
(1995) 04 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8072 of 1990

Tejinder Singh Bawa and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Punjab Municipal Corporation Act, 1976 — Section 275

Citation : (1995) 110 PLR 578

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : A.K. Mittal and G.S. Sandhawalia, for the Appellant; R.S. Bindra and R.S. Bal and Ashok Aggarwal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The three petitioners alongwith another person purchased the land measuring 633 square yards close to the District Court Chowk in Amritsar. They submitted a plan for raising construction on this land. The Municipal Corporation, Amritsar, respondent No. 2, rejected the plan on the ground that the land in question was "a part of Green Space". Even a representation submitted by petitioner No. 1 to the Government was rejected vide order dated April 25, 1990. Aggrieved by these orders, the petitioners filed civil writ petition No. 8072 of 1990 and prayed that a writ of mandamus be issued directing the respondents to sanction the plan or to acquire the land on payment of compensation u/s 275 of the Punjab Municipal Corporation Act., 1976. It appears the even before the plan had been formally sanctioned, the petitioners had started raising construction on the site on January 20, 1989. On January 31, 1989, the respondent Corporation served a notice on petitioner No. 1 to show cause as to why he should not be stopped from raising the construction. Therefore, as many as seven notices were issued to the petitioners from February 13, 1989. The petitioners resorted to litigation before the Civil Court. According to the petitioners, in spite of the grant of an ad interim

injunction, the building was actually demolished on June 20, 1989. Thereafter, notices under Sections 269(1) and 220(1) of the Punjab Municipal Corporation Act, were issued to the petitioners. They were informed that they had started the repair of the demolished shops without permission in violation of filed Civil Writ Petition No. 12910 of 1991 and prayed that the notices be quashed and the respondents be directed not to demolish the building or to remove the debris, etc. In view of the orders of the Motion Bench, these petitions have been listed together for hearing and can be disposed of by one order.

2. The primary claim of the petitioner is that they being the owners of the property, have the right to use it and the respondent-Corporation cannot deny them the permission to raise construction thereon. The petitioners maintain that electricity connection was sanctioned. Others, like Smt. Lajwanti, were allowed to raise construction. The action of the respondent-Corporation is arbitrary and discriminatory.

3. The respondents contest this claim. They point out that the predecessor in interest of the petitioners owned a total of 12 kanals 4 marlas of land. This land was included in a building scheme No. 9B prepared by the Corporation. The Scheme was duly notified. Objections were invited. According to the scheme, the land measuring 1 1/4 kanals, was kept as "Green Space". The original owners had not raised any objection against the reservation of this land as Green Space. The Scheme was approved by the Government vide its order dated April 12, 1988. After the approval of the Scheme, the petitioners purchased this land in November, 1988. Since the land had been reserved as "Green Space" and the petitioners have bought it in spite of that, they are not entitled to raise construction on the land. It has been further pointed out that the land was purchased by the petitioners for a total amount of Rs. 1,11,000/-. The land is in a commercial area in the vicinity of District Courts. They got it for a low price because the owners knew that no construction could be raised thereon and it could not have in fact been put to any use. Accordingly, the building plans submitted by the petitioners were rejected. In regard to the averment made by the petitioners that electricity and water connections have been sanctioned for the site, it has been pointed out that petitioner No.1 had got a "No Objection Certificate" issued under the signatures of one Mr. P.K. Goel, Assistant Engineer (Buildings). When this certificate was brought to the notice of Mr. Goel, he denied that he had issued any such certificate and submitted that the signatures had been forged. He had been suspended. His signatures were got verified from an hand writing expert. It was opined that the certificate was not signed by Mr. Goel. According to the respondents, Mr. T.S. Bawa, petitioner No. 2 was responsible for the entire fabrication of documents resulting in securing the water and electricity connections. Even the facts regarding the proceedings before the Civil Court have been explained in detail. Keeping in view the limited issues arising in these petitions, it is not necessary to notice all the pleadings in detail. Briefly, regarding the allegation that the action of the respondents suffers from the vice of discrimination, it has been explained that Smt. Lajwanti had field

objections against the Scheme. These were considered and the Commissioner had made a recommendation to the Government that the Scheme may be amended so that the property of Smt. Lajwanti was not retained as a "Green Space", and may be retained by her as a residential premises. This was of course "subject to the restriction of house line and height of the boundary line for clear vision". The recommendation was accepted by the Government and the residential house of Smt. Lajwanti was not reserved as a part of the Green Space. It has been further pointed out that the Scheme having been finally sanctioned by the Government, the petitioner's land cannot be exempted nor is it incumbent on the respondent-Corporation to acquire it. Accordingly, it is prayed that they writ petition has no merit and may be dismissed with costs.

4. Learned counsel for the parties have been heard.

5. Mr. Ajay Mittal, learned counsel for the petitioners, has submitted that Municipal Corporation has no power to take away private land without payment of compensation. The action of the respondents, the counsel urged, in not allowing the petitioners to raise construction amounts to deprivation of property without payment of compensation. The counsel submitted that if the Corporation could not allow the petitioners to rise construction on the land in dispute, it could acquire it and pay adequate compensation. It was also urged that the action suffered from the vice of discrimination in as much as the land of various persons who were similarly situated with the petitioners, was exempted by the respondents.

6. On the other hand, Mr. R.S. Bindra, learned counsel for the respondent Corporation submitted that the scheme was duly notified. In this Scheme, the land in dispute was reserved for use as "Green Space". If the owners were aggrieved, they could have raised objections. None having been raised, the petitioners cannot be permitted to raise any construction on the land. Learned counsel further submitted that the action of the respondents was in strict conformity with the provisions of law and that the petitioners were not entitled to the grant of any relief in the exercise of extraordinary jurisdiction under Article 226 of the Constitution. As for the case of Smt. Lajwanti etc., it was explained that keeping in view the fact that the property was located at a considerable distance from the "traffic round about", it was found possible to amend the Scheme and that the petitioners' land being close to the round about, such a relief could not be granted to them.

7. In order to examine the primary contention raised by the counsel for the parties, it is apt to notice the relevant provision of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as the Act). This Act was enacted with the object of providing "better administration, better amenities and better planning for future..." in the cities of Amritsar and Ludhiana. Chapter XIV of this Act contains the provisions regulating the erection of buildings etc. A perusal of various provisions shows that no person can erect any building without the prior sanction of the Commissioner. Even repairs and alterations have to be made after

obtaining sanction. Section 275 deals with the drawing up of a Building Scheme or a Town Planning Scheme. Such a Scheme can inter alia provide for "the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the city, and of the use to which they may be put" and "the prescription of a building line on either side or both sides of any street existing or proposed". After the preparation of the Scheme, the Corporation has to give a public notice so that the aggrieved persons may file objections or suggestions. These objections have to be considered. The Corporation is competent to modify the Scheme and then to forward it to the Government for sanction. After the sanction of the Scheme, use of any building or land for a purpose not permitted by the Scheme, is punishable with fine.

8. A perusal of the above provisions shows that the Corporation while framing a Building Scheme, can restrict the erection or re-erection of buildings in the city and also prescribe a building line on either side of the city. The obvious purpose is to regulate the erection of buildings and to promote public good. Haphazard growth of buildings is against the very concept of planned development and results in avoidable public inconvenience. The Corporation can in the exercise of its power under the Act prescribe a line beyond which a building shall not be constructed so that there are proper open spaces and the view of the persons driving the vehicles is not obstructed. This is for general good. This is precisely what appears to have been intended by the Corporation while reserving the land in dispute as a "Green Space". Both sides have produced plans. Even photographs have been produced. Effort on the part of petitioners has been to show that erection of buildings on the disputed land shall not be a traffic hazard. On the other hand, learned counsel for the Corporation has been categorical in asserting that permitting the petitioners to erect a building on the disputed land would not be in public interest. On an examination of the entire material on record, it is clear that the land in dispute is close to a traffic round about where a number of roads meet. The Corporation was justified in reserving the land as a "Green Space". The predecessors-in-interest of the petitioners had apparently accepted this position and raised no objection whatsoever. That having happened, the petitioners could have reasonably visualised before purchasing the land that they will not be permitted to raise any construction thereon. They bought it with their eyes open. They are not now entitled to complain.

9. The position in this case can well be illustrated. In Chandigarh, every plot holder has to keep certain amount of space as an open area. The building lines on various roads and in different sectors are clearly marked. Supposing somebody buys a piece of land out of a particular plot which has to be kept as an open space, he would not automatically become entitled to raise any construction thereon. He will be bound to keep it as an open space in accordance with the Building Bye-laws prevalent in the Union Territory of Chandigarh. He would not be entitled to say that the Administration is denying him the right to use his property or that it should be forced to acquire it. Same appears to be the position in the present case. When the petitioners bought the land, they knew

that it was reserved as a "Green Space". There is not even a suggestion to the contrary. That being so, they have to keep it as such.

10. Mr. Ajay Mittal contended that in case, the petitioners cannot be permitted to raise construction on the land, the Corporation should acquire it. The contention is mis-conceived. Under the Scheme, the user of land had been specified. No objection thereto was raised. The original owners could not have raised construction on it. The petitioners are transferees. They cannot have a better claim than their vendors. Still further, the land was not transferred to the Corporation. The Corporation is not becoming the owner of the property. It has only restricted the use of the land by the owner. Its action is in conformity with the provisions of Section 275 of the Act. There being no challenge to the provision, the Corporation cannot be forced to acquire the property or to pay compensation to the petitioners.

11. Even the charge of discrimination levelled by the petitioners cannot be accepted. The suggestion in the petition was that even the space where Smt, Lajwanti had constructed a building, was in fact an open space and was proposed to be reserved as a "Green Space". This has been denied. It has been pointed out that a building existed thereon. She had sought permission for exclusion of the build-up area from the "Green Space". This was allowed. The action was fair inasmuch as the building is at a considerable distance from the traffic round about. The remaining area is sufficient to ensure a clear view for the persons driving the vehicles. However, this does not mean that the Corporation was bound to permit erection of buildings on the remaining area as well.

12. On behalf of the respondents, it was pointed out that petitioner No. 1 had forged the signatures of Mr. P.K. Goel, an Assistant Engineer, it was also urged that the petitioner was actually working in the office of the Corporation and had bought the property in the hope that he would manage to raise construction. It is not necessary to go into these matters in view of the above findings.

13. On behalf of the petitioners, it was pointed out that the building had actually been erected and that construction on a part of the land may be allowed. These are matters for the respondents to consider. If the petitioners make a representation, the respondents shall examine it and see if it is possible to accommodate the petitioners to some extent. However, no relief as prayed for in these petitions can be granted to the petitioners under Article 226 of the Constitution.

14. The writ petitions are wholly lacking in merit, these are, consequently, dismissed. No costs.