
(2008) 12 P&H CK 0133
In the Punjab And Haryana At Chandigarh

Suraj Bhan and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Punjab Town Improvement Act, 1922 — Section 36, 42

Citation : (2009) 156 PLR 467 : (2009) 3 RCR(Civil) 571

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—This Civil Writ Petition seeks quashing of notifications dated 4th January, 1974 and 30th December, 1976 (Annexures P-3 and P-5) as well as the award dated 28th July, 1978 (Annexure P-6) whereby the petitioners' land measuring 10 Bighas 4 Biswas in one parcel and 1 Bigha 2 Biswas in the other parcel situated within the revenue estate of Patiala [Punjab] has been acquired for the Development Scheme for an area measuring 180 acres known as "Saheed Sewa Singh Tikriwala Nagar" framed by the Improvement Trust, Patiala.

2. The Improvement Trust, Patiala vide its Resolution dated 3rd December, 1973 framed the aforementioned Development Scheme. A notification dated 21st December, 1973 [Annexure P-2] was thereafter issued u/s 36 of the Punjab Town Improvement Act, 1922 (for short "the 1922 Act")- However, it appears that no final notification u/s 42 of the 1922 Act was issued.

3. On 4th January, 1974, the Punjab Government issued another notification (Annexure P-3) u/s 36 of the 1922 Act proposing to acquire the same set of land for the same Scheme, followed by a notification dated 30th December, 1976 (Annexure P-5) u/s 42 of the 1922 Act.

4. On 28th July, 1978, the Land Acquisition Collector, Improvement Trust, Patiala, announced the award (Annexure P-6) whereby the land was divided into two Blocks "A" and "B" and compensation @ Rs. 8.25/- per square yard for Block "A"

and @ Rs. 6.60/- per square yard for "B" was announced.

5. The petitioners' own case in para No. 7 of the writ petition is that after the receipt of the notice of award, they have filed references u/s 18 of the Land Acquisition Act, 1894 and the same were pending adjudication at the time of filing of this writ petition in the year 1992.

6. It is the petitioners' case, that the award dated 28th July, 1978 [Annexure P-6] is incomplete as the market price of the "structures" existing on the acquired land was not evaluated, even though such an evaluation was required to be done within a period of two years as provided in Section 11-A of the Land Acquisition Act, 1894 [in short the 1894 Act] which came into force w.e.f. 24th September, 1984 by virtue of the Central Act No. 68 of 1984. The petitioners' further grievance is that though they received a notice u/s 16(1) of the 1894 Act in April, 1990 informing about the assessment of compensation of Rs. 49,841/- for their acquired land and since in response thereto, they had sought abandonment of acquisition qua their godown built up at the acquired land, it was obligatory upon the Improvement Trust, Patiala to take a decision in that regard in terms of Section 56 of the 1922 Act.

7. While issuing notice of motion, dispossession of the petitioners from the acquired land was stayed vide an ex-parte order dated 17th March, 1992. However, the Improvement Trust, in its counter-affidavit came up with the plea that possession of the acquired land had already been taken at the time of passing of the award, therefore, while admitting this writ petition, the ex-parte stay order was modified and the parties were directed to maintain status quo regarding possession.

8. I have heard learned Counsel for the parties at some length and with a view to take notice of the subsequent events including the present status of the acquired land, an additional affidavit dated 14th November, 2008 filed by Lal Singh Tiwana, Executive Officer of the Improvement Trust, Patiala along with certain documents, has been taken on record.

9. Learned Counsel for the petitioners vehemently urged that (i) since no award for the super-structures existing on the acquired land has been passed within the stipulated period, the entire acquisition proceedings are vitiated; (ii) the land in dispute is still lying un-utilized; (iii) the "public purpose" has already been achieved by the Improvement Trust, therefore, the petitioners' land is liable to be released; (iv) even as per the respondents possession of the shed alone was taken, whereas the remaining land is still in possession of the petitioners, therefore also, the petitioners' land is liable to be released; (v) since the compensation amount has not been paid/deposited by the State Government as per Section 51 of the 1894 Act, the acquisition proceedings are liable to be struck down.

10. Learned Counsel for the Improvement Trust, Patiala, on the other hand, urged that the writ petition is liable to be dismissed on the ground of delay and

lacs as the acquisition made in the year 1974-75 has been challenged by the petitioners in the year 1992 without any explanation. He argued that the petitioners are otherwise estopped by their act and conduct from assailing the acquisition as they have already filed references u/s 18 of the 1894 Act seeking enhancement of compensation. Learned Counsel further urged that possession of the petitioners' land had been taken by the Trust on 25th June, 1990, except that of godown which was in possession of the Punjab Ware Housing Corporation. Relying upon the averments made in the additional affidavit dated 14th November, 2008, it was maintained that the entire compensation amount stood deposited with the Collector before possession of the acquired land was taken.

11. The record reveals that notifications under Sections 36 and 42 of the Act were issued in the year 1974 and 1976. The award was passed by the Collector on 28th July, 1978. The petitioners thereafter sought reference u/s 18 of the 1894 Act. followed by a writ petition before this Court for enhancement of the compensation. They went up to the Hon'ble Supreme Court where the matter appears to have been finally decided on 29th October, 1987. It would, thus, be seen that after getting determined the compensation for the land up to the highest court, that the petitioners thought of challenging the acquisition proceedings through this writ petition in the year 1992. Pretending that there is no delay on their part, the petitioners are harping upon the fact that compensation was offered to them in April, 1990 and thereafter they were asked to deliver the possession on 25th June, 1990 (Annexure R3/1). As against this, the Trust in its affidavit dated 14th November, 2008 has clarified that:

That the compensation assessed by the Collector was sent to the Collector, Improvement Trust, Patiala vide Memo No. PIT/88/860 dated 26.5.1988 by way of cheque No. 236418 for Rs. 4 lacs and vide cheque No. 042784 for an amount of Rs. 2.5 lacs and another cheque No. 562461 for an amount of Rs. 82, 618.17 total amount of Rs. 7,32,618.17 for further disbursement to the landowners including the petitioners. The total land of the petitioners was acquired 10.4 B and 1.2B (1/3 share) i.e., 6.4 BB 7 Biswas 6.66 Biswansi and award was passed but thereafter the compensation was deposited of this land i.e. 6.4 BB and 7 B 56.66 Biswansi. The name of the petitioners is entered at Sr. No. 177 of award Statement at page No. 4 with regard to land 6 Bigha 4 Biswas and 0-7-6, 6.66 BBB for an amount of Rs. 47,058/- and 2,783/-. The copy of the letter as well as the award statement is being attached with this affidavit as Annexures R3/3.

12. What, therefore, appears to be is that after determination of the compensation by the highest court, the Improvement Trust deposited the same with the Collector on 26th May, 1988, including the compensation payable to the petitioners for their land measuring 6 Bighas 4 Biswas. It was thereafter that the possession of the acquired land was taken in terms of Section 16 of the 1894 Act. Otherwise also, once the award is passed and compensation deposited, the acquired land vests in the State Government absolutely free from all encumbrances. No advantage of the delay in taking of its physical possession by

the Improvement Trust can be taken by the petitioners to assail the validity of the acquisition process which began 1974 and ended in the year 1978. The writ petition, in a way, could be dismissed at the threshold on the ground of delay and laches.

13. Adverting to the merits of the petitioners' claim, the main plank of their arguments is that firstly the award was not passed within the stipulated period of two years as prescribed u/s 11-A and secondly the compensation amount having not been paid to them in accordance with Section 38 of the 1894 Act and that too when no award for super-structure has been passed till date, the entire acquisition proceedings have elapsed.

14. No doubt, Section 11A which came into force w.e.f. 24th September, 1984 mandatorily requires passing of an award within a period of two years from the date of publication of the declaration, however, the provision being prospective in nature, has no applicability in the present case where the acquisition proceedings including the award stood concluded in the year 1978. The plea that no compensation amount has been deposited also stands belied by the averments made in the Improvement Trust's additional affidavit dated 14th November, 2008, reproduced above. The compensation amount had been deposited in the year 1978 itself.

15. This takes us to yet another strenuously urged contention that since no award has been passed in respect of the structures, the entire acquisition proceedings are liable to be quashed in view of Section 11A of the 1894 Act. In this regard, the petitioners have relied upon the following averments made in the award dated 24th July, 1978 passed by the Land Acquisition Collector, Improvement Trust, Patiala (Annexure P-6):

Structures:- The standing structures in the Scheme have not been so far evaluated for price. The Improvement Trust, Patiala was asked to supply the estimates of structures, but the same has not been supplied as yet.

As and when the same are supplied these shall be separately awarded to as per the provisions of the Land Acquisition Act, 1894 and also any other judicial pronouncement pertaining to the same except the Katcha/pacca structure standing at and around the wells and tubewells as per Annexure "G". The land acquisition staff has estimated these structures at Rs. 8,500/-. I agree with the same and assess and award accordingly. Some area has also been recommended by the Trust for exemption as explained above. The same would also have been already left out of the award.

16. Firstly, it has to be kept in view that the aforementioned award pertains to a big chunk of land measuring 180 acres, i.e., 864 Bighas. The averments regarding non-evaluation of the structures existing in the acquired land, thus, do not exclusively pertain to the petitioners only. As regards the petitioners' claim, the respondent Trust has taken up the following stand in paras No. 8 and 9 of its counter-affidavit:

8&9. In reply to para Nos. 8 and 9 of the writ petition, it is submitted that the compensation regarding structure was not assessed in the award and later on it can not be assessed because of the pending litigation. But it is stated that as per the survey plan which was prepared before issuance of the notification for acquisition of land (19.12.1973). There exist no construction over the land owned by the petitioners. The entire area was lying vacant. They may have constructed this shed godown afterwards with a view to save the acquisition of the land, as such they can not raise any objection for non determination of the compensation for standing structure etc.

(Emphasis applied)

17. Besides there being a serious dispute as to whether the Godown/structures were constructed by the petitioners after the acquisition process had started or before, there is nothing to prohibit the Land Acquisition Collector from evaluating the market value of the structures at a later stage when the land underneath has already been acquired, compensation assessed and deposited.

18. Learned Counsel for the Improvement Trust has referred to the latest site plan of the Development Scheme known as "Saheed Sewa Singh Tikriwala Nagar" and has rightly contended that the entire area has already been developed as a residential colony except a small piece of the disputed land though plots have been carved out on that land also. The petitioners' contention that the land in dispute is still lying unutilised, therefore, is wholly misconceived as the Development Scheme was conceptualized over an area measuring 180 acres in which the land in dispute constitutes a very small part. If that piece of land could not be utilized due to the pending litigation, the Trust authorities can not be accused of not utilizing the same for the purpose for which it was acquired.

19. For the reasons aforementioned, there is no merit in this writ petition and the same is accordingly dismissed. No costs.