

Bachan Singh and Others

Vs

State of Punjab and Others

Writ Petition No. 1 of 1970

(J. S. K. Hegde, A. N. Grover, G. K. Mitter JJ)

18.02.1971

JUDGMENT

REDDY, J. -

1. The three petitioners who are residents of Amritsar have filed this petition under Article 32 of the Constitution, challenging the Punjab Development of Damaged Areas Act 10 of 1951 (hereinafter called 'the Act') as being violative of Articles 14, 19(1) (f) and (g) and 31(2) of the Constitution of India.

2. The first petitioner carries on a Bakery business in a shop in Bazar Jallianwala near Chowk Phowara of which he is a tenant. The second petitioner is the owner of a building consisting of a number of shops situated in Bazar Bikanarian while the third petitioner is a tenant in occupation of residential house situated in Bazar Sodhian. On June 26, 1962 the State Government declared by a Notification under Section 2(d) of the Act the entire area within the walled city of Amritsar to be a damaged area. In pursuance of the said Notification a number of schemes were formulated by the Improvement Trust of Amritsar. Two of such schemes with which the petitioners are concerned related to : (1) Chowk Phowaracum-Jallianwala Bagh and (2) Ghantaghar. The former Scheme was sanctioned by the State Government by a Notification, dated July 17, 1968, while the Ghantaghar Scheme was sanctioned by Notification of October 10, 1969. Pursuant to these Notification a notice was issued on November 26, 1969, to the first Petitioner whose shop is covered by the Chowk Phowara-cum Jallianwala Bagh Scheme to vacate the premises in his possession. A notice was also given to petitioners 2 and 3 in respect of the building owned or occupied by them in the Ghantaghar Area Scheme, asking them to appear before the Land Acquisition Collector - the third respondent and explain the interest which they have in the respective premises sought to be acquired. It is contended by the petitioners : (1)(a) that Section 2(d) offends Article 14 of the Constitution inasmuch as the damaged area as defined under that section furnishes no guidelines, is arbitrary, unguided, un-canalised and discriminatory inasmuch as it enables the State Government to pick and choose any area and declare it to be damaged area even though it may not at all be damaged while as the same time leaving out other areas similarly situated which are either not damaged or really damaged; that in any case the Notification under Section 2(d) is vague and therefore bad, (b) that the provisions regarding compensation are also discriminatory because property can be acquired at the discretion of the Improvement Trust either under the Punjab Town Improvement Act, 1922, or under the Act even though the compensation payable under the provision of the former Act are advantageous as compared to those payable under the Act; (2) that the compensation provisions in the Act violate Article 31(2) as it stood at the time when the Act was passed in 1951; (3) that the acquisition under the Act cannot be said to be for a public purpose as not a single pie comes from the Government or is contributed by the local authority and (4) that the impugned Notification

sanctioning the two schemes is also void because once the Government had exercised the power by sanctioning Dharam Singh Market Scheme, the power of sanction under Section 5 is exhausted.

In order to appreciate the several contentions it is necessary to examine the provisions of the Act but before we do so it may be useful also to briefly set out the legislative history of the enactment and the purpose for which it was enacted. Prior to the partition of India there were serious communal rioting in March, 1947, in some part of Punjab, particularly in Amritsar. These riots as well as those which subsequently took place on the eve of parties caused extensive damages to property and left a lot of debris and refuge which had to be cleared. The Governor of Punjab who had by a proclamation under Section 93 of the Government of India Act, 1935, assuming to himself all powers vested by and under the said Act passed the Punjab Damaged Areas Act 11 of 1947 on May 9, 1947. The Act so passed would only have force for two years from the date on which the proclamation ceases to have effect unless sooner repealed or re-enacted by an Act of the appropriate legislature. The rule of the Governor came to an end on August 15, 1947, and consequently the 1947 Act would cease to have force on August 15, 1949.

3. It appears from the Statement of Objects and Reasons of the 1947 Act that Government finding that it has not adequate power to deal with dangerous or damaged building summarily, or to deal satisfactorily with debris, the materials of damaged or fallen buildings or to control salvage of property and its disposal or to indemnify the Crown or the Local authorities or their employees for the action already taken in respect of the aforesaid matters, wanted to arm itself by emergency changes in the laws regulating the administration of urban areas and to provide in an orderly way for the custody and disposal of debris and salvaged property. The substantive portions of the Act were meant to come into force in any area to which their application may be considered desirable by the Provincial Government, on such date as may be notified. Under Section 2(c) the damaged area was defined in much the same way as is defined in Section 2(b) of the present Act. It conferred power on the Provincial Government to declare by Notification any area or any portion thereof to be a damaged area. Under this provision the whole of the walled city of Amritsar was declared to be damaged area. As this Act would have lapped by August 15, 1949, the East Punjab Damaged Areas Act 10 of 1949 was enacted which embodied practically the same provisions as were contained in the 1947 Act. Under this Act no fresh Notification in respect of the area notified in the 1947 Act was issued and though Sections 1 to 3 of the 1949 Act came into force immediately after its publication the other provisions of that Act were to come into force in any urban area as the State Government by Notification may appoint. These provisions however did not meet the need for planned development of the damaged areas and consequently the Damaged Area Ordinance 16 of 1950, was promulgated by the Governor of Punjab on the 1st December, 1960. The Ordinance was replaced by the present Act.

4. Though under sub-section (2) of Section 1 the Act extends to the whole of Punjab sub-section (3) was to come into force at once within the local area of Amritsar Improvement Trust and any other such areas as the Government may be Notification specify. Section 2(d) defines damaged area to be an area which the State Government by Notification may declare to be a damaged area and includes the area already notified by the East Punjab Damaged Area Act, 1949. Section 2(e) defined 'The Improvement Trust' of 'Trusts' as an Improvement Trust constituted under the Punjab Town Improvement Act, 1922, while land under Section 2(f) includes benefits to arise out of land or things attached to the earth or permanently fastened to anything attached to the earth. Section 3 empowers the Trust to frame a Scheme of Schemes for the development of the damaged area providing for all or any of the matters mentioned under Section 28 of the Punjab Town Improvement Act, 1922 and any scheme already framed or sanctioned in respect of a damaged area

under the provisions of that Act which shall be deemed to have been framed or sanctioned under the Act. Sections 4 and 5 then provide for the publication of the scheme giving certain specified details calling for objections to the scheme within a period prescribed. After considering the objections, if any, which may be received by the Trust during the period prescribed submit it to the State Government with a statement of objections received by it. The State Government may modify the scheme if necessary any notify it either in original or as modify. The scheme so published shall be deemed to be the sanctioned scheme; such publications being conclusive evidence of the Scheme having been duly framed and sanctioned. Under Section 6 the Trust shall within 3 months from the date of the publication of the scheme under sub-section (3) of Section 5 apply to the Collector for acquisition and if considered necessary for taking immediate possession of the whole or part of any damaged area comprised in the Scheme and on such application being made the Collector may forthwith deliver or caused to be delivered to it the possession of the damaged area. On such order being made by the Collector the damaged area vests in the Trust free from all incumbrances but subject to payment in due course of compensation by the Trust in accordance with the provisions of the Act. The occupier of any building or any part of the building was to be given at least two weeks notice or such longer notice as it considered reasonably sufficient to enable him to remove his movable property from such building without unnecessary inconvenience to him. Section 7 empowers the Collector, if he is himself a Magistrate and if not to apply to a Magistrate to remove obstruction and to deliver possession of the land to the Improvement Trust. Section 8 provides for marking and measuring. Section 9 requires the Collector to cause notices giving particulars as required under sub-section (2) inviting claims to be made to him for compensation. Section 11 requires the Collector to make an enquiry into the objections and claims made pursuant to the notice issued under sub-section 2(b) of Section 9 and to determine -

- (a) the true area of the land;
- (b) the market-value, at the time of publication of the scheme under Section 4(1), of -
 - (i) the land,
 - (ii) all material standing on them, and
 - (iii) any sources of income derived from the land;
- (c) the value of plots, the material thereon and other sources of income remaining outstanding as notified by the State Government under Section 12; and
- (d) the extent of the interest of every person claiming compensation; and the market-value of the interest of such persons at the time of publication of the scheme under Section 4(1).

5. Under Section 12 the Trust shall as soon as possession of the land comprised in the sanctioned scheme is delivered to it proceed to execute the scheme - but not later than 3 years of the sanction of the scheme submit for the scrutiny of the State Government an accurate statement which shall contain the following particulars -

- (a) the actual cost of the scheme;
- (b) the income derived from the scheme;

(c) the particulars and the estimated value of the plots and any material thereon that remain to be sold; and

(d) the estimated value of the other sources of income from the scheme which remain outstanding.

On the scheme being submitted to the State Government it shall after necessary scrutiny notify the details of the aforesaid statement.

6. The manner in which compensation is to be computed and the award to be passed by the Collector and the payment of compensation are provided for in Sections 13 and 16. Section 14 provides for the Collector's award to be filed and Section 15 empowers Trust either to notify its intention to make a reference to the Tribunal in the manner stated in Section 19 against the amount awarded by the Collector or place the amount awarded at his disposal. Sections 13 and 16 which deal with the calculation of the total compensation and its payment are as follows :

"Section 13. - (1) After the statement has been notified under the preceding section, the Collector shall make an award apportioning compensation in the manner hereinafter prescribed, among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have appeared before him.

(2) Notwithstanding anything contained in any other law for the time being in force, the total compensation payable for any land acquired under this Act shall be the difference between -

(a) the income of the scheme, which shall include the estimated value of the plots and the material thereon that remain to be sold and the other sources of income from the scheme which remain outstanding; and

(b) the cost of the scheme, as notified in the statement under Section 12.

(3) Subject to the provisions of the Administration of Evacuee Property Act, 1950, or any other law on the subject for the time being in force, the compensation awarded in respect of the structures, if any, standing on the persons known or believed to be interested in those structures according to their respective interests as determined by the Collector under Section 11.

Explanation. - In computing such compensation, the Collector shall assess the market-value of the structures at the time of delivery of possession of the land to the Trust and deduct from such value the cost of demolishing them and removing the material from the site.

(4) The total compensation, less any deductions that may be necessary on account of the amounts, if any, payable under sub-section (3), shall be paid to the various persons interested in proportion to the interests held by them as determined by the Collector under Section 11(c) :

Provided that the amount paid to any person shall not be less than the market-value of his interest as determined by the Collector under Section 11(d) minus the cost of demolition and removal incurred by the Trust.

Section 16. - From the amount placed at his disposal under Section 15 the Collector shall, according to the award, tender payments to the persons interested and make payments to those who agree to receive the same, with or without protest."

7. Section 19 to 21 provide that the Trust or persons interested who received compensation under protest, may require the Collector to make a reference to the Tribunal in respect of the measurement of the land, amount of compensation, the persons to whom it is payable, its apportionment among persons interested. A statement of the case is also required to be drawn up by the Collector or reference, and a notice to be given by the Tribunal to the persons interested. Under Section 23 the Tribunal has power to either maintain or modify the award passed by the Collector and order payment to the persons entitled to it, provided that it shall not question the amounts notified under Section 12. The award passed by the Tribunal is deemed to be a decree and the statement of the grounds therefore a judgment within the meaning of sub-sections (2) and (9) of Section 2 of the Civil Procedure Code; and every award and order of the Tribunal is enforceable by the Court of the senior sub-judge within the local limits of its jurisdiction as if it were a decree made or passed by it. While Section 24 makes provision for the award of costs, Section 25 does not require the Trust to pay interest on any amount awarded as compensation and tendered in accordance with the order of the Collector.

8. The provisions of the Act it may be noticed clearly indicated that they are reasonable and are designed to serve the interest of the general public namely to execute schemes in a planned manner for the improvement of the damaged areas of the city of Amritsar. They do not in any way violate the provisions of Article 19(1)(f) and (g). This Court has in no uncertain terms laid down the test for ascertaining reasonableness of the restrictions on the rights guaranteed under Article 19 to be determined by a reference to the nature of the right said to have been infringed, the purpose of the restrictions sought to be imposed, the urgency of the evil and the necessity to rectify or remedy it - all of which has to be balanced with the social welfare of social purpose sought to be achieved. The right of the individual has therefore to be sublimated to the larger interest of the general public. Applying this test it will be seen that persons who are effected by the scheme. They have also a right to take part in the proceedings before the Collector in the enquiry into claims, for compensation, and are given notice of the award made by the Collector. The compensation payable to them is, more in the nature of a profit sharing scheme in that the mining that they would be entitled for payment is the market-value of the property which has come under the scheme and may even be entitled to something more depending upon the income of the scheme and the expenditure incurred therefore. The total amount of compensation for any land so acquired under Section 13(2) is the difference between the income of the scheme which is to include the estimated value of the buildings and the material thereon that remains to be sold, the profits on the plots sold and the other source of the income of the scheme as notified in the statement under Section 12, subject as we have pointed out earlier to the compensation in any case not being less than the market-value of his interest as determined by the Collector under Section 11(d) minus the cost of the demolition and removal incurred by the Trust. The persons interested are further given a right to have their objections to the award fixing compensation, the area of the land demarcated and other matters as specified in Section 20 referred to the Tribunal. The award or any order passed by the Tribunal being deemed to be judgment and a decree under the Civil Procedure Code, the affected persons have therefore right of appeal provided under that Code, which will give them an opportunity to go up to the High Court and even to the Supreme Court. The fundamental rights to acquire, hold or dispose property or to carry on any occupation, trade or business guaranteed under Article 19(1)(f) and (g) is subject to the restrictions contained in clauses (5) and (6) of the said Article. The Act in our view complies substantially if not abundantly with the restrictions imposed on the exercise of the said fundamental

rights.

9. It is then contended that some buildings in these areas are newly built or that some of them are not damaged and hence the restriction is unreasonable but in our view this alone does not in any way justify an impediment being placed for a scheme which is designed to achieve a social purpose and is for the public good. The compensation payable under the Act is also determined on principles similar to those under the Land Acquisition Act or the Punjab Town Improvement Act. There is however no justification in the submission that option is given to acquire the area either under the Act or under the Punjab Town Improvement Act. It further declares that any scheme already framed under the Punjab Town Improvement Act is deemed to have been framed under the Act. This is far from saying that a discretion is given to the Trust to frame a scheme either under the provisions of the Act or under the provisions of Punjab Town Improvement Act or that the provisions of the latter Act are more advantageous in the matter of compensation or in respect of any other matter. The section merely incorporates by reference some of the provisions of the other Act and is also an enabling one. There is also no validity in the contention that compensation is not payable for the building but only for the land because the definition of land under the Act is similar to that under Section 3(a) of the Land Acquisition Act and is comprehensive enough to include buildings also.

10. It is next urged that the compensation so determined is not immediately payable because under the provisions of the Act the final compensation will only be determined after the scheme is submitted and sanctioned by the Government which may take several years and also there is a prohibition against payment of interest on the amount of compensation unlike that provided under the provisions of the Land Acquisition Act. It is true that the finalisation of the scheme will take time but under the provisions of sub-section (2) of Section 12 the submission of the scheme by the Trust is not to be later than 3 years which does not mean necessarily that it will take 3 years and may even take less if not obstructed by persons affected. In any case as we have said where the scheme is for the benefit of all those who have properties in the areas which are covered by the scheme and is on a profit-sharing basis, there is no hardship or disadvantage-particularly when the petitioners as well shall point out presently are assured of alternative accommodation and the allotment of newly built shops under the scheme.

11. Though the actual scheme are not before us, it is stated in the counter of Respondent No. 2 the Chairman of the Amritsar Improvement Trust that the petitioners have been assured in writing by the Trust that allotment of Pacca shops as soon as the commercial building in Dharam Singh Market which is being constructed at an estimated cost of Rs. 26 lakhs is completed. In fact Ahata Bishan Das and the adjoining scheme areas are ready. In the mean while many of the persons who have applied for alternate accommodation have for the time being been accommodated by the Trust in the stalls recently set up in Kesribagh in the immediate vicinity of the Trust office. Though the Petitioners 1 and 3 have not applied for alternative accommodation they have been assured that they will be treated alike with the said displaced occupiers of shops in case they apply for alternative accommodation. In so far as the petitioner No. 2 is concerned it is alleged that he is not an occupier of the building, as such there is no question of an alternative accommodation being given to him but this matter will have to be decided under the provisions of the Act. Be that as it may in fact the Chairman of the Amritsar Improvement Trust has appended to the counter a letter addressed to one Inder Singh Arora who has a shop in Bazar Jallianwals in Amritsar and who is also similarly situated like the petitioners. In that letter of January 6, 1970, he has stated as follows :

"Reference your discussion with the undersigned :

It is been decided to offer you accommodation on the lines of commitments made by the Trust in High Court in Letters Patent Appeal No. 187 of 1969 (Mulk Raj and Others v. Trust) i.e., as soon as commercial buildings in Dharam Singh Market, Ahata Bishan Das and the adjoining scheme areas are ready, the Trust would give preference to the oustees from the scheme area (Chowk Phowara to Jallianwala Bagh in Main Bazar and other Markets) who are 5 years old to occupy shops of their choice at the rent which is fixed by the Trust for the particular shop. The rent fixed by the Improvement Trust may be the highest that can be fetched in the market. At that rent the tenants may exercise their option to get tenancy rights in preference to other and in case they refuse to take the shops on rent so fixed by the Trust, the same would be given to others."

12. These assurance are commitments and would equally apply to the petitioners. We cannot envisage a more reasonable and fair treatment accorded to the persons who have been displaced as a result of the Improvement Schemes. The petitioners in spite of all these assurances have taken an unreasonable attitude in litigating and holding up a scheme that it beneficial for all those affected in the damaged areas by the two impugned schemes. In our view the compensation payable is neither inadequate nor illusory but on the other hand is not less than the market-value may even be more. There is therefore no violation of Article 31(2) of the Constitution.

13. The further contention that Section 2(d) is discriminatory or vague in that it does not indicate the criteria for determining what is a damaged area appears to us to be without force. We have seen the purpose for which the Act was passed by the Legislature which leaves little doubt that it was the damage caused by wholesale and serious rioting to buildings in certain urban areas in the State of Punjab and particularly in the area within the walled city of Amritsar which necessitated the framing and execution of schemes of improvement in those areas. In so far as the present petition is concerned it relates to two of the areas within the walled city of Amritsar. It is therefore not difficult to determine what is a damaged area for, if the whole of the walled city of Amritsar is a damaged area, any part thereof is equally a damaged area. There is nothing arbitrary nor is the power conferred on the State Government unguided or un-canalised nor for that matter can it be said that the Notification issued on June 26, 1962, is vague.

14. In so far as the contention that the impugned Notification sanctioning the two schemes are void as the power under Section 5 of the Act was exhausted because the Government had already exercised its power when it sanctioned Dharam Singh Market Scheme, the learned advocate has not chosen to address any arguments or to substantiate that contention. As such we find it unnecessary to deal with it.

15. In our view none of the objections are sustainable either on the ground of discrimination under Article 14 or one the scheme being unreasonable or not in the interest of general public violating Article 19(1)(f) and (g) nor on the ground of the compensation payable being inadequate or insufficient so as to infringe the guarantee under Article 31(2) of the Constitution of India. The petition is accordingly dismissed with costs.

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