

(1988) 10 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition. No. 1706 of 1976

Malwa Silicate and Chemical Industries

APPELLANT

Vs

Improvement Trust, Moga and anr.

RESPONDENT

Date of Decision : 03-10-1988

Acts Referred:

Citation : (1989) PLJ 556 : (1990) 1 RRR 172

Hon'ble Judges : G.C.Mital, J and K.S.Bhalla, J

Advocate : I.S. Verma, Advocate., Advocates for appearing Parties

Judgement

K.S. Bhalla, J.

1. Development Scheme No. 3 for Motor Vehicles Stand and Goods Transport Companies was framed by the Improvement Trust, Moga (in short 'the Trust') and notified through a public notice under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter called "the Act"), by publication in the Daily Tribune on 10th and 24th January, 1975. Thereafter notice under Section 38 of the Act was served by the Trust on various owners of the immovable property which was proposed to be acquired in executing that scheme inviting objections. In response thereto, Malwa Silicate and Chemical Industries, Moga, petitioner of Civil Writ Petition No. 1706 of 1976 and Manchanda Soap Works, G. T. Road, Moga, petitioner of Civil Writ Petition No. 1804 of 1976, submitted objections against the scheme to the Trust on 26.3.1975, wherein rehousing of the petitioners was also claimed. Subsequent thereto, another notice under Section 36 of the Act in respect of the approved layout plan of the development scheme was published in the Daily Tribune on 13.6.1975 and both the abovesaid petitioners also received notices on 11.6.1975 inviting fresh objections within 160 days. In response, thereto, both the petitioners preferred further objections to the layout plan of the development scheme on 7.8.1975. After the various objections so preferred, no individual notice was received by any of the petitioners by way of intimation with regard to the hearing of those objections, although, admittedly, the Trust published a fresh notice in the Daily Tribune

dated August 20, 1975, in the following terms :

"It is for the information of general public and in particular owners of the area falling in (i) (ii) Scheme No. 3 regarding the land between D. B. Rest House and the New Grain Market under construction, that they will be heard in person in the office of the undersigned on 25.8.75 at 3 P.M. in respect of the abovescheme.

Sd/ Gurdeep, Singh,

Chairman, Improvement Trust,

Moga."

Civil Writ Petitions on No. 1706 and 1804 of 1976 are directed against scheme No. 3 and this order of ours shall take care of both the said petitions.

2. The main objection raised in the two writ petitions relates to denial of opportunity of personal hearing and thus noncompliance with Section 40(1) of the Act, besides certain minor objections which perhaps cannot be raised in view of the finality provided by subsection (2) of Section 42 of the Act, because the scheme already stands approved and notified by the State Government vide notification dated December 18, 1975 (copy annexure P7) under subsection (1) of the Section 42 of the Act. With regard to the main objection, petitioner of Civil Writ Petition No. 1706 of 1978 has asserted in para No. 12 of the petition that it is mandatory for the Trust to hear in support of the objections filed by the petitioner and that the petitioner was never called for that purpose. It is further claimed that petitioner was entitled to individual notice, without denial of the publication in the Tribune dated August 20, 1975, having come to his notice. The petitioner of Civil Writ Petition No. 1804 of 1976, however, has said in clear terms in para No. 14 of the petition that he did not read the abovesaid news item in the newspaper nor it had come to his notice upto 25th August, 1975, i.e. the date of hearing for which opportunity was afforded to the affected owners of the immovable property.

3. Both these civil writ petitions were taken up together and vide order dated 15.7.1983, of the single Bench the case was ordered to be laid before the Chief Justice for constituting a larger Bench in the wake of conflict between two earlier Division Benches. They expressed totally divergent views of the proposition whether after the issuance of the notification Under Section 42 of the Act, the scheme could be impugned on the ground of noncompliance of any provision of the statute on the part of the Trust or the State Government. In the meantime, the conflict was resolved by a Full Bench of this Court on April 27, 1984 in Civil Writ Petition No. 2131 of 1976, "Prof. Jodh Singh and others v. The Jullundur, 1984 RRR 36 (P&H). Improvement Trust Jullundur and others." The same Full Bench to which these cases were, referred for decision vide its order of even date directed that these cases be placed before the appropriate Bench for decision in the light of the Full Bench Judgment in Civil Writ Petition No. 2131 of 1976.

4. The abovesaid Full Bench decision has been reported in AIR 1984 Punjab and Haryana 398 : 1984 PLJ 413. It has been laid down therein that the provisions of Sections 36, 38 and 40(1) do not merely provide for the framing of the scheme simpliciter but also provide for acquisition of property to enable the execution of the scheme and since no person can be deprived of his property without being heard and one cannot ask for hearing unless he knows that he is being deprived of his property, so, by necessary implication a notice of the intention of the authorities of acquiring a given person's property is impliedly necessary to enable him to bring to the notice of the concerned authority his objections against the acquisition of his property. It has further been laid down that presumably such provisions as provide for notice raising of objections and personal hearing in support of the objection would be mandatory in character and noncompliance with Sections 36, 38 and 40(1) vitiates framing and sanctioning of the scheme. As is obvious from the principle laid down therein, personal hearing has to be afforded to the persons affected i.e. those who are to be deprived of their property and for that they should have proper knowledge with regard to the affording of said opportunity. Section 40(1) of the Act deals with affording of opportunity and it only states that objections are to be considered by the Trust before finalising the scheme and for that purpose hearing is to be afforded to concerned persons or their representatives who may desire to be heard. It nowhere prescribes that individual notice regarding the hearing of their objections is called for. In our opinion, general notice through publication in a largely circulated newspaper as the Daily Tribune is also serves the purpose and should be treated as sufficient compliance of Section 40(1) of the Act provided persons affected had knowledge thereof. Their knowledge of the joint notice shall have to be inferred from the material placed on the record.

5. So far as the petitioner of the Civil Writ Petition No. 104 of 1976 is concerned, he has clearly asserted, as referred to above, that he did not read the joint notice, published in the newspaper nor did it come to his notice upto the date of hearing, i.e. 25.8.1975. His rights, therefore, cannot be affected and the scheme stands vitiated so far as said petitioner is concerned. The petitioner of Civil Writ Petition No. 1706 of 1976 however, having nowhere denied his knowledge with regard to joint notice published in the Tribune dated August 20, 1975, it cannot be presumed that he was not afforded requisite opportunity of hearing. Had he not read the notice in the newspaper or had the same not come to his notice at the relevant time, he would have so stated in the petition. Absence of such assertion in his petition or his denial to that effect goes against him and it now does not lie in his mouth to state that there was noncompliance of Section 40(1) of the Act qua him.

6. In view of the ratio in Prof. Jodh Singh v. Jullundur Improvement Trust, Jullundur, AIR 1984 Punjab and Haryana 398, and in the light of what has been stated above, we quash the impugned notification dated 18.12.1975 (copy annexure P 7) issued under Section 42(1) of the Act in so far as it concerns Manchanda Soap Works, G. T. Road. Moga, i.e. Civil Writ Petition No. 1804 of

1976's petitioner's property and direct the Trust to consider the objections filed by the said petitioner after affording due opportunity of hearing. Civil Writ Petition No. 1804 of 1976 is allowed to the extent indicated above with costs. Civil Writ Petition No. 1706 of 1976, however, is dismissed, but without making any order with regard to costs.