

(2006) 08 P&H CK 0161
In the Punjab And Haryana At Chandigarh

Smt. Pritam Kaur Grewal and Others	Vs	APPELLANT
The Improvement Trust and Others		RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 147 PLR 165

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Judgement

H.S. Bhalla, J.—Invoking extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the Improvement Trust, Ludhiana, respondent No. 1, (hereinafter referred to as "the Trust") to allot the plots to the petitioners on priority basis, as provided under the Act and the Rules of 1975. The petitioners have further prayed that the allotment of plots to respondent Nos. 2,3, and 4 be cancelled, being illegal.

2. The facts required to be noticed for the disposal of the writ petition are that the property of the petitioners was acquired by the State of Punjab for the purposes of Improvement Trust, Ludhiana for execution of its 2.2. Hectares Development Scheme opposite Khalsa College for Women on Sheep Shank Road, Ludhiana, in 1976. The petitioners were owners to the extent of 1/3rd share of the land measuring 8 Bighas 18 Biswas comprised in khasra No. 467 within the revenue estate of village Taraf Gahlewal, tehsil and district, Ludhiana. The total area comprising 8 Bighas 18 Biswas comes to 26700 sq. yards, one Biswa being of 150 sq.yard, therefore, the 1/3rd share of the petitioners comes to about 8900 sq.yards, i.e., about 2225 sq.yards comes to the share of each of the petitioners individually. The land is situated within the Municipal Limits of Ludhiana in the area of Civil Lines, Ludhiana.

3. It has been averred in the petition that the award with regard to this land was announced on 9.11.1976 by virtue of which, compensation at the rate of Rs.

14.95 Paise per Sq. yard was granted. It is categorically pleaded that the petitioners, as a result of this acquisition, stepped into the shoes of Local Displaced Persons as per the definition contained in Rule 2 (a) of the Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 (hereinafter referred to as "the Rules of 1975") made in exercise of the powers conferred under Clause (xiii) of Sub-section (1) of Section 73 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as "the Act"). The petitioners, accordingly, moved an application to respondent No. 1-Trust seeking allotment of plots by treating the same that they being local displaced persons had acquired a legal right for the allotment of plots of 500 sq.yards each on free hold basis and on reserve price, as per the provisions contained in Rule 7(ii) of the Rules of 1975. The plots were not allotted by respondent No. 1-Trust in spite of the fact that the petitioners had been in regular touch with the respondents in this context. The representations (Annexures P-2 and P-3) were also moved by the petitioners, but to no effect. During the proceedings of award of compensation for acquisition, a claim was set up by one Smt. Jaswant Kaur claiming himself to be the owner of the acquired property. The amount of compensation was withheld and respondent No. 1 also deferred the decision on the applications of the petitioners for the allotment of plots and the petitioners were told by respondent No. 1 that the allotment will be made after the title of the property had been established, but ultimately, the claim of Jaswant Kaur was rejected by the Court of law upto to the Hon"ble Apex Court on 1.11.1978, but even then no action was taken by respondent No. 1 to allot the plots to the petitioners. The petitioners served a legal notice through their counsel calling upon the respondent-Trust to allot the plots to them, but even then, no action was taken thereon.

4. Subsequently, the petitioners learnt that out of the land acquired from the petitioners in the aforesaid scheme, three plots have been allotted to respondent No. 2, 3 and 4, who are near relations and employees of the Improvement Trust, without there being any right of theirs in preference to the petitioners.

5. It has been further averred in the petition that in December, 1983, a new set of rules to govern the utilisation and allotment of plots was introduced known as Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 (hereinafter referred to as "Rules of 1983") and with the introduction of these new rules, no criteria for eligibility was adopted, which, as per the case of the petitioners, is prejudicial to their interests and the Rules 1983 are not applicable to their case, as their case for allotment of plots has to be decided under the Rules of 1975. Keeping in view the facts narrated above, and silence on the part of the respondents, the petitioners had no other option but to knock the door of this Court by filing the petition under Article 226/227 of the Constitution of India by virtue of which, it was prayed that respondent No. 1 be directed to allot the plots on priority basis as provided under the Act and the Rules of 1975 and the allotment of plots to respondent Nos. 2,3, and 4 be cancelled being illegal. Hence, this petition.

6. On the other hand, the petition was contested by the respondents and the same was attacked by raising a number of preliminary objections that the writ petition is bad for non-joinder of necessary parties; the petition is mis-conceived; the present petition is not maintainable and the petitioners have no locus standi to file the present petition. It was admitted through the written statement that as per jamabandi for the year 1973-74, the petitioners are shown to be of 1/3rd share in khasra number mentioned above. The location of the land is also admitted and at the stage of filing of the written statement, it was also pleaded that the claim between the parties is subjudice and Jaswant Kaur has also disputed the claim of the petitioners and on this ground also, the petition was opposed. It was further categorically pleaded by respondent No. 1 that the petitioner cannot claim to be local displaced persons as an area measuring 1667 sq. yards of land is already proposed to be exempted in favour of the rightful owners on usual terms and conditions governing such exemption under the law. The rightful owners of the said acquired property cannot claim exemption for such a big portion and also claim to be treated as Local Displaced Persons in addition and if both these benefits are given, this will frustrate the very purpose of framing the scheme. It was further pointed out that if the owners do not wish to avail of the proposed exemption of 1667 sq.yards of land, then the request of the eligible persons for the allotment of plots as local displaced persons, in accordance with the Punjab Town Improvement Rules, Rules of 1983 can be considered. It is further pleaded by the respondents that each application of allotment of plots as local displaced persons has to be accompanied by Rs. 500/- as earnest money. Since the petitioners have never deposited any such amount, therefore, they have no right for allotment of plots as local displaced persons and while denying other averments raised by the petitioners in their petition, it was finally prayed that the petition be dismissed with costs.

7. The other respondents also contested the claim of the petitioners by filing their written statement and while denying most of the assertions raised by the petitioners, finally, it was prayed that the petition be dismissed.

8. I have heard the learned Counsel for the parties and have also gone through the record of the case.

9. The entire controversy between the parties revolves around the platform of local displaced persons and then again whether the case of the petitioners is covered under the Rules of 1975 and what is the effect of new Rules of 1983 with regard to the allotment of plots on the rights of the petitioners. In order to appreciate the points involved in this petition, it is necessary to reproduce the Rule 2-A of the Rules of 1975, which runs as under:

Local displaced persons" means a person who is the owner of a property acquired by the Trust for the execution of a scheme and has been such owner for a continuous period of two years immediately before the first publication of the scheme by the Trust u/s 36 of the Punjab Town Improvement Act, 1922.

10. It is settled law that the legislature in its wisdom anticipating such uprooting of people in connection with the execution of the scheme of the Improvement Trust had expressly provided for the rehabilitation of the persons whose land were acquired and moreover, Section 27 of the Act clearly spells out that any person, who is likely to be displaced by the execution of any scheme, may apply to the Trust to be re-housed and no such scheme shall be put into execution until a re-housing scheme as provided for in Section 26 of the Act for the rehousing of such resident house-owners is introduced and it is an admitted case of both the parties that the land of the petitioners was acquired and they stepped into the shoes of local displaced persons, after their property was acquired. At this stage, I would like to observe that in a free country like India right to own property is a fundamental right given by the Constitution of India and every citizen, as per his desire, can possess moveable and immovable property, but at the same time, in the interest of State and General Public, the property of a person can be acquired, but certainly after awarding compensation to him and this is the spirit of law, which spells out from the Land Acquisition Act (for short "the Act"). Keeping in view the admitted case put forward by respondent No. 1 in its written statement, it is crystal clear that the present petitioners are local displaced persons and as soon as they stepped into the shoes of local displaced persons, they are entitled to the allotment of plots by the Trust and for this purpose, they certainly submitted applications before the respondent-Trust, but no action was taken thereon and once the petitioners are local displaced persons, they have acquired a legal right for the allotment of a plot of 500 sq.yards each in accordance with the rules. At this stage, in order to arrive at the right conclusion, I would like to lay hands on Rule 7(ii) of the 1975 Rules, which runs as under:

7. Reservation of plots and tenements

(i) xx xx xx

(ii) A local displaced person may be allotted a plot upto the size of 500 sq.yards, on free hold basis, on reserve price calculated on the basis of the formula in the Annexure, if the area of the land owned by him and acquired by the Trust is more than 500 sq.yards. If the area of the acquired land is less than 500 sq.yards, the local displaced persons shall be entitled to allotment of plot, which is nearest in size, next below the area of his land, which has come under acquisition.

11. The above quoted rule further spells out that the petitioners were entitled to the allotment of plots upto the size of 500 sq.yards since the land measuring 26700 sq.yards was acquired in which the petitioners had 1/3rd share. In other words, the land of each petitioners to the tune of 2225 sq.yards was acquired, which was, admittedly, situated within the Municipal Limits of Ludhiana.

12. The learned Counsel appearing for the petitioners has vehemently argued that the petitioners were oustees and were entitled to plots in the capacity of local displaced persons and when the procedure for acquisition of land was set into motion by the Trust, the petitioners, at that stage, were governed by the

1975 Rules. The learned Counsel appearing for the respondents could not point out or show in any manner that the new Rules of 1983 could operate retrospectively and that the case of the petitioners for the allotment of plots, would be covered under the new Rules. To my mind, the 1983 Rules could not operate retrospectively and that the case of the allotment of plots to the petitioners, would be covered under the 1975 Rules, and their entire case have to be processed under the definition of local displaced persons, as defined in the Rules of 1975. Moreover, the relevant date to determine, as to whether a person is an owner of the land within the meaning of Rule 2(B) of the Rules 1975 so as to be entitled to claim an allotment of a plot is the one when he was divested of his ownership and possession of the land is taken from him or in other words, at least it should be the date when the scheme was finally sanctioned and as per the case of the petitioners, the entire process was complete under the Rules of 1975 and the subsequent rules of 1983, which was introduced in December 1983, would not come into play. The respondents, by introduction of these rules, and by introducing new criteria for eligibility and allotment, which is prejudicial to the interests and curtails vested rights of the petitioners, as provided under the Rules of 1975, cannot withdraw the rights, which were acquired by the petitioners under the Rules of 1975, Moreover, in the event of the amendment of rules, the amended Rules will effect only the procedural matters and in no case can affect the substantial rights of those persons whose cases were pending under the Rules of 1975, nor new rules could be passed with retrospective effect and the allotment of plots to each of the petitioners individually is to be disposed of under the Rules 1975 only.

13. A bare reading of the rules reproduced above, would show that before coming into force of the new Rules, 1983, the petitioners were entitled to the allotment of one plot each, but now with the introduction of Rules, 1983, Rule 4(2) of the new Rules clearly spells out that the local displaced persons having a joint khata, being co-sharers, shall be allotted only one plot. At this stage, I would like to reproduce Rule 4 (2) of 1983 Rules, which runs as under:

Provided that the local displaced persons having a joint khata, being co-sharers, shall be allotted only one plot taking into account the whole or their joint land acquired.

14. Taking benefit of these new rules, learned senior counsel Shri A.K. Chopra, appearing for respondent Nos. 2 to 4, has vehemently argued that the present petitioners are entitled to only one plot measuring 500 sq. yards jointly since they have local displaced persons having joint khata. He further clarified that as per the new Rules of 1983, the petitioners are entitled to only one plot jointly for an area of measuring 500 sq.yards. I have considered the contention of the learned Senior Counsel appearing for respondent Nos. 2 to 4 and have examined the same in the light of the facts available on record, but to my mind, this contention is liable to be noticed only for the sake of rejection. Since the Rules of 1983 have not been given retrospective effect, therefore, this contention is not

liable to be accepted, since as already discussed above, the case of the petitioners is covered under the Rules of 1975 and even if by virtue of proviso to Rule 16 of the Rules 1983, the Rules of 1975 are repealed, even then this saving clause would not help the respondents in any manner, nor it would stand in the right of the petitioners, which they have clearly acquired under the 1975 Rules and according to the Rule of 1975, the petitioners are entitled to separate plot as per the area of entitlement and it is not open to the respondents to now contend that the petitioners, being joint owners under the scheme, are entitled to only one plot, particularly when new Rules of 1983 would not operate in the present case, as the acquisition had taken place in the year 1976. Moreover, while admitting this writ petition, the Hon'ble Division Bench, on the statement of Mr. D.P. Kapur, learned Counsel appearing for the Improvement Trust-respondent No. 1, passed an order dated 7.2.1985 by virtue of which an area of 2000 sq.yards shall be kept unutilised till the decision of this writ petition adjacent to the banglow of the petitioners and on account of this undertaking given by the learned Counsel appearing for the Trust, the stay order granted vide order dated October 30,1984 against respondent Nos. 2,3, and 4 was vacated.

15. Learned Counsel now appearing for respondent No. 1 Shri Sandeep Khunger, Advocate, has disclosed that in pursuance of the order dated February 7, 1985, an area of 2000 sq.yards was kept unutilised and is still available. In view of this, I find that the rights of respondent Nos. 2 and 3 are not affected in any manner since the area is available with the Improvement Trust-respondent No. 1.

16. In the final analysis, keeping in view the facts and circumstances discussed above, the petitioners are bound to succeed particularly when their case is fully covered under the 1975 Rules and as such, the writ petition is allowed and the respondent-Trust is directed to hand over the vacant possession of the plot measuring 500 sq.yards to each of the petitioners out of an area measuring 2000 sq.yards earmarked for this purpose, within 90 days subject to the conditions that each of the petitioners shall pay the price of the plot, including all other charges, that may be imposed, as per the scheme flouted by the Improvement Trust in accordance with the Rules of 1975. However, It is made clear that the respondent-Trust shall communicate in black and white all the outstanding dues to the petitioners, that may be found due from them, within a period of one month from the date a certified copy of this order is received. On receipt of such communication, the petitioners shall pay the outstanding dues to the respondent-Trust, within a period of two months thereafter. In case the petitioners fail to deposit the requisite amount, as demanded by the respondent-Trust, within the stipulated period, then in that eventuality, the area measuring 2000 sq. yards kept reserved more than two decades ago by the order of this Court for being allotted to the petitioners shall be deemed to be automatically resumed.

17. Before I part with this order of mine, I find that the present petitioners had knocked the door of this Court in the year 1984 for the reasons best known to them, after a lapse of number of years, therefore, apart from the reserved price,

the respondents shall be entitled to simple interest at the rate of 9% per annum from the date of passing of the award by the Collector, i.e., 19.11.1976 till the filing of the present petition, i.e., 28.4.1984. The petitioners are directed to pay the court fee, if not paid earlier, on the amount so intimated by the respondent-Trust to be paid to it, within a period of three months. However, parties are left to bear their own costs.