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(1992) 01 P&H CK 0166

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16161 of 1990

Lakhwinder Singh Bajwa — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 23-01-1992

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Punjab Town Improvement Act, 1922 — Section 36(3)

Citation : (1994) 2 ILR (P&H) 245 : (1992) 101 PLR 602

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : H.S. Mann, for the Appellant; B.S. Wasu and T.S. Dhindsa and Jasdeep Singh, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—These three petitions viz. C. W. P. Nos. 16161 and 15375 of 1990 and 1616 of 1991 have been filed to stifle the third attempt of the Improvement Trust, Pathankot (hereinafter referred to as ''the Trust'') to acquire the land of the petitioners. Commonality of questions of fact and law warrants disposal of these petitions by one judgment. The facts as given in C. W. P. No. 16161 of 1990 may be briefly noticed.

2. In 1963, a development scheme was notified by the Trust u/s 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as ''the Act''). It covered an area of about 70 acres. The scheme was approved by the State Government in the year 1967. Nine writ petitions, including C. W. P. Nos. 1227 of 1975 and 1577 of 1976 were filed in this Court against this acquisition. All these Civil Writ Petitions were allowed vide judgment dated August 28, 1980 by a Learned Single Judge of this Court. Letters Patent Appeal against this judgment having failed, the Trust filed Special Leave Petitions Nos. 4127 to 4136 of 1981 in Hon''ble the Supreme Court of India. The Special Leave Petitions were dismissed on July 19,

3. On October 17, 1985. the Trust passed a resolution No. 66. In the proposal

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put up to the Trust it was inter alia observed that "according to the present position there is no way to the area which is in possession of the Trust under this Scheme. Thus it is very necessary to renotify the quashed Pockets. It is placed before the Trust for consideration and approval." Necessary approval was granted. In pursuance to this resolution, a notice u/s 36 was published in the Punjab Government gazette of January 30, 1987. A copy of this notice is at Annexure P-3. The State Government, however, did not approve this scheme. As a result the second attempt of the Trust to acquire the land in question failed.

4. On April 6, 1989, the Trust initiated its third attempt. It passed a resolution No. 9 for promulgating a development scheme under Sections 24 and 28 of the Act. A notice u/s 36 was published in ''the Tribune'' dated May 11, 1989. In all material particulars it was almost identical to the one published in the Gazette of January 30, 1987. Thereafter, notices u/s 38 of the Act were issued to the various persons. A copy of the notice dated June 5, 1989 issued to the petitioner is at Annexure P-9. It is averred that besides raising objections to the acquisition of the land, the petitioner submitted an application dated August 4 1989 (Annexure P-11) for supply of copies of certain documents. It is averred that in spite of reminder dated January 9, 1990, the copies were not supplied to the petitioner. Finally, the Government sanctioned the scheme on June 29, 3990. As a result, these petitions have been filed to challenge the acquisition on different grounds. In C.W.P No. 16161 of 1990, it has been specifically averred in paragraphs 9 and 13(v) that the copies of the documents have not been supplied. In C.W.P. No. 1616 of 1991, an averment has been made in paragraph . 6 to a similar effect. It has been pointed out that the petitioner was not supplied with the requisite documents in spite of a request having been made in writing through a Registered letter sent by Mr. Rakesh Mahajan, Advocate on August 2, 1989. In all the three petitions, the acquisition proceedings have been Challenged as being arbitrary and violative of the provisions of the Act.

5. No written statement has been filed on behalf of the State. However, separate written statements have been filed in all the three petitions on behalf of the Trust. It has been inter alia averred that the original notification having been quashed by this Court and the 2nd notification u/s 36 having lapsed due to non-sanction by the State Government, the Trust is competent to acquire the land. It has been further averred that the objections raised by different persons were duly considered and decided by the Improvement Trust before the scheme was sent to the State Government for sanction. It has also been averred that the petitions suffer from delay and laches as the notification u/s 36 was published on May 11, 1989. The specific plea raised in C.W.P. Nos. 16161 of 1990 and 1616 of 1991 that the documents have not been supplied has not been denied. Otherwise an attempt has been made to justify the scheme and its approval by the State Government.

6. The petitioner in C.W.P. No. 16161 of 1990 has also filed a replication in which averments made in the writ petition have been reiterated. It has been specifically

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stated in paragraph 1 of the replication that "the documents requested by the deponent to be supplied were not supplied".

7. I have heard the learned counsel for the parties. Learned counsel for the petitioners have inter alia contended that the entire proceedings are vitiated as copies of documents asked for by them were not supplied. Mr. J. K. Sibal, learned counsel for the petitioners in C.W.P. No. 15375 of 1990 has also contended that the petitioners have raised valuable construction on the respective plots of land owned by them and that their property could not be acquired for the mere purpose of providing access to certain other persons. It has been pointed out with reference to the site plan that in fact alternative land is available and there was no justification for depriving the petitioners of their valuable property. Learned counsel has vehemently contended that the action of the respondents amounted to a colourable exercise of power and that in fact there was no justification for rejecting the objections raised by the petitioners in this behalf. Mr. Sibal has referred to certain averments to specifically point out that the action of the Trust to acquire an area of more than 4000. Sq. Yds. merely for the purpose of providing an access to the Trust''s own area of 2,500 Sq. Yds. which it had allotted to its employees is wholly arbitrary and a colourable exercise of power. Learned counsel had raised another contention that the possession of the land having not been taken within one year after June 29, 1990 when the scheme was sanctioned by the State Government, it should be held that the scheme has lapsed. The claim made on behalf of the petitioners is controvered by the learned counsel for the respondents.

8. It is apt to notice the provisions of Sections 36 and 38 of the Act. A perusal of Section 36(3) shows that the Chairman has been entrusted with the responsibility of causing to deliver the copies of the documents mentioned in Clause (1). Further, during 30 days following the day on which the notice is published u/s 36 for the first time, the Trust is required to serve a notice on every owner of immovable property which is proposed to be acquired in executing the scheme. Such person is entitled to file his objections within a period of 30 days from the service of the notice upon him. On a perusal of these provisions, it is clear that the provision has been made in Section 36 (3) for the supply of copies to an applicant With the object of enabling him to effectively submit his objections in response to a notice given to him u/s 31 The Legislature has burdened the Chairman with this responsibility. It appears that the Legislature has not purposely entrusted any other person with this responsibility. The obvious reason was to ensure that the responsibility was placed on the first person in the Trust so that the provision was duly complied with. Further the use of the word ''shall'' in the context of the provision appears to make it mandatory for the Chairman to ensure that the copies are delivered. The obvisous legislature intention was to provide an effective opportunity to a person before he was deprived of his property. Keeping in view the context in which the provision appears and the purpose which it is required to achieve, I am of the view that clause 3 of Section 36 embodies a mandatory rule. Its violation is fatal

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to the proceedings which ensue from Section 38 onwards. A person, who is not supplied the copies of the documents asked for by him cannot have an effective opportunity to raise objections against the acquisition of his property. Failure to supply documents is not only violative of the principles of natural justice, but also of the mandatory provision contained in Section 36 (3) of the Act.

9. Adverting to the facts of the present case, it is clear that in spite of specific request having been made by the petitioners in C.W.P. Nos. 16161 of 1990 and 1616 of 1991, the copies of the documents were not supplied to them. In the absence of the documents they could not have filed the objections properly, nor could the hearing granted to these petitioners be effective or proper. They were thus deprived of a valuable right granted to them under the law. On this ground alone, the acquisition of the property of these petitioners is liable to be quashed.

10. In spite of my above finding, it is not possible to quash the entire scheme. Consequently, it is necessary to examine even the contention raised by Mr. Sibal. It was contended that the action of the Trust in acquiring a huge chunk of land for the mere purpose of providing an access to a small area of 2.500 Sq. Yds. as a result of which the petitioners in C.W.P. No. 15375 of 1990 were being threatened with deprivation of their residential accommodation is arbitrary. Similar challenge has been made even in C.W.P. No. 1616 of 1991. On behalf of the respondents it has been contended that the law does not debar the Trust from acquiring even houses and due compensation shall be paid to the petitioners.

11. The Act undoubtedly confers a power on the Trust to frame a scheme and to acquire the property, which is necessary for executing the scheme. However, the acquisition cannot be arbitrary. It is no doubt correct that the individual good must yield to public good. However, it is implicit that no authority can act arbitrarily, unfairly or for a collateral purpose. Primarily, the purpose for which the property of the petitioner in CWP No. 15375 of 1990 end 1616 of 1991 is being acquired, is for providing "a way to the area which is in possession of the Trust....." Mr. Sibal pointed out with reference to the plan that alternative land was available. He referred to the pleadings to show that about 4000 Sq. Yds. of land was being put under a road to provide access to the trust land situate on the southern side of the Sant Ashram School. He pointed out that petitioner Nos. 1 and 2, in CWP No. 15375 of 1990 had invested their entire savings on the construction of houses and they could not be deprived of their property merely for the purpose of providing a road for the benefit of the employees of the Trust who had been allotted houses in an area of 250 Sq. Yds. each. In the written statement filed on behalf of the Trust, it had been averred that the petitioners are likely to be adjusted in the scheme and they would be offered plots at the reserve price.

12. After hearing the learned counsel for the parties, I am left with the impression that the Trust is robbing Peter to pay paul. Admittedly all the three petitioners have raised construction on the plots owned by them. Petitioner Nos.

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1 and 2 claim to have raised spacious houses while petitioner No. 3 has constructed one room etc. The acquisition of this property is being resorted to with the object of providing a road to connect the 10 houses which have been allotted by the trust to its own employees. It is not disputed that the alternative area exists through which a road can be constructed. In this situation, I do not find any good ground for sustaining the action of the Trust. Accordingly I am of the view that the action of the Trust suffers from the vice of arbitrariness and cannot be sustained.

13. There is another aspect of the matter. The Trust had issued a notice even in the year 1987. The State Government had not approved the scheme of the trust. No reason has been assigned to show that there was any change in the situation. No written statement has been filed on behalf of the State of Punjab controverting the claim made on behalf of the petitioners. In this situation, it is not understood as to why the State has chosen to sanction the scheme in the year 1990 while it has not done so earlier. Further more, the objections raised by the petitioners have been rejected by the Trust without assigning any reason whatsoever. It is no doubt correct that the Trust is not expected to pass a detailed order. However, some process of reasoning should be available on record to indicate that there was an application of mind and that there was some reason for the Trust to reject the objections. In the present case, the proceeding have been produced which do not even show that the Trust collectively applied its mind to the objections. The proceedings are merely signed by the chairman and only a word ''rejected'' appears against the objections raised by various parsons.

14. Even though Mr. Cheema has contended that the scheme had lapsed as the possession of the land had not been taken by the Trust within one year. He had relied upon the decision of this Court in Ranjit Singh v. State of Punjab 1989 P.L.J. 343. However, Mr. Wasu pointed out with reference to the decision in Iqbal Singh and Ors. v. State of Punjab (1988) 93 P.L.R. 575, that the said instructions had already been withdrawn by the State Government. In view of this factual position, the objection raised by Mr. Cheema cannot be sustained.

15. In view of the above, the writ petitions are allowed. The impugned action of the Trust and the approval of the Scheme by the State Government vide Notification dated June 29, 1990 are quashed. In the circumstances of the case I make no order as to costs.

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