

(2003) 03 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10655 of 1994 (O and M)

Ravinder Singh Sidhu and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

General Clauses Act, 1897 — Section 19
Punjab Municipal Act, 1911 — Section 192(3)

Citation : (2003) 135 PLR 25 : (2004) 1 RCR(Civil) 795

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : R.B.S. Chahal, for the Appellant; H.P.S. Gill, Assistant A.G., Arun Palli and D.S. Brar, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This writ petition has been filed for directing the Municipal Committee, Patiala not to enforce Town Planning Scheme (Sardarni Joginder Kaur Town Planning Scheme). The case set up in the writ petition is that the scheme was framed by the petitioners and submitted for sanction vide application dated 13th November, 1968. Sanction was duly granted, but the scheme was never implemented. In the year 1978, a revised scheme was proposed, which was sanctioned in the year 1982. The said scheme was also not implemented and vide application dated 1st March, 1990, the petitioners sought revision of the scheme on which no action was taken. The petitioners received a notice in June, 1990 u/s 172 read with Section 195 of the Punjab Municipal Act for demolition of boundary wall, against which a writ petition was filed, which was dismissed on 3rd October, 1990. SLP against the said order was also dismissed on 10th March, 1991. On 29th July, 1992, the Municipal Engineer along with other persons came to the site and demolished the wall at point "C" in the site plan, which was rebuilt by the petitioners. The wall was again breached on 6th March, 1993. The petitioners applied for revising the scheme by making an application before the Chief Minister on 3rd April, 1993, on which the Chief

Minister on 19th April, 1993 stayed operation of the earlier scheme. Resolution dated 26th March, 1993 was passed by the Municipal Committee to the effect that scheme No. 13 be cancelled. The petitioners were summoned by the Regional Deputy Director Secretary, Local Government and thereafter, the scheme was sanctioned vide order dated 7th January, 1994, which has been annexed as Ex.P.13, but still the scheme has not been published nor objections invited thereto. On 6th August, 1994, some employees came to break open the boundary wall.

2. On notice, reply has been filed by the Municipal Committee, Patiala stating that the petitioners had not disclosed about filing of suit on 13th August, 1991 against demolition of boundary wall, which was dismissed on 22nd July, 1992 and appeal of the petitioners was dismissed on 24th September, 1992, which has become final and therefore, principle of resjudicata will apply. It is also submitted that the writ petition having been dismissed against the earlier scheme, implementation of the scheme, therefore, could not be challenged. Further stand of the respondents is that the scheme known as Sardarni Joginder Kaur Town Planning Scheme, which was sanctioned by the Government on 22nd July, 1981 was still valid and operative. With regard to the order of the Chief Minister, it is stated that the order dated 19th April, 1993 was vacated by the Chief Minister on 23rd April, 1994 on representation of Capt. Amrit Pal Singh and Sardar Baldev Singh, which order was annexed as Annexure R.2/3. As regards resolution dated 26th March, 1993, stand of the respondents is that resolution pertains to some other scheme No. 13 of Waraich Colony and Municipal Committee passed resolution dated 19th August, 1994 reiterating the earlier scheme, a copy of which is Annexure R2/4 and communications Annexures P.13 and P.14 relied on by the petitioners stood superseded by the order of the Chief Minister on 23rd April, 1994, Annexure R2/3.

3. Order sanctioning Town Planning Scheme dated 22nd July, 1981 is as under:-

"GOVERNMENT OF PUNJAB DEPARTMENT OF LOCAL GOVT. UNIT NO. II. ORDER OF THE GOVERNOR OF PUNJAB

In exercise of the powers conferred by Section 192(3) of the Punjab Municipal Act, 1911 and all other powers enabling him in this behalf, the Governor of Punjab is pleased to sanction the Town Planning. Scheme in respect of unbuilt area known as Sardarni Joginder Kaur Bhopindera Road, measuring 3.41 Acres of Municipal Committee Patiala as described in Drawing No. DTP(P) 1788/81 dated 13th May, 1981 prepared by the Divisional Town Planner Patiala and adopted by the Municipal Committee Patiaia vide their resolution No. 1742 dated 15th December, 1981.

Dated: 22.7.1981

Sd/- S.P. Karwal Joint Secretary Local Govt."

4. Letter dated 7th January, 1994. Annexure P. 13, inter alia is as under:-

""For the revision of this scheme representations from the affected owners have been received as well as heard and the proposal by the Senior Town Planner Patiala have also been considered. This scheme is a regulatory scheme and the Government u/s 19 of the General Clauses Act has decided that the drawing (attached) prepared by the Senior Town Planner Patiala be published again and the owners in the scheme be asked to file objections and after hearing the objections the implementation of the scheme be decided. Till the final decision of the scheme the stay of implementation of the scheme by Hon"ble Chief Minister Punjab will continue."

5. Annexure R2/3 is as under:-

"Capt. Amritpal Singh and S. Baldev Singh of Patiala met me and submitted the enclosed representation. I would like that the while matter be investigated in view of the position explained in the representation. Since the Court has earlier dismissed the writ petition of Smt. Surinder Kaur Sidhu and Satwinder Kaur Sidhu, so the earlier stay granted be me on 19th April, 1993 is vacated. In the meantime, Deputy Commissioner, Patiala may be asked to ensure that the road is completed at the earliest. I would like to have the report within 15 days.

Sd/- Beam Singh C.M. 23.4.1994."

6. Counsel for the petitioners contended that Annexure P.13 was an order of the Government u/s 19 of the General Clauses Act. Order Annexure R2/3 cannot be considered to be order of the Govt. and therefore, the scheme earlier sanctioned in the year 1981 stood superseded by the order Annexure P.13 and order Annexure R2/3 was of no consequence.

7. Counsel for the respondents submitted that Annexure P.13 is based on earlier order of the Chief Minister, which stood vacated and in view of dismissal of the writ petition and suit, earlier, matter will be resjudicata.

8. In reply, counsel for the petitioners submitted that decision of earlier writ petition or suit could be resjudicata, as revised scheme was ordered to be issued on 7th January, 1994 i.e. after decision of the writ petition as well as the suit and Capt. Amrit Pal Singh, who made a representation to the Chief Minister, had no locus standi. He forged a sale deed in his favour which was under challenge and mutation sanctioned on that basis has been ordered to be set aside and the land being exclusive ownership of the petitioners, there was no reason not to proceed with the revised scheme sanctioned vide Annexure P.13. Since the order of the Chief Minister and orders Annexures P.13 and P.14 are subsequent to the dismissal of suit and dismissal of earlier writ petition, question of resjudicata will not apply.

9. I have considered the rival submissions and perused the record of the case.

10. Question for consideration is whether orders Annexures P.13 and P.14 have the effect of revising the scheme or nullifying order Annexure P1/A dated 22nd July, 1981.

Section 192(3) of the Punjab Municipal Act, 1911 is as under:-

"(3) The Committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of Sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Deputy Commissioner, who may, if he thinks fit, return it to the Committee for reconsideration and resubmissions by a specified date; and the Deputy Commissioner shall submit the plans as forwarded, or as resubmitted, as the case may be with his opinion to the State Government, who may sanction such scheme or may refuse to sanction it, or may return it to the committee for reconsideration and resubmissions by a specified date."

11. In the present case, original scheme was sanctioned on 22nd July, 1981 and the said order has already been quoted above. No doubt, writ petition against the said scheme sanctioned in 1981 was dismissed on 3rd October, 1990 and SLP was also dismissed on 10th March, 1991 and a suit and appeal were also dismissed in 1992, on 7th January, 1994, vide Annexure P.3 in exercise of its powers u/s 19 of the General Clauses Act, a revised drawing was published and present writ petition was filed seeking enforcement thereof on the ground that such an order conferred a fresh cause of action to the petitioners. To this extent, there is substance in the writ petition and contention of the respondents that writ petition and suit having been dismissed, bar of res judicata will apply, cannot be accepted. The grievance of the petitioners is that Annexure R.2/3 dated 23rd April, 1994 has been passed without giving any opportunity to the petitioners on the basis of a representation of Captain Amrit Pal Singh and S. Gurdev Singh and ground mentioned in the said order is not relevant namely that the writ petition had been dismissed. Dismissal of the writ petition was known when order Annexure P.13 was passed and was not a new development. If the Government had passed an order Annexure P. 13, the same could not be withdrawn at the back of the petitioners even if there is power and justification for exercise of such a power.

12. For the above reasons, this petition is allowed to the extent of setting aside order Annexure R.2/3 passed at the back of the petitioners with a direction that a fresh order be passed after hearing the petitioners in accordance with law. The parties will appear before the Secretary, Local Government, Punjab on 19th May, 2003 unless the petitioners are informed by the Secretary, Local Government, Punjab to appear before any other competent authority in which case, the petitioners will appear before such authority.