

(1993) 01 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3227 of 1989

Siri Ram and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Town Improvement Act, 1922 — Section 36(3), 41

Citation : (1993) 104 PLR 193

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : T.S. Doabia and I.P.S. Doabia, for the Appellant; M.L. Sarin Somesh Ojha, J. Bakshi and Jayshree Thakur and V.P. Singh, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—In this Writ petitioner under Articles 226/227 of the Constitution of India, the have, challenged in acquisition proceedings initiated u/s 36 and 41 of the Punjab Town Improvement Act, 1922 (for short "1922 Act") which appeared in the daily Tribune dated 23.2.1984, The petitioners 2.1 number, claimed to be the owners of the land proposed to be developed by Kapufthala Improvement. Trust, Kapurthala (hereinafter referred to as the Trust").

2. The relevant facts ate that a notice u/s 36 of 1922 by notices u/s "38 of 1922 Act were issued. of the various "formalities, u/s 42 purporting to be a declaration u/s 41 of the 1922 Act was published in the Punjab Government Gazette on 20.2:1987. Before the authority period of two years could expire the Collector made in award on 16.2 1989. It was at that stage that the petitioners had filed the instant writ petition.

3. This Court on 14.3.1989 while, issuing notice of motion had stayed the dispossession of the petitioners from the land in dispute. The Trust had filed written statement on 18.7.1989 and the petition was admitted.

4. The challenge to the above proceeding is on the grounds :-

that the procedure u/s 36 is totally without jurisdiction because

(a) the trust has neither the plan, nor, lay put plan or the scheme at the time of issuing of the notices.

(b) that the respondents have not acceded to the request of petitioner for supply of map. survey plan and the lay out an as the same were non existent and the petitioners could not submitted any objection to the scheme or to the acquisition,

(c) the acquisition proceedings initiated by the respondent are not bona fide because the earlier scheme was prepared with regard to this very area and was abandoned. "

(d) That the nature of the scheme has been changed inasmuch as it is now for raising, of commercial complex whereas earlier purpose was for residential accommodation which Was abandoned by the Trust.

(e) that there was no application of, mind, in deciding the objections raised by the petitioners and the principle of natural justice has been given a go by,

(f) that the State Govt. while according sanction has not given reason as to why sanction is being accorded when earlier it was declined and reason for change of decision should have been incorporated.

5. The Trust has contested the claim of the petitioners on the ground that the petitioners have approached this Court at a belated stage. It has been further argued that even if there is any technical flaw in the procedure as envisaged u/s 36 of the 6 1922 Act, the same is to be ignored and no relief is td be granted to the petitioners, as no injustice has been caused to the petitioners.

6. I have given consideration to the various pleas taken at the Bar and have perused the paper book with the help of learned counsel for the parties.

7. Learned counsel for; the Respondent-Trust on the question of delay has relied upon, various judgments and in particular the judgment of the apex Court in Aflatoon and Others Vs. Lt. Governor of Delhi and Others, and State of Mysore and Others Vs. V.K. Kangan and Others, . The learned counsel for the respondent contended that once the respondent had allowed acquisition proceedings to go on, they are not within their right to attack the notification initiating the acquisition proceedings". This argument was couniered by the learned counsel for the petitioners. The counsel had argued that the failure to frame a scheme would render it null and void and that failure of justice is writ large as petitioners could not file any valid objections.. As such there was no delay in filing the writ petition. The petitioners immediately filed the writ petition when the threat of dispossession was given to them. It was also contended that equity demand interference of the Court. The counsel had also argued that this objection of delay was also taken at the time of motion hearing but despite that the Motion Beach had admitted the writ petition. As such no notice of the objection with

regard to delay in filing the writ petition is required to be taken. It was also highlighted that the writ petition is pending in this Court for the last three years. As such, it be not dismissed on the question of delay. In support of his arguments, the petitioners' counsel has relied upon a D. B. judgment of this Court in *Smt. Nirmala v. State of Punjab* 1992 (1) P. L. R. 588.

8. The learned counsel for the Trust has relied upon a decision of apex Court in cases of *Phagwara Improvement Trust Vs. State of Punjab and Others*, and has contended that technical flaw if any in issuance of notices under Sections 36 & 38 of 1922 Act would not be a ground to challenge the acquisition proceedings and more so when petitioners had filed objections in response to personal notices having been served u/s 38 of 1922 Act. In the *Phagwara Improvement Trust* case (supra) the facts were that notice was published in the Punjab Govt. Gazette on 7-5-1976 inviting objections and the objections were to be filed by 5-5-1976. The second notice u/s 36 of 1922 Act was published on 15-5-1976, and the third statutory notice was published on 21-5-1976. In all the notices, the time for filing the objections was mentioned and the objections were to be filed by 5-5-1976. It was on this basis, it was argued that there was non compliance of Section 36 as the Objector could not file objections by 5-5-1976 whereas Gazette notification was published later on. The abovesaid technical objection was held to be devoid of merit in the *Phagwara Improvement Trust* case (para).

9. The learned counsel for the petitioners have contended that there was no scheme in existence on the date when initial notice was published in the Tribune dated 23-2-1984 and later on plan was prepared in March/September, 1966. The petitioners also contended that an effort was made to obtain the site plan as also the general map of the locality but this was not made available to the petitioners and the same were not in the record for the purposes of inspection. In brief, the contention was that there was no valid scheme prepared by the Trust. In order to fortify his argument reliance was placed on a decision of apex Court in *State of Tamil Nadu v. A. Mohammed yosef* (1991) 10 L. R. S.148, to show that unless there is a scheme in existence no acquisition proceedings can be taken. In this case the argument raised by the Supreme Court is in para 6 of the judgment which reads : -

"The question for decision is whether the acquisition proceeding can be initiated only after the framing of the proposed scheme and not earlier. The learned attorney General contended that having regard to the provisions of the Act and the relevant considerations it must be held that the procedure in regard to the preparation of the scheme has to await the conclusion of the land acquisition proceeding. It is only after the possession of the land is delivered to the Board that its engineers and other experts can go over the land, make necessary inspection and collect vital data, on the basis of which the scheme can be drawn up. It is essential to have a clear idea of the area of the land, its boundaries, and the nature of the soil for deciding about the details of the proposed scheme, and this is not possible so long the owner of the land continues in possession. Any

attempt* to draw up a scheme earlier has been described by learned counsel as an exercise futility. Alternatively it has been contended that even if it be held to be permissible to frame the scheme without waiting for the acquisition and possession of the land, it cannot be further assumed that the land acquisition proceeding has to await the finalisation of the scheme. In other words, both the proceedings may continue simultaneously, or any of the proceedings including one for land acquisition can be commenced without waiting for the other. In any event, the land acquisition proceedings should not be condemned as pre-mature on the ground that the scheme has not been framed. We have closely examined the entire Act with the assistance of the learned counsel for the parties and in our view the contention on behalf of the respondents that the proceedings for acquiring land can be commenced only after the scheme is framed is well founded."

If there is no lay out plan or survey plan or map of the locality available on the date when notice is issued u/s 36 then the residents cannot file any purposeful objections. As a matter of fact this Court in the case of Lakhwinder Singh Bajwa Vs. State of Punjab and Others, , has reached the conclusion that the provisions of Section 36(3) of the Act are mandatory and if there is violation of this statutory provision then this would be fatal to the further proceedings which are taken under 1922 Act In para 8 of the judgment it has been observed as under;-

"... It is apt to notice the provisions of Sections 36 and 38 of the Act, A perusal of Section 36(3) shows that the Chairman has been trusted with the responsibility of causing to deliver the copies of the documents mentioned in clause ()). Further, during 30 days following the day on which the notice is published u/s 36 for the first time, the Trust is required to serve a notice on every owner of immovable property which is proposed to be acquired in executing the scheme. Such person is entitled to file his objections within a period of 30 days from the service of the notice upon him. On a perusal of these provisions, it is clear that the provisions have been made in Section 36(3) for the supply of copies to an applicant of enabling him to effectively submit his objections in response to a notice given to him u/s 38. The Legislature has burdened the Chairman with this responsibility. It appears that the Legislature has not purposely entrusted any other person with responsibility. The obvious reason was to ensure that the responsibility was placed on the first person in the Trust so that the provision was duly complied with. Further the use of the word "shall" in the context of the provision appears to make it mandatory for the Chairman to ensure that the copies are delivered. The obvious legislative intention was to provide an effective opportunity to a person before he was deprived of his property. Keeping in view the context in which the provision appears and the purpose which it is required to achieve....."

10. In view of the above mentioned observations, it becomes apparent that there is non compliance of Section 36(3) of 1991 Act. Whatever opportunity was available to the petitioners, the same was meaningless as they were not aware of

the contents and scope of the scheme As such, no useful objection could be filed. In this view of the matter there is no option but to hold that provision of Section 36 of 1922 Act were not followed in letter and spirit and proceedings were not in accordance with law, Judgment in Lakhwinder Singh's case (supra) also touches another aspect of the matter. This is with regard to sanction when earlier sanction was declined No doubt there is no bar to acquire land and frame a scheme but then there must be something apparent on the record to show as to and what reason has impelled the Government or the Trust to resort to the acquisition. Para 13 in Lakhwinder Singh's case runs as under : -

"The State Government has not approved the scheme of the Trust. No reasons has been assigned to show that there was any change in the situation. No written statement has been filed on behalf of the State of Punjab controverting the claim made on behalf of the petitioner. In this situation it is not understood as to why the State has chosen to sanction a scheme in the year 1990 while it had not done so earlier. Further more, the objection raised by the petitioner have been rejected by the Trust without assigning any reason whatsoever. It is no doubt correct that the Trust is not expected to pass a detailed order. However, some process of reasoning should be available on record that there was application of mind and that there was some reason for the Trust to reject the objections."

The present case is squarely covered by the observations made in Lakhwinder Singh's case (supra).

11. The contention with regard to the change of nature of the scheme has been sought to be countered by relying upon Section 41 of the Act, It has been argued that the State Government can change the scheme and can accord sanction to the new scheme. But in the instant case the change is not by the State Government but is at the instance of the Trust and this change is not covered u/s 41 of the act. In my case, the argument loses significance in view of what has been said with regard to non-compliance of mandatory provisions as envisaged u/s 36 of the Act.

12. In view of the fact that this matter is squarely covered by the ratio in Lakhwinder Singh's case (supra), this writ petition is allowed and award dated 16-2-1989 Annexure P-6 as also the notifications Annexure P-I and P-3 are quashed.

13. No order as to costs.