
(1999) 11 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8505 of 1987

Satish Gupta and Others

APPELLANT

Vs

Yamuna Nagar Improvement Trust and Others

RESPONDENT

Date of Decision : 15-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Town Improvement Act, 1922 — Section 24

Citation : (2000) 124 PLR 772 : (2000) 1 RCR(Civil) 712

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : O.P. Goyal and Mohan Luthra, for the Appellant; M.L. Sharma and J.B. Taccoria, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Satish Gupta and 26 others have filed the present writ petition under Article 226 of the Constitution of India against the respondents seeking a writ in the nature of certiorari quashing the auction of plots bearing Nos. 1 to 5 carved out from the green land/park and the case set up by the petitioners is that they are the permanent residents of Yamunanagar where Improvement Trust was constituted u/s 4 of the Punjab Town Improvement Act, 1922 (hereinafter called the Act). The Yamunanagar Improvement Trust (hereinafter called the Trust) prepared a development scheme at Yamunanagar which ultimately came to be known as Scheme No. 3 for Shastri Nagar Colony. The layout plan of this colony provided the layout of the houses, green belts, landscape features etc. Health Centre and Primary School have also been provided. The scheme was published u/s 36 of the Act and finally approved by the State Government u/s 41 of the Act and was duly notified u/s 42 of the said Act. The petitioners have purchased plots in Shastri Nagar Colony by way of auction or otherwise on the assurance of the layout plan. The petitioners except Petitioners No. 5 and 14, purchased the plots around green belt featuring health centre and primary school and the park. They were purchased on the assurance of the

layout plan that it would not be changed. It provided them not only fresh air but also sufficient light. The petitioners also purchased the plots on the ground that the green belt will provide good play ground for their children etc. The petitioners have constructed their houses on plots which were allotted to them. Some of the houses were constructed as back as in the year 1975-76 and the petitioners are enjoying the green belt with park facilities etc. The Scheme No. 3 relating to Shastri Nagar Colony as sanctioned under Sections 41 and 42 of the Act, has not been amended or modified by the State Government. The Trust gave an advertisement for the auction of five residential plots to be carved out of the green belt on 25.10.1987 so much so plots No. 1, 2, 4 and 5 were auctioned to respondent No. 3 on 29.10.1987 and plot No. 3 was auctioned to respondent No. 4 and they had deposited the amount as per the advertisement 25 per cent of the bid money. The residents of the colony were affected by the auction of the plots No. 1 to 5 and they in the shape of a deputation met respondent No. 2 to cancel the auction but to no effect. With the above broad allegations, the petitioners have prayed that the auction of the plots Nos. 1 to 5 in favour of Respondents No. 3 and 4 be cancelled as the Scheme which was originally notified u/s 24 of the Act, has not been changed or modified by the State Government.

2. Notice of the writ was given to the respondents. A joint written statement was filed on behalf of respondents No. 1 and 2 i.e. the Trust and its Administrator. According to them, the petitioners have concealed the material facts of the case. According to these respondents, the petitioners have tried to make out a case by stating that there was a green belt including a park and that the same has now been converted into residential plots which have been sold in public auction but this contention of the petitioners is incorrect, The land under the present Shastri Colony was acquired in 1965 under sub section 1 of Section 41 of the Act and the award was passed on 9.9.1966. The open space shown in the layout plan P-1 was originally earmarked for setting up a Health Centre and a Primary School. This open space was to be sold to the interested institutions for the said purpose. However, no institution/party ever came forward for the purchase of this space for the said purpose. By the passage of time, it was seen that sewerage system of large area of this colony around the said open space and the open space itself was at lower level. Sewerage water was not being properly drained out and so was the case with the rainy water. It was to meet this situation that a disposal work was constructed over a big portion of the said open space somewhere in the year 1973 or 1974. Subsequently, a gas godown was constructed in the year 1975-76. There was a persistent demand from the local residents for a park and, therefore, a big park measuring 314" x 90" was carved out on a suitable rectangular portion of the said open space and park was developed in the year 1986 at the huge cost of Rs. 1.24 lacs. After construction of disposal work, gas godown and the park, only a small portion of the said open space remained unutilised. Out of this unutilised portion five residential plots were carved out and these were sold in public auction on 29.10.1987 at the total cost of more than 5

lacs for the reasons that there was a big financial loss. Had the interested parties purchased the said open space for the purpose of health centre and primary school, the Trust would have earned Rs. 40 to 50 lacs but it only earned 5 lacs. A heavy expenditure of Rs. 1.24 lacs had to be spent for the development of the park. The area was lying useless as the local residents were keeping heaps of dung cakes and animals were being injurious to health of the people and there was every apprehension of encroachment on this portion. A lot of money was required for the implementation of the Development Scheme for the purpose of sewerage, water supply, street lights etc. The financial position of the Trust was not even satisfactory and employees were to be given salary in time. A number of employees retired in the year 1972 and the Trust was supposed to pay gratuity etc. The auction was most competitive and fetched a handsome price of more than five lacs. "Four-walls over 4 of the 5 residential plots were also raised by the concerned bidders. It was also stated by these respondents that the petitioners are estopped from agitating the disputed matter in the present petition on account of their conduct. No resident of the locality raised a finger when disposal work was constructed in the year 1973-74. No body objected when the gas godown was constructed in the year 1975-76 and also when the park was developed in the year 1986 at a huge cost. Now, they cannot agitate when a very small unutilised portion of the space has been converted into residential plots and particularly, when these very petitioners were misutilising the space in question by creating a health risk. A big and beautiful green park has already been developed in the said open space, though there was no provision for the park in the original layout plan.

3. On merits, the stand of these respondents is that the open site was not originally meant for green belt, rather, it was meant for a Primary School and Health Centre. Only a small unutilised area of the open space has been converted into five residential plots but these do not lie in front of the houses of the petitioners. In short, the defence of respondents No. 1 and 2 is that the layout scheme has not been changed substantially as only a small piece of land has been converted into a residential one by carving out the plots which have been auctioned according to rules.

4. Respondent No. 3 has also filed the written statement. According to this respondent, there is a green belt apart from the plot sold in auction. The land was unutilised one and it was considered appropriate to put the land to auction. The area was acquired in 1965 and the award was pronounced in the year 1966. There arose a problem of sewerage as the sewerage water was not being drained out. To meet with this situation, the disposal work was constructed in some portion in the year 1973 and 1974. Subsequently, some area was sold in the year 1975 for the gas godown as it was also a necessity of the colony. Thereafter, a demand arose for a park and a big park measuring 314" x 90" was carved out. After the construction of the disposal work, gas godown and park, only a small portion of the plot remained unutilised which could not be utilised for Health Centre or for any other purpose so it was decided to convert into five residential

plots which were sold in public auction on 29.10.1987 at the total cost of more than rupees five lacs. The plots were purchased for the residence of the Principal of the Colleague and for small hostel of girls. The location of the plots is near to the college. The Trust suffered a big financial loss because it could not sell the plot for health centre or primary school. The main grouse of the petitioners is that the above area was kept as a green belt. Still there is a green belt in the shape of a park. The unutilised portion of the acquired area was lying useless. That area was being used by the residents for tethering cattle and preparing dung cakes. It was health hazard and it was thought proper to auction the area. The scheme has not been changed or altered by the Trust. The Trust could utilise the land the way it liked when there were all facilities available to the residents of the locality. Moreover, the petitioners are estopped from agitating the disputed matter in the present writ petition. No residents including the petitioners raised any finger when the disposal work was constructed in the year 1973; when the gas godown was constructed in the year 1975-76 and also when the park was developed in the year 1986. Now, if the small plots are being utilised, they cannot agitate this issue. The answering respondent had participated in the auction proceedings and had purchased the plots in question for the development of the colony and for the residence of the Principal and girls hostel. The answering respondent has already deposited the amount to the tune of Rs. 50,000/- for each plot and possession has also been delivered.

5. In support of their petition, the petitioners have placed on record site plan Ex. P.1 in order to show that this scheme was primarily for development purposes and in the original scheme, there was a provision of providing health centre and a primary school. Ex.P.3, is the notice through which, the auction of the proposed plots were to be taken.

6. On the contrary, the respondents have placed on record the site plan in order to show that there is a gas godown in the area of 110" x 90". There is a sewerage disposal system in an area of 174 x 129 feet and there is a park in an area of 314" x 90 feet. Further it has also been shown that there are five plots. The measurement of each plot was 35"x51"

7. I have heard Shri O.P. Goel, Senior Advocate, on behalf of the petitioners and Shri M.L. Sharma, on behalf of the respondents and with their assistance, have gone through the record of this case.

8. The major contention which was raised by the learned counsel for the petitioners is that as per the original layout scheme, the area was acquired by the trust for creating a residential colony and the original scheme made a provision for the health centre and a Primary School. There was no proposal in the original scheme for the conversion of the open space into residential plots and by auctioning the five plots. The very scheme has been changed without the approval of the State Government u/s 24 of the Act. Therefore, the auction notice and the auction proceedings of the five plots in favour of the private respondents is illegal and is liable to be set aside. In support of his contention

the learned counsel for the petitioners relies upon 1982 All India Land Laws Reporter 553 Bodh Raj and Ors. v. The Improvement Trust, Amritsar. In this cited case a Housing Scheme provided a site for school. The petitioner purchased the site and raised the construction. The land which was meant for Primary School, ought to be given to the District Industrial Centre by the Trust which did not obtain the prior permission of the State Government. In such situation, it was held by the High Court that such an alteration is not permissible under the Act.

9. The counsel for the petitioners then relied upon (1973)75 P.L.R. 741 Kartar Singh etc. v. State of Punjab, in which it was held that characteristics of development cannot be taken away by making an amendment without inviting new objections. In the cited case, the trust was restrained from converting the development scheme into housing scheme. Reliance was also placed on Social Welfare, Associate and Another Vs. Haryana Urban Development Authority and Others, , in which it was held that the land reserved for the green belt and also for providing other amenities, such land cannot be changed without the approval of the State Government.

10. Let us see what has been done in the present case. Whether there is any material alteration in the scheme or the scheme remains unchanged but only minor variations here or there had taken place. The site plan Ex.P.1 which has been relied upon by the petitioners would show that at two points health centre and Primary School were earmarked. There was no green belt in the site plan P.1. Otherwise, the layout of the scheme would show that this scheme is primarily meant for residential houses. With the passage of time and with the need of the hour some minor alterations that there was no person willing for the creation of a health centre and a primary school. Had the site which was earmarked for the health centre and primary school, been sold by the Trust, it would have brought huge money to the tune of rupees 40/50 lacs. Resultantly, the gas godown was built up somewhere in the year 1973-74. Again the sewerage disposal system had to be created keeping in view the needs of the locality and that was created in the year 1973-74. In order to provide green belt to the residents a park in the an area of 314 x 90 feet was carved out and this exercise resulted to the expenses of 1.20 lacs of the trust. The petitioners never challenged the creation of gas godown, sewerage disposal system and the carving out of the park, which were created somewhere in the year 1973-74 and 1987. If five plots comprising area of 174 x 35 feet have been auctioned by the Trust for residential purposes, in the view of the this Court, it is not a modification or alteration of the scheme. The dominant purpose of this scheme was for residential purposes. The area which was utilised by the Trust was earlier lying an open space which could not be utilised for Primary School or for Health Centre. By auctioning this area the dominant purpose is the same. These plots will also be utilised for residential purposes and in these circumstances, the sanction of the State Government u/s 24 of the Act, is not necessary. In the cited cases characteristics of development were taken away by the Trust by amendment. In Bodh Raj's case (supra) the housing scheme was for a site of a

school. Later on the land meant for the primary school was given to District Industrial Centre. In these circumstances, it was observed by the Hon"ble High Court that prior permission of the State Government was necessary and such an alteration was not maintainable under-the Act. The ratio or Kartar Singh s case (supra) is also not helpful in the present case.

11. In the view of this Court, the petitioners are estopped by their own act and conduct from filing the present writ petition. The petitioners had raised no objection for the setting up of a gas godown and sewerage disposal scheme. They also raised no objection at the time when the green belt in the shape of a park was created. When a small vacant area, which was being used for tethering cattle etc and for placing dung cakes, has been utilised by the Trust, mainly, for the residential purposes, by carving out five plots only, such change will not amount material alteration in the nature of the scheme.

12. Resultantly, I do not see any merit in this petition and the same is hereby dismissed with no order as to costs.