
(1982) 12 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 2972 and 3649 of 1982

Ranbir Kumar Arora and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-12-1982

Acts Referred:

Punjab Town Improvement Act, 1922 — Section 36

Citation : AIR 1983 P&H 431

Hon'ble Judges : S.S. Sandhawalia, C.J;I.S. Tiwana, J

Bench : Division Bench

Judgement

I.S. Tiwana, J.—In these two Civil Writ Petitions 2972 and 3649 of 1982, the proceedings initiated by the respondent Improvement Trust, Karnal, for the acquisition of petitioner's land to implement its development scheme known as "Scheme No. 39(Commercial-cum-Residential Development Scheme)" are impugned. In this regard, the requisite notice under S. 36, Punjab Town Improvement Act, 1922(for short, the Act), was published in the Haryana Government Gazette on 27-11-1973 and after sanction of the scheme by the State Government in terms of S. 41, it was followed by another notification under S. 42 of the Act on 11-11-1976. It is not in dispute in the light of a Full Bench judgment of this Court in Harbans Kaur v. Ludhiana Improvement Trust, Ludhiana (1973) 75 PLR 511, that these two publications are to be respectively treated at par with notifications under Ss. 4 and 6, Land Acquisition Act, 1894. The challenge to these acquisition proceedings is inter alia, on the ground that at the time of the first publication under S. 36, the respondent Trust had no genuine need to acquire the land in question and rather the whole process of acquisition was initiated with a view to peg down the prices of the suit land and to acquire it as and when it suited the convenience of the Trust, To sustain it the petitioners assert that subsequent to the above noted two publications, no meaningful step whatsoever except the issuance of a notice under S. 9 of the latter mentioned Act requiring the land-owners to file their claims with regard to compensation for the land sought to be acquired, has been taken by the Trust,

Besides this, challenge has also been launched to the vires of S. 44-A of the scheme within a period of five years from the date of publication of the scheme under S. 42 of the Act subject, of course, to further extension of time by the State Government. But in view of the conclusion which we have arrived at with regard to the first ground of attack noted above, we do not feel the necessity of going into this aspect of the matter at all.

2. The learned counsel for the petitioners, in the light of the Full Bench judgment of this Court in *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, , forcefully contends that non-action on the part of the Trust authorities to complete the acquisition proceedings so far is a clear pointer to the lack of bona fides of the authorities about the requirement of the land in question for purposes of implementation of the scheme. The learned counsel maintains that there was absolutely no genuine need on the part of the Trust to acquire this land and its whole purpose was to peg down the prices of the land to the date of publication under S. 36 of the Act. In the above noted Full Bench judgment it has been ruled by this Court that (Para 9) :--

"Long unexplained procrastination, either by itself and in any case coupled with other factors clearly tends to prove the lack of bona fides in the exercise of the power of acquisition. If it can be established beyond cavil that the real motivation behind the acquisition was not any specific public purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification under S. 4 and holding the citizens to ransom for years at the whim and caprice of the State to finalise the acquisition proceedings when it chooses (if at all it is so done) is clearly a factor for establishing the colourable exercise of power."

It has further been observed that :--

"Unexplained inordinate delay in the finalisation of the acquisition proceedings under the Act may well taint it with the vice of a colourable exercise of power and thus vitiate the same."

On behalf of the respondents, it is contended that firstly no unexcusable delay has been caused in this case in acquiring petitioners' land and secondly, the ratio of the above noted Full Bench judgment of this Court would not apply to the facts of these cases in the light of S. 48-A of the Act. The delay is sought to be explained in the following manner :--

"The delay was caused as the scheme was sanctioned in 1976 and from 1977 to 1979, the entire record of the scheme was with the Shah Commission in connection with a complaint made by some of the petitioners in Civil Writ Petition No. 3649 of 1982(referred to above), and the officials who were acquainted with the scheme were under suspension. It was thereafter that the scheme was taken in hand. As already explained, the scheme is being implemented."

We, however, find nothing in this explanation which minimises the brunt or force

of the petitioners" attack on the acquisition proceedings. The respondents cannot possibly attribute their sluggishness or the delay in taking disciplinary action against their own employees to the petitioners. If the "officials concerned" had been placed under suspension by the respondent authorities, then the petitioners possibly had nothing to do with the same. Moreover, the respondents cannot possibly plead that with the suspension of a particular official or more than one, the whole working of the Trust, or for the matter any other public organisation or the Government comes to a standstill and the duties to be performed by the suspended officers or official s re not to be performed by anybody else. In other words, functioning of the office of the Trust cannot possibly be a cause of the suffering of the petitioners in holding them to ransom by paying them the market price for their lands which was prevalent about ten years earlier, that is, the date on which the publication under S. 36 of the Act took place. Even if for arguments sake the respondents explanation with regard to the pendency of some proceedings before the Shah Commission during the years 1977 to 1979 is to be accepted, still we find the lapse or waste of subsequent period in the completion of the acquisition proceedings by the respondent authorities cannot take their case out of the purview of the above noted Full Bench judgment As has been pointed out by us earlier in Civil Writ No. 3705 of 1982(Smt. Ranjit Kaur v. State of Punjab) decided on 4-12-1982(reportd in AIR 1983 P&H 32), the provisions of para 28 of the Financial Commissioner"s Standing Order No. 28 which undisputedly are in the form of execution instructions binding on the acquiring authorities, the whole process of acquisition is time bound and under ordinary circumstances had to be under ordinary circumstances has to be completed within a period of six months after the issuance of notification under S. 6, Land Acquisition Act, that is, notification under S. 42 of the Act in the instant case. That notification admittedly was published on 11-11-1976. Thus in the light of the observations made by the Full Bench in Radhey Sham Gupta"s case (supra) we find that the above noted two impugned publications suffer from the vice of colourable exercise of power and thus deserve to be quashed.

3. The submission of the learned counsel for the respondents that the provisions of S. 48-A of the Act in any way detract anything from the ratio of the above noted Full Bench judgment, is equally meritless. The relief which is available to the petitioners under S. 48-A, cannot possibly be equated with the relief of writ of certiorary quashing the above noted proceedings. As a matter of fact the relief under this section is dependent on the relief the petitioners have prayed for. The petitioners can be held entitled to damages under S. 48-A of the Act only if the above noted two notifications are sustained. Otherwise also, we are satisfied that these two phrases "compensation" and "damages" have wholly different and independent meaning and connotations and cannot possibly be equated with each other. As has been explained by the Division Bench of this Court in Man Singh v. State of Punjab 1980 RLR 600, compensation" essentially means the just equivalent of what the owner has been deprived of. In other words, the owner, who is deprived of his property, is to be enabled by the compensation

awarded to him to place himself in substantially the same position in which he was before the acquisition. The conception of compensation for compulsory acquisition involves two elements--(i) the value of the property and (ii) damages for injury. On the other hand, compensation for damages awardable under S. 48-A of the Act at the most can cover only the latter aspect of compensation, that is, damages for injury. The damages payable under this section have essentially to depend on concrete facts and not on conjectures. It is only when a landowner, whose land is sought to be acquired, is in a position to establish that on account of the non-making of an award by the Collector under S. 11, Land Acquisition Act, within a period of one year from the date of publication of the declaration under S. 6 (S. 42 of the Act in the instant case) he has suffered damage, he can be compensated to that extent. In a given case, such as where the land lies in the close vicinity of a fast growing or developing town and has a very high market value, but is not yielding any income to the landowner, he may not be entitled to any compensation by way of damages under S. 48-A of the Act in spite of any length of delay in the making of the award. Besides this we are also aware of cases where the Collectors have made their awards under S. 11 of the Act within a short time of the notification under S. 6 of the Act but neither any compensation in terms of that award has actually been paid to the landowners nor has the possession of the property sought to be acquired been taken. In such a case, the authorities, by adopting this vice, can very well thwart the claim of the landowner for any damages the plea that the award was made within a period of one year from the date of the publication of the notification under S. 6 of the Land Acquisition Act. Thus we are satisfied that the relief available to the petitioners under S. 48A of the Act is no substitute for the relief to which they are entitled, that is, the quashing of the acquisition proceedings.

4. For the reasons recorded above, we allow these petitions and quash the impugned acquisition proceedings emanating from the publications under Sections 36 and 42 of the Act. The petitioners are also held entitled to the costs of this litigation which we determine at Rs. 300/- in each case.

S.S. Sandhawalia, C.J.

5. I agree.

6. Petitions allowed.