

(2015) 04 P&H CK 0161

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17632 of 2008 (O&M)

Mandir Doombh Patiala

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 25, 26

Land Acquisition Act, 1894 — Section 18, 30, 31, 5-A

Citation : (2015) 179 PLR 237 : (2015) 179 PLR 199 : (2015) 3 RCR(Civil) 453

Hon'ble Judges : Surya Kant, J;Raj Mohan Singh, J

Bench : Division Bench

Advocate : S.D. Sharma, Senior Advocate and D.D. Gupta, for the Appellant;
Ashwani Talwar, Addl. AG and Sunil Kumar Vashisht, AAG, Advocates for the
Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.—Mandir Doombhwala at Patiala, seeks through this writ petition quashing of the Notification dated 30.09.2005 issued under Section 36 of the Punjab Town Improvement Act, 1922 (Annexure P4) which was re-published on 07.10.2005 (Annexure P5) proposing to acquire the petitioner's land for the development of a Residential and Commercial Area Scheme within the Municipal limits of Patiala.

2. The Mahant of petitioner-Dera submitted a representation dated 05.10.2005 to the Chairman of Improvement Trust (Annexure P6) raising objections against the inclusion of dera land in the proposed acquisition and further requested to supply copies of documents/papers (Sr. No. 1 to 7) to enable him to submit his objections. The Chairman of Trust vide reply dated 14.10.2005 (Annexure P7) informed the Mahant that he could "see the details of area in the office on any working day as already mentioned in the public notice u/s 36 published in the newspapers..." but the information sought by him could not be supplied. The Mahant of petitioner-dera then sent a reminder (Annexure P8) but finding no

response, submitted his objections (Annexure P10) and sought release of land measuring 32 bighas 4 biswas of the Mandir Doombhwala from the proposed acquisition.

3. The Mahant further represented the State Government on 31.10.2005 followed by various representations to the Trust and other authorities requesting them not to acquire the temple land. The Mahant of petitioner-dera also filed objections before the Principal Secretary, Department of Local Self Government on 26.12.2006. It appears from the contents of letter dated 11.12.2006 (Annexure P18) that the Principal Secretary Department of Local Self Government gave personal hearing to Mahant on 21.11.2006 but finally vide a self-speaking order dated 05.12.2006 (Annexure R2), the objections were turned down. The aforesaid order is also under challenge by the petitioner-Dera.

4. The Improvement Trust, Patiala namely, respondents No. 2&4 as well as Financial Commissioner, Revenue and Deputy Commissioner, Patiala (respondents No. 3&5) have filed their respective written statements. The Improvement Trust has taken a preliminary objection against non-maintainability of the writ petition on the ground that the acquisition cannot be challenged after passing of the award, more-so when the petitioner-dera has already filed petition under Section 18 read with Section 30 and 31 of the Land Acquisition Act, 1894 for enhancement of compensation.

5. As regards petitioner's allegation against non-consideration of the dera's objections as per law, it is averred in para-11 of the written statement that the petitioner was given full opportunity of hearing in support of his objections but no merit was found, for only the vacant land was acquired. Similarly, the information sought by the petitioner was not possible to be provided in writing hence he was advised to inspect the record to clear his doubts. The acquisition was made in public interest, after due consideration of the petitioner's objections.

6. Respondents No. 3&5, namely, the State Government authorities have questioned the Mahant's locus standi to file writ petition on behalf of Mandir Doombhwala as according to them, he has no concern with that temple. It is further averred that after passing of the Award No. 2 of 2008 compensation amount was deposited with the District Judge, Patiala and possession of the acquired land has been handed over to Improvement Trust on 06.10.2008.

7. The principal grievance of the petitioner is against the alleged non-observance of mandatory procedure contained in Section 36(2)(a)&(b) and Section 36(3) of the Punjab Improvement Act, 1922 which are to the following effect:-

"(2) The trust shall -

(a) notwithstanding anything contained in section 78 cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the president of the municipal committee, and to the medical officer of health.

(3) The chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 74."

(emphasis applied)

8. As regards the petitioner's complaint of non-observance of the procedure as per sub-Section (2), we do not find any material on record to support such allegation. The petitioner himself has referred to the notifications issued under Section 36 in a series of representations submitted by him to various authorities for withdrawal of the acquisition qua him. No fault can thus be attributed to the mode of publication of these notices.

9. So far as the petitioner's claim that the Chairman of Trust declined to supply copies of the documents contrary to the mandate of sub-Section (3), it appears to us that the obligation caused upon the Chairman pertains to supply only those documents which are referred to in clause (iii) of sub-Section (1) of Section 36, namely, (i) details of scheme; (ii) site of land proposed to be acquired; (iii) a general map of locality comprised in the scheme. However, instead of confining his claim to supply the above-mentioned documents, the petitioner vide request dated 05.10.2008 (Annexure P6) demanded the following documents/information from the Chairman of Trust:-

1. "Certified copy of the proposals of your meeting i.e. agenda items with details.
2. Minute of the meeting considering the absolute agenda item razzing (sic) the solution as the date, time and place.
3. Proposal, agenda of scheme purpose and submitted to the Govt. of Punjab for their approval, with details.
4. Punjab Govt. approval to the above scheme with date etc.
5. Proposal site plan of the area including the proposed area under requisition 32 bighas 4 bishwa owned by our institution Mandir Dhoomb, Patiala.
6. Drawing No. PIT(P)/20/2005 dated 15.9.05 proposal by your office for proposed scheme at Patiala (H.B. No. 33).
7. Any background justification under which any public demand raised for the proposed residential and commercial area our institution."
10. Out of these, the Chairman was obligated in terms of the sub-Section (3) of Section 36 of the Act to supply only the documents mentioned at Sr. No. 5 and 6.
11. Petitioner in his subsequent representation dated 20.02.2006 (Annexure P13) has categorically and candidly acknowledged the receipt of four documents, namely, (i) jamabandi and other revenue record of the land; (ii) copy of the

notice under Section 36 of the drawing No. PIT(P)/20/2005 dated 15.9.05; (iii) copy of resolution No. 2359 of 11.03.2005 and (iv) copy of survey plan of the development scheme. Having admitted the receipt of above-mentioned documents, petitioner cannot be heard to complain that sub-Section (3) of Section 36 has not been complied with. His contention being contrary to the record is liable to be rejected. Reliance placed by the petitioner on Full Bench decision of this Court in (i) Jodh Singh and Others Vs. Jullundur Improvement Trust, Jullundur and Others, AIR 1984 P&H 398 : (1984) 2 ILR (P&H) 222 ; and (ii) Lakhwinder Singh Bajwa Vs. State of Punjab and Others, (1994) 2 ILR (P&H) 245 : (1992) 101 PLR 602 is also misconceived. We have already held as a matter of fact that the Trust had complied with principles of natural justice and mandatory procedure laid down under the Act.

12. Similarly, the petitioner's reliance on the decision in Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, (2012) 10 JT 295 : (2012) 4 RCR(Civil) 684 : (2012) 10 SCALE 184 : (2013) 1 SCC 403 laying down that if the objections of landowner filed under Section 5-A of the 1894 Act are not considered objectively, it amounts to violation of substantial right of landowners and the acquisition in such a case would be liable to be quashed, is also distinguishable on facts. Respondents have specifically averred and it is so mentioned by the State Government too in its self-speaking order that the objection submitted by the petitioner were duly considered not only by the Trust but also by the State Government as well before taking final decision to acquire the land.

13. That besides, we find merit in the submission made by Mr. Salil Sagar, learned senior counsel for the Improvement Trust that the instant writ petition deserves dismissal on the ground of delay and laches, acquiescence on the part of the petitioner especially when the possession of acquired land had already been taken and the land stood developed by the Trust under a Residential-cum-Commercial Scheme. (Ref. (i) Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others, (1996) 5 AD 77 : (1996) 5 JT 114 : (1996) 4 SCALE 340 : (1996) 4 SCC 579 : (1996) 2 UJ 148 ; (ii) Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, (1996) 6 AD 761 : AIR 1997 SC 482 : (1996) 8 JT 16 : (1996) 6 SCALE 379 : (1996) 11 SCC 501 : (1996) 5 SCR 551 Supp : (1996) AIRSCW 3871 : (1996) 7 Supreme 26 ; and (iii) A.P. Industrial Infrastructure Corporation Ltd. Vs. Chinthamaneni Narasimha Rao and Others, (2011) 4 RCR(Civil) 831 : (2011) 10 SCALE 460 : (2012) AIRSCW 651 : (2011) AIRSCW 5047 . Similarly, petitioner's half-hearted contention that the land of Mandir Doombhwala is meant for purely religious purposes and its compulsory acquisition would be hit by Articles 25 and 26 of the Constitution must fail in the light of the view taken by this Court in Akhara Shri Braham Dutt v. State of Punjab 1988 (4) PLR 594. We thus do not find any merit in this writ petition and the same is accordingly dismissed upholding the acquisition.

14. Ordered accordingly.