

(1974) 11 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2692 of 1967

Shri Goverdhan Dass and others

APPELLANT

Vs

The State of Punjab and anothers

RESPONDENT

Date of Decision : 05-11-1974

Acts Referred:

Punjab Municipal Act, 1911 — Section 192
Punjab Town Improvement Act, 1922 — Section 24

Citation : (1976) 1 ILR (P&H) 776 : (1975) 77 PLR 175

Hon'ble Judges : Bal Raj Tuli, J;A.S. Bains, J

Bench : Division Bench

Advocate : I.N. Kaushal, with Mr. Ashok Bhan, for the Appellant; I.S. Tiwana, D.A.G., Punjab for Respondent No. 1 and Mr. D.N. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—This petitioner came up for hearing before P.C. Jain. J., and was referred to a larger Bench by order dated March 6, 1973, in view of the importance or the point of law involved.

2. The facts giving rise to this petition are that the petitioners are owners of a plot of land measuring 132 kanals 9 marlas situate on Lawrence Road, Amritsar, out of which an area measuring 81 kanals 10 marks is entered in the jamabadi of Amritsar and 50 kanals 19 marls are entered in the jamabandi of village Tungwala. The Amritsar Municipal Committee, by its letter dated August 27, 1956, intimated to the petitioners that it had prepared a town planning scheme u/s 192 of the Punjab Municipal Act, (hereinafter referred to as the Municipal Act), and a meeting was fixed for September 5, 1956, for the petitioner to express their points of view on the subject. It was stated that the proposed scheme would go a long way to meet the legitimate demands of the public. Ultimately, the Municipal Committee, Amritsar, sanctioned the town planning scheme which was approved by the State Government on November 15, 1962. Before the sanction of the scheme by the State Government, the Amritsar improvement

Trust, by its resolution No. 990 dated May 30, 1961, resolved that a scheme under sections 24 and 28 of the Town Improvement Act (hereinafter referred to as the Improvement Act), be proposed. In June 1961, the Improvement Trust issued a notification u/s 36 of the Improvement Act to the effect that a development scheme for a vast area, which included the area of the petitioners, had been proposed to which objections were invited. The petitioners raised objections to the proposed scheme but the scheme was finally sanctioned by the State Government and the petitioners were informed of the same by letter dated November 8, 1967. The petitioner then filed the present petition challenging the development scheme drawn up by the Improvement Trust and sanctioned by the State Government.

3. The petition has been opposed by the respondents who have filed their separate written statements.

4. Various points were raised in the writ petition but ultimately the only point that was pressed before the learned Single Judge on behalf of the petitioners was that a town planning scheme having already been framed and sanctioned u/s 192 of the Municipal Act, there was no jurisdiction in the Improvement Trust to frame a development scheme u/s 24 of the Improvement Act nor could the State Government accord its sanction to such a scheme. On behalf of the Improvement Trust, it was maintained by Shri D.N. Awasthy that the framing of a town planning scheme u/s 192 of the Municipal Act was no bar to the framing of a scheme under the Improvement Act and that the even if a town planning scheme had been sanctioned by the State Government u/s 192 of the Municipal Act, a development scheme framed u/s 24 of the Improvement Act could also be sanctioned by the State Government. It is this point that is for consideration before us.

Section 192 of the Municipal Act reads as under :--

192(1) The committee may, and if so required by the Deputy Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for built areas, which may among other things provide for the following matters, namely :--

(a) the restriction of the erection or re-erection of buildings or any class (f) buildings in the whole or any part of the municipality, and of the use to which they may be put ;

(b) the prescription of a building line on either side or both sides of any street existing or proposed ; and

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed thirty-five per cent., and the amount transferred without payment shall not exceed twenty-five per cent., of any one owner's land

within such unbuilt area.

(2) When a scheme has been drawn up under the provisions of sub-section (1), the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provision 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 resubmission 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 resubmission by a specified date.

(4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date, when required to do so under sub-section (3) or resubmits a scheme which is not approved by the State Government, the Deputy Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Deputy Commissioner, any objection or suggestion which he may wish to make, and the Deputy Commissioner shall forward with his opinion any such objection or suggestion to the State Government and the State Government may sanction such scheme as originally notified or modified in consequence of any such objection, or suggestion, as the State Government may think fit; and the cost of such scheme or such portion of the cost as the State Government may deem fit shall be defrayed from the municipal fund.

(5) When sanctioning a scheme the State Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Deputy Commissioner, or to the State Government and for the inspection and supervision of the scheme by the State Government.

This section clearly shows that the scheme prepared under it is a town planning scheme and not a development scheme. Under the Improvement Act, various kind of schemes which can be framed by the Improvement Trust are mentioned in sections 22 to 27. We are concerned with the development scheme mentioned in section 24 of the Improvement Act which reads as under :--

24(1). The trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a development scheme", and

(2) such trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto within the local area of such trust prepare "an expansion scheme".

(3) "A development scheme" or "an expansion scheme" may provide for the layout of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of its sanitary localities and such other details as may appear desirable.

Section 28 of the Improvement Act enumerates the various matters which may be provided for by a scheme under that Act as under:--

(i) the acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or affected by the execution of the scheme, or adjoining any street, thoroughfare, open space to be improved or formed under the scheme;

(ii) the acquisition by purchase, lease, exchange or otherwise of such land or interest in land;

(iii) the retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested more acquired by the trust;

(iv) the demolition of buildings or portions of buildings that are unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line;

(v) the relaying out of any land comprised in the scheme and the redistribution of sites belonging to owners of property comprised in the scheme;

(vi) the laying out and alteration of streets;

(vii) the provision of open spaces in the interests of the residents of any locality comprised in the scheme or any adjoining locality and the enlargement or alteration of existing open spaces;

(viii) the raising, lowering or reclamation of any land vested in or to be acquired by the trust for the purposes of the scheme and the reclamation or reservation of land for the production of fruit, vegetables, fuel, fodder and the like for the residents of the local area;

(ix) the draining, water-supply and lighting of streets altered or constructed;

(x) the provision of a system of drains and sewers for the improvement of ill-drained and in sanitary localities;

(xi) the doing of all acts intended to promote the health of residents of the area comprised in the scheme including the conservation and preservation from injury

or pollution of rivers and other sources and means of water supply;

(xii) the demolition of existing buildings and the erection and re-erection of buildings by the trust or by the owner or by the trust in default of the owners;

(xiii) the advance to the owners of land comprised within the scheme upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme of the whole or part of the capital requisite for the erection of buildings in accordance with the scheme;

(xiv) the provision of facilities for communication;

(xv) all other matters which the State Government may deem necessary to promote the general efficiency of a scheme or to improve the locality comprised in such scheme.

Section 29 has an overriding effect in respect of scheme prepared u/s 23 of the Improvement Act with regard to the alignment of streets. Sections 49 and 50 provide that certain sections of the Municipal Act shall so far as may be consistent with the tenor of the Improvement Act, apply to all localities in respect of which a scheme under that Act is in force, and for the period during which such scheme remains in force ; and all reference in the said sections to the municipal committee or to the president or to any officer of the municipal committee, shall be construed as referring to the trust which, in respect of any such localities, may alone exercise and perform all or any of the powers and functions which under any of the said chapters and sections might have been exercised and performed by the municipal committee or by the president or by any officer of the municipal committee. Section 192 is one of the sections mentioned in section 49. According to section 50, the Improvement Trust, before taking any action under certain provisions of that Act, shall consult the municipal committee and obtain its consent. This section is only a corollary to section 49 and both these sections are not relevant for the decision of the point of law before us because these provisions will apply only when an improvement scheme is already in force in any locality of a municipality. This section has no application to a case where the improvement scheme is sanctioned later than the town planning scheme u/s 192 of the Municipal Act, as is the case before us.

5. It has to be observed that the object of the Improvement Act is essentially to improve and expand the towns in the State and for that purpose schemes have to be prepared for big localities and, therefore, the provisions of the Improvement Act will override the provisions of the Municipal Act except where the contrary is indicated in any of the two Acts. The present case is an apt illustration of the way in which the schemes are prepared under the Improvement Act. The locality for which the development scheme was prepared by the Improvement Trust u/s 24 read with section 28 of the Improvement Act covered an area of 12.5 acres while the land of the petitioners only measures 132 kanals 9 marlas. If the town planning scheme sanctioned by the municipal committee fits in with the development scheme prepared by the Improvement

Trust, there may not be any difficulty in making adjustments but where the development scheme is entirely on a different basis, then, for the development of that locality, the scheme prepared by the Improvement Trust will have precedence. Evidently, the Improvement Trust shall have to acquire all the properties in that locality in accordance with the provisions of the Land Acquisition Act, 1894, and since the purpose of acquisition is a public purpose, the owners of properties can have no objection to the acquisition being made, I am accordingly of the opinion that there is no bar to the Improvement Trust drawing up a development scheme for a locality wherein an area exists for which a town planning scheme was sanctioned by the municipal committee.

6. It is also worthy of note in the case in hand that the Improvement Trust had drawn up the scheme almost eighteen months before the State Government accorded its sanction to the town planning scheme prepared by the municipal committee. The development scheme by the Improvement Trust had also been notified in June, 1961, while the State Government sanctioned the town planning scheme on November 15, 1962. The petitioners, therefore, had ample notice of the development scheme drawn up by the improvement Trust which was quite inconsistent with the town planning scheme which had been proposed by the municipal committee and for which sanction was obtained from the State Government. The petitioners, in fact, filed objections to the development scheme which were rejected. Under these circumstances, the petitioners cannot be heard to say that they should be allowed to develop their property in the manner they want in accordance with the town planning scheme sanctioned u/s 192 of the Municipal Act. Over that scheme the development scheme drawn up by the Improvement Trust and sanctioned by the State Government has to have precedence. There is thus no merit in this petition which is dismissed but, in the circumstances, the parties are left to bear their own costs.

A.S. Bains, J.

7. I Agree.