

(1989) 05 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19 of 1983

Municipal Committee Bhiwani

APPELLANT

Vs

Munshi and another

RESPONDENT

Date of Decision : 31-05-1989

Acts Referred:

Companies Act, 1956 — Section 237
Constitution of India, 1950 — Article 14, 227, 32
Customs Act, 1962 — Section 110, 110(2), 124
Passports Act, 1967 — Section 10(3)
Punjab Town Improvement Act, 1922 — Section 22, 24, 24(2), 25, 27

Citation : AIR 1990 P&H 169 : (1990) 1 ILR (P&H) 399

Hon'ble Judges : V. Ramaswami, C.J.;G.R. Majithia, J

Bench : Division Bench

Advocate : A.S. Nehra and J.S. Duhan, for the Appellant; S.C. Mohunta, General and S.S. Ahlwat, D.A.G., for the Respondent

Judgement

G.R. Majithia, J.—L.P. As Nos. 394, 395, 396 and 442 of 1983 are being disposed of by a common judgment as common question of law and fact is involved therein.

2. The only question surviving for consideration, as directed by the apex Court relates to the constitutional validity of S. 44A of the Punjab Town Improvement Act, 1922, as enforced in Haryana (for short "the Act") and the notifications issued from time to time under the proviso to the said section granting extension of the period for the completion of the scheme.

3. The relevant facts for appreciation of the question involved briefly are that vide notification No. 7111-3CI-76/22899 dated July 7, 1976, the Governor of Haryana in exercise of power under S. 41(1) of the Act sanctioned Development Scheme No. 23 prepared by the Bhiwani Improvement Trust. Bhiwani, under S.24 read with sub-sec. (2) of S. 28 of the said Act. As enjoined by sub-sec. (1) of S. 42 of the Act, the scheme was also notified. The scheme was not executed within a period of five years from the date of issue of notification under sub-sec.

(1) of S. 42 of the Act. Vide Notification No. 14/ 36/ 3CI-80 dated October 13, 1980, the Governor of Haryana extended the period for the execution of the scheme for a period of three years from July 7, 1981 to July 6, 1986 (1984?).

4. The persons aggrieved by the action of the State Government extending the period for execution of the scheme challenged the same through various writ petitions in this Court. The writ petitions were allowed by a single Judge of this Court on February 14, 1983. Municipal Committee, Bhiwani, aggrieved by the decision of the learned single Judge filed letters Patent appeals which were also dismissed. The Municipal Committee then went up in appeals before the apex Court by filing Special Leave Petitions. The same were disposed of by an order dated March 5, 1987, with the following directions :--

"We have heard the learned counsel for the parties in all these appeals. We do not agree with the decision of the High Court that the schemes involved in these cases were liable to be set aside on the basis of the reasons given by the Full Bench of the High Court of Punjab and Haryana in *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, . We, therefore, set aside the judgments against which these appeals are filed and remand the case to the High Court to consider only the question relating to the constitutional validity of S. 44A of the Punjab Town Improvement Act, 1922, as in force in Haryana and the Notifications issued from time to time under the proviso to the said section granting extension of the period for the completion of the schemes in question. No other question shall be raised before the High Court by the writ petitioners. It is open to the writ petitioners to file, if they are so advised, additional pleadings confined to the above question. It is also open to the respondents to file additional counter-affidavits in the High Court. The High Court shall dispose of the writ petitions within six months. Status quo as on today regarding possession shall be maintained until the High Court disposes of the writ petitions.

The appeals are disposed of accordingly."

Additional pleading were filed by the parties as directed by the apex Court. On the expiry of the period extended vide notification dated October 13, 1980, the State of Haryana vide notification dated July 3, 1983, extended the period for the execution of the scheme for a further period of two years from July 7, 1984 to July 6, 1986. On July 2, 1986, the period for the execution of the scheme was further extended for a period of two years from July 7, 1986 to July 6, 1988. The scheme was not executed within the extended period. The State of Haryana vide notification No. 14/ 6/80-iiiC dated July 4, 1988 extended the period up to July 6, 1991. The vires of S. 44 of the Act has been challenged on the grounds that it gives unguided and unfettered power to the State Government to extend the time for execution of the scheme for an indefinite period. The legality of the notifications was challenged on the ground that these were issued without application of mind and there was no material before the State Government justifying the extension of time for the execution of the scheme.

5. Chapter IV of the Act pertains to Scheme under Act. S. 22 of the Act relates to general improvement scheme or rebuilding scheme. S. 24 of the Act relates to Development and expansion schemes. The Trust is empowered to prepare "a development scheme" within the municipal limits contained in its local area. Under sub-sec. (2) of S. 24, the Trust can within the local area of the trust prepare "an expansion scheme" to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto. Sub-sec. (3) of S. 24 of the Act provides for the lay-out of the locality to be developed in a "a development scheme" or "an expansion scheme". S. 25. of the Act relates to Housing accommodation scheme and S. 26 of the Act for the Rehousing scheme. The re-housing scheme is for providing accommodation to those persons who were displaced or were likely to be displaced by the execution of any scheme under the Act. S. 27 provides that when a residential house-owner who is likely to be displaced by the execution of any scheme under this Act, can apply to the Trust to be rehoused and no scheme under this Act shall be executed until a re-housing scheme as provided for under S. 26 has been completed. Under sub-sec.(1) of S. 28 of the Act it is provided that a scheme under the Act may be combined with one or more types of schemes or any special features thereof. Sub-sec. (2) of S.28 provides for the matters which have to be taken care of while framing a scheme. S.29 enables the Trust to make provision for the street alignment with the sanction of the State Government and the Municipal Committee shall not have power to prescribe a regular line for the street within the limits of the scheme and any such line previously prescribed by the committee within such limits shall cease to be the regular line or line of frontage of the street. S, 30 of the Act empowers the Trust to set back or forward buildings adjacent to the street alignment. S. 31 of the Act prohibits a person from erecting, re-erecting, adding to or altering any building in the locality comprise in the scheme without the permission of the Trust. S. 32 relates to acquisition of property affected by deferred street scheme. In the locality comprised in a deferred street scheme the owner of any property affected by a street alignment duly prescribed by the Trust may at any time after the scheme has been sanctioned by the State Government give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice and the Trust shall acquire the property accordingly. S. 33 relates to the preparation of a scheme under the Act upon an official representation made by the Municipal Committee or otherwise. Under S. 34 of the Act, the Trust is enjoined to consider every official representation made under S. 33 of the Act and decide whether a scheme under the Act should be framed forthwith or not. S. 35 relates to matters to be considered when framing improvement schemes under the Act. S. 36 of the Act provides that when a scheme under the Act has been framed, the Trust shall prepare a notice stating the following :--

- (i) the fact that the scheme has been framed.
- (ii) the boundaries of the locality comprised in the scheme, and

(iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

Sub-section (2) of S. 36 of the Act enjoins the Trust to publish the notice mentioned in sub-sec. (1) of S. 36 in the official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received. It has also to send a Copy of the notice to the Municipal Committee. Sub-sec. (3) of S. 36 enjoins the Chairman to furnish copies of all documents mentioned in Cl. (iii) of sub-sec. (1) of S. 36 to any applicant on payment of fees as prescribed by the rules under S. 74 of the Act. Examination of documents may be made, if necessary, for the purpose of filing objections to the scheme under the Act. Under S. 37, the Municipal Committee to whom notice has been sent under Cl. (b) of S. 36 of the Act. can send its representation within 30 days on receipt of the notice. S. 38 provides for the issue of individual notices to the persons who are owners of Immovable property which is proposed or is likely to be taken in execution of the scheme by the Trust. S. 39 enjoins upon the Municipal Committee to furnish all information relating to a locality regarding which a notice has been published under S. 36 as is available in the Municipal record, on payment of fee as may be prescribed by the rules. Under S. 40 of the Act after the expiry of the periods prescribed under Cl. (a) of sub-sec. (2) of S. 36, S. 37 and by Cl. (b) of sub-sec. (2) of S. 38 in respect of any scheme under the Act, the Trust is enjoined to consider objections, representations and after considering all objections or representations and after affording an opportunity of hearing to those persons who desire to be heard, it may abandon the scheme or apply to the State Government for sanctioning the scheme with or without modifications. No scheme can be abandoned without the approval of the State Government. S. 40(2) of the Act relates to documents which have to be forwarded with the application for sanctioning the scheme. Under sub-sec. (3) of S. 40 when a scheme has been submitted to the State Government for approval, the Trust shall publish a notice for two consecutive weeks in the official gazette and newspaper or newspapers that the scheme has been submitted for approval under sub-sec. (1) of S.40. S.41 empowers the State Government to sanction the scheme with or without modifications or refuse to sanction the scheme or return it to the Trust for reconsideration. If a scheme has been returned for reconsideration under sub-sec. (1) of S.41, and is modified by the Trust, it has to be republished in accordance with S.36 of the Act, in cases in which the modification affects the boundaries of the locality comprised in the scheme or involves the acquisition of any land not previously proposed to be acquired, in every other case, the State Government may dispense with the republication of the scheme. Under sub-sec. (1) of S. 42, the State Government has to notify that a scheme has been sanctioned. Sub-sec. (2) of S. 42 imparts a degree of conclusiveness to a notification issued under sub-sec. (1) of S. 42. Under S. 43 of the Act, a scheme can be altered by the Trust at any time between the time of its sanction by the Government and its execution. Under S. 43(a). the State

Government may drop a scheme which is earlier sanctioned. Any number of localities in respect of which the Trust has framed or has proposed to frame a scheme under this Act, may be included in one combined scheme as provided by S. 44. S. 44A of the Act prescribes time limit during which a scheme which has been sanctioned and notified according to S. 42 will be executed by the Trust. If a scheme is not executed within a period of five years from the date of notification, it loses its legal value. An exception is carved out by the proviso to S. 44 enabling the State Government to extend the period provided under S. 44A in its discretion if it is satisfied that it was beyond the control of the Trust to execute the sanctioned scheme within the period prescribed.

6. The brief resume" of the statutory provisions indicates that a complete and comprehensive provision has been made in the statute for framing scheme by the Trust. The Trust has to hear all objections to the scheme before its submission to the State Government for sanctioning it. The State Government examines the matter de novo after the scheme has been submitted to it. If, on scrutiny, the State Government finds that it is not in public interest to sanction the scheme, it may reject it or may send it to the Trust for reconsideration. As observed earlier, the Scheme attains finality after its sanction and the issuance of notification under sub-sec. (2) of S. 42 of the Act is a conclusive evidence that the scheme has been duly framed and sanctioned. The non-compliance with any procedural provisions is cured once a scheme has been notified. The land owners or persons affected can ask for an opportunity of hearing by the Trust. Their objections are heard and disposed of by the Trust and thereafter the scheme with all the appendices as mentioned in S. 40(2) of the Act is submitted to the State Government. It is not open to the petitioners to contend that they had no opportunity to object to the scheme. They had a right which they could or had availed of. After the scheme has been duly sanctioned and notified, it is to be executed within the period prescribed. If in any event, the Trust could not execute the scheme within the period prescribed, the State Government can extend the period for its execution. Extension is granted only on satisfaction that it was beyond the control of the Trust that it could not execute the scheme within the period prescribed under S. 44 of the Act or within the extended period. A landowner or the person affected has no right to be afforded an opportunity of hearing before the State Government extends the period within which the scheme has to be executed by the Trust. The matter is purely between the State Government and the Trust.

7. Mr. Anand Swaroop, the learned Senior Advocate, who appeared for some of the land owners who are affected by the scheme, submitted that unguided and unfettered power has been granted to the State Government to extend the period of execution of the scheme and in support of his submission, he referred to *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and *Rohtas Industries Vs. S.D. Agarwal and Others*, . There is no quarrel with regard to the proposition of law laid down therein, but the question is of its applicability to the facts of the instant case.

8. In Barium Chemicals Ltd. case (supra), the constitutional validity of S. 237 of the Companies Act was challenged. Under S. 237(b) of the Companies Act, the Central Government was authorised to appoint one or more competent persons as Inspectors for investigating the affairs of a Company. Cl. (ii) of S. 237(a) of the Companies Act authorises the Court to declare that the affairs of the Company ought to be investigated by an inspector appointed by the Central Government. The apex Court found that S. 237 of the Companies Act was valid and that the Company Law Board had to form an opinion whether to order investigation of a Company by an Inspector and this opinion to be formed is subjective and has to be formed on grounds disclosed.

9. The judgment rendered in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, was followed in Rohtas Industries Vs. S.D. Agarwal and Others, . The ratio of these two judgments is not even remotely applicable to the facts of the instant case. The State Government extends the period for execution of the scheme only when it is satisfied that it was beyond the control of the Trust to execute a scheme within the period prescribed or within the extended period.

10. Mr. B. S. Gupta, Senior Advocate, referred to (1) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; (2) Swadeshi Cotton Mills Vs. Union of India (UOI), ; (3) Baldev Singh and Others Vs. State of Himachal Pradesh and Others, ; (4) U.P. State Electricity Board and Another Vs. Labour Court (I), U.P. Kanpur and Another, and (5) Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

11. In Maneka Gandhi's case (supra), her passport was impounded in public interest and the Government of India declined to dispose the reasons for impounding the passport in public interest. The order of Union of India was challenged under Art. 32 of the Constitution on numerous grounds. It was in this context that the apex Court dealt with the constitutional validity of S. 10(3)(c) of the Passport Act and held that it is void as it conferred arbitrary power since it did not provide for an opportunity of hearing to the holder of the passport before the passport is impounded. This judgment has not the remotest applicability to the facts of the instant case. For the reasons stated (supra), the affected parties in the instant case were afforded an opportunity of hearing by the Trust before the scheme was forwarded to the State Government for approval and the State Government examined the matter again before sanctioning it.

12. Swadeshi Cotton Mills Vs. Union of India (UOI), deals with the concept of principles of natural justice. For the reasons hereinbefore stated, this judgment has no relevance to the facts of the case.

13. Baldev Singh and Others Vs. State of Himachal Pradesh and Others, pertains to inclusion of certain areas in the Notified Area Committee. This judgment has also no bearing to the facts of the instant case.

14. U.P. State Electricity Board and Another Vs. Labour Court (I), U.P. Kanpur

and Another, pertained to an employee working in the erstwhile Kanpur Electricity Supply Corporation Limited who opted for absorption in the U.P. State Electricity Board after the company was taken over by the Board. The employee was retired in terms of the regulation framed by the Board. Action of the Board retiring him in terms of the regulation was held to be valid.

15. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, the facts were as follows : The Central Inland Water Transport Corporation was a Government company and was incorporated on February 22, 1967 for maintaining and running river service with ancillary functions of maintenance, constructing vessels of various sizes and descriptions, repairing vessels of various sizes and descriptions and undertaking general engineering activities. A company called the "Rivers Steam Navigation Company Limited" was carrying on the same business including the maintenance and running of river service as the Corporation was doing. A scheme of arrangement was entered into between the said Company and Corporation. The closure of the said Company was ordered, but the Corporation was to take as many of the existing staff and labour as possible subject to any valid objection to any individual employee or employees. The employees who could not be taken over by the Corporation were to be paid by the transferor Company all moneys due to them under the law and all legitimate and legal compensations payable to them either under Industrial Disputes Act or otherwise legally admissible. One Brojo Nath Ganguly was working in the Company and under the scheme of arrangement his services were taken over by the Corporation and he was appointed as Deputy Chief Accounts Officer. Tarun Kami Sen-gupta was also working in the Company and his services were taken over as General Manager. The terms and conditions of employment of these employees were contained in the letters of appointment but these stood superseded by Service Rules framed by the Corporation. Their services were terminated and the employees assailed the action of the Corporation by filing writ petitions in the Calcutta High Court under Art. 227 of the Constitution challenging the termination of their services and also the said rule under which action was taken. The rule was found to be bad being opposed to public policy as it conferred a right on the Corporation to terminate the employment of a permanent employee by giving three months' notice or giving three months' pay and dearness allowance in lieu of such notice, as the case may be. Here also, we fail to understand how this ruling has any applicability to the facts of the instant case. The rule which enabled the Corporation to terminate the services of a permanent employee on payment of three months' salary was declared to be void as it suffered from the vice of arbitrariness and unreasonableness. No such situation has arisen in the present case.

16. Mr. K. P. Bhandari, Senior Advocate, who also appeared for one for the petitioners, relied upon Assistant Collector of Customs Vs. Charan Das Malhotra, , which related to the power of the Collector to extend the period for giving notice of confiscation under S. 124(a) of the Customs Act. S. 110 of the

Customs Act deals with searches, seizure and arrest. Sub-sec. (2) of S. 110 provided that where any goods are seized under sub-sec. (1) and no notice in respect thereof is given under Cl. (a) of S. 124 within six months of the seizure of goods, the goods were to be returned to the person from whose possession they were seized. A proviso was added to S. 110 under which the Collector of Customs could extend the period for a period, not exceeding six months on sufficient cause being shown. Extensions were granted but without any notice to the aggrieved party. The apex Court found that the extension could be granted on sufficient cause being shown and this presupposes an enquiry by the Collector to determine if sufficient cause is shown to grant an extension of time. Under S. 110 of the Customs Act, the goods are to be returned to the person from whose possession they were seized after the expiry of six months and if the goods are not to be returned within six months, the period has to be extended on sufficient cause and this presupposes an enquiry into the matter by the Collector. This decision also has no applicability to the facts of the present case. As observed earlier, after the scheme has been notified, it assumes finality and before the Government notifies the scheme, it ensures that the mandatory provisions of the statute relating to the framing of the scheme have been duly complied with. A statute has to pass the test of reasonable classification, but legislative or executive actions could be declared bad if these were arbitrary. There is no arbitrariness in the provision under challenge. The State Government can extend the period for execution of the scheme if it is satisfied on material that the Trust could not execute the scheme within the period prescribed for the reasons beyond its control. We have examined the record and we find that the material existed before the State Government when the opinion was formed. The material was not irrelevant and it was considered sufficient by the State Government to form an opinion recommending the grant of extension for executing the scheme. In the present case, the writ petitions were filed in 1982 and an order was obtained staying dispossession of the writ-petitioners. In view of the protracted litigation in the High Court and thereafter in the Supreme Court, the Trust could not execute the scheme and the State Government under the circumstances of the case was justified in extending the period for executing the scheme. Initially, the scheme had to be executed within a period of five years from the date the scheme was notified under sub- sec. (2) of S. 42 of the Act. If within the period prescribed; the scheme is not executed, the State Government can extend the time to execute the same on satisfaction that it was beyond the control of the Trust to execute the scheme within the period prescribed. The guideline for exercising the power is mentioned in the provision itself. If the material exists, the State Government's action cannot be said to be unjustified. The material cannot be examined by the Court objectively to ascertain whether it was sufficient for the Government to come to the conclusion that the Trust could not execute the scheme within the period prescribed. As observed earlier, the material did exist on record and the State Government on the basis of that material arrived at a satisfaction that it was beyond the control of the Trust to execute the scheme within the prescribed time or within the extended time. The

matter pertains to the subjective satisfaction of the authorities and the Courts cannot examine the same objectively. Once the material exists, which have been used by the State in arriving at a satisfaction, it cannot be said that the action of the State is arbitrary. S. 44A of the Act is valid and so is the action of the State Government taken under it.

18. In the result, the appeals are allowed. However, we leave the parties to bear their own costs.

19. Appeals allowed.