
(2014) 10 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 9506, 11699, 9507 of 2001 and 10381, 14291 of 2003
(O&M)

Swaran Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 19(1)(g)

Citation : (2015) 1 RCR(Civil) 677

Hon'ble Judges : Jaishree Thakur, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Munish Behl, Advocates for the Appellant; Manoj Bajaj, Additional Advocate General and Sanjiv Sharma, Advocates for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of C.W.P. Nos. 9506, 9507, 11699 of 2001 and C.W.P. Nos. 10381 and 14291 of 2003 filed by similarly situated Pan/Bidi/tea stall vendors etc. working in Phase-IVA, Focal Point, Dhandari Kalan, Ludhiana. In the year 1993, the respondent-Corporation carried out a demolition exercise to remove encroachments from the public land. A survey was conducted to ascertain the persons who are running Khokhas. (kiosks) on the public land in Focal Point, Ludhiana. The petitioners claim to be one of those carrying out their Khokhas.

2. A scheme was framed in the year 1993 by respondent-Corporation to allot 10 square yard land to each of the Khokha owners at the price of Rs. 350/- per square yard. The persons running Khokhas were to deposit earnest money of Rs. 700/- by 15.08.1993. Though, the petitioners deposited the amount demanded but still allotments were not made. Thereafter, on 11.06.2001 the Corporation fixed price of Rs. 1,33,000/- for the allotment of 10 square yards of land to the persons running Khokhas. The petitioners were called upon to remit Rs. 13,300/- towards earnest money being 10% of the cost of the offered site. It is at that stage the petitioners invoked the jurisdiction of this Court challenging the action

of the respondent-Corporation being violative of Articles 14, 19(1)(g) of the Constitution of India and contrary to the principles of natural justice.

3. In reply filed in C.W.P. No. 9506 of 2001, reference is made to the orders passed in C.W.P. No. 6934 of 2000 titled *Avtar Singh v. State of Punjab*, decided on 30.04.2000 and C.W.P. No. 11418 of 2000 titled *Rajinder Singh Bedi v. Ludhiana Improvement Trust*, decided on 19.07.2001, holding that in respect of price fixation, the High Court does not exercise appellate jurisdiction. It is also pointed out that a duly constituted Estimate Approval Committee under the Chairmanship of the Managing Director of the Corporation has fixed the price on rational basis after taking into consideration the average bids realized from auction of commercial booth at Dhandari Kalan which was to the tune of Rs. 11,191/- per square yard. The price of Rs. 1,33,000/- was arrived at after taking into consideration the provision of pucca platform with cement and toilets etc. to be provided by the Corporation. The minutes of the Estimate Approval Committee has been appended with the reply as Annexure R-3/1.

4. As per the facts on record, the petitioners are squatters of public land and are rank "encroacher". They are in occupation of public land for more than two decades. The attempts of the Corporation to rehabilitate the persons like the petitioners have encountered road-block but we find that the petitioners cannot be permitted to scuttle the process of rehabilitation. The question of the right of the person in occupation of the public land has been examined by the Supreme Court in number of cases. Such as in *Friends Colony Development Committee Vs. State of Orissa and Others*, . The Court dealt with the importance of lay-out plans within the municipal limits and also the importance to maintain peace, good order, dignity, protection and comfort and safety of the community. It was observed that the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. It was held as follows:

"22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the

private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services."

5. Later in *Milk Producers Association, Orissa and Others Vs. State of Orissa and Others*, , the Supreme Court was examining the rehabilitation of dairy owners. The Court held that only because the dairy owners are agreeable to pay for the plot which may be allotted to them, that by itself would not clothe them with the legal right to be rehabilitated. There does not exist any legal concept which confers a legal right upon an encroacher to be rehabilitated. It was held as follows:-

"24. It may be true that the members of Appellant 1 Association were to pay for the plot. But, only because they are agreeable to pay for the plot which may be allotted to them, that by itself in our considered view would not clothe them with the legal right to be rehabilitated. There does not exist any legal concept which confers a legal right upon an encroacher to be rehabilitated. The matter may be different where the State comes out with a policy decision which meets the constitutional scheme as envisaged under Article 162 of the Constitution. In the instant case, we have noticed that the appellants have failed to show the existence of any such scheme, which can be said to be irretrievable in nature. In view of the 2003 Act, even the doctrine of promissory estoppel will have no application."

6. In *Jagpal Singh and Others Vs. State of Punjab and Others*, , the Supreme Court was examining the menace of encroachment on village common land. It was held that regularizing illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers. The Court directed the State Governments that they should prepare schemes for eviction of illegal/unauthorized occupants of the common land for the common use of villagers of the village. The Court observed as follows:-

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/

money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village."

7. Thus, we find that the petitioners cannot seek any right to continue to be in possession of the public land. They must accept the rehabilitation scheme framed by the Corporation. Though, we find that the price realized in auction may not be perfectly justified mode while allotting land as a process of rehabilitation but the final decision in respect to the price has to be taken by the Corporation after taking into consideration the various aspects including the cost of development and the facilities to be provided etc.

8. Therefore, we dispose of the present writ petitions with direction to the Corporation to re-calculate the price on which 10 square yard plots are proposed to be allotted to the persons running Khokhas in the Focal Point and the manner of allotment i.e. in case there are more persons than the plots available, whether the Corporation shall like to adopt process of draw of lots or otherwise. The Corporation shall have also the right to rehabilitate the persons running the Khokhas at the same place or at suitable place in the vicinity of their present place of working. The Corporation shall finalize the process of allotment including the price thereof and complete the same within a period of six months. After the process of allotment is completed, all encroachers on the public land shall vacate the land, failing which the Corporation shall have the right to take recourse to law.