such an interpretation does not do any injustice to the Improvement Trust. After all the Trust is always in a position to realise the money spent by it in the execution of a scheme by selling the plots at higher rates. The third reason which impels me to take this view is that the proviso (a) to section 43 refers to the alteration of the scheme vis-a-vis its cost only. This matter had to be provided for in the statute because the sanction of the Government is considered necessary if more cost is to be incurred on the same scheme. If it was intended that an entirely new scheme could be substituted for the old scheme than a provision in that behalf could have been made without emphasising the question of additional costs. It is a matter of common knowledge that costs for various schemes under the Act would be substantially different.

6. The new scheme proposed by the Trust in this case has been framed for providing flats to unauthorised occupants of land. According to the original

scheme, the Trust was to carve out flats and sell them by auction but now the quarters have to be built and allotted at a cost of about Rs. 60,0000/- as alleged in the petition. In the return filed on behalf of the Trust, the allegation regarding the allotment of built quarters to its squatters has not been specifically denied. A reference to the, plan would show that the new scheme makes no provision for the commercial area, the car park, a primary school, etc. etc. In short the original scheme which answered the description of a development scheme has been completely abandoned and in its place a new scheme has been submitted to the Government which answers the description of a housing scheme under the Act. In my considered opinion, such a charge is not warranted by section 43 of the Act. Nor can the respondents invoke section 19 of the Punjab General Clauses Act for this purpose, because if the earlier scheme has to be amended then the power of allotment in the absence of anything to the contrary contained in law has to be exercised in the like manner and subject to the same conditions in which the power to frame any scheme can be exercised. In other words, if the scheme is to be altered or amended under the general law then it would be imperative for the Trust to re-publish the amended scheme u/s 36 of the Act, invite objections against it and to consider them in accordance with law. Admittedly, this has not been done in the instant case.

7. For the reasons mentioned above, this petition is allowed and the respondent-Trust is directed to refrain from converting the development scheme as originally framed into a housing scheme as proposed to the State Government without publishing the scheme afresh. It shall, however, be open to the respondents to make minor alterations in the original scheme in accordance with section 43 of the Act. There shall be no order as to costs.

